

Tuesday - November 9, 1999 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Edward C. Hay Jr., Presiding; 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: Mayor Leni Sitnick

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THURSDAY, NOVEMBER 11, 1999, AS "VETERANS DAY" IN THE CITY OF ASHEVILLE

Vice-Mayor Hay read the proclamation proclaiming Thursday, November 11, 1999, as "Veterans Day " in the City of Asheville.

II. CONSENT:

Mr. Daniel Breen asked that Item G. from the Consent Agenda be removed for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 27, 1999, AND THE WORKSESSION HELD ON NOVEMBER 3, 1999

B. RESOLUTION NO. 99-163 - RESOLUTION AWARDING A CONTRACT FOR CELLULAR TELEPHONE SERVICE AND EQUIPMENT TO U.S. CELLULAR CORPORATION

Summary: The consideration of a resolution awarding a contract for cellular telephone service and equipment to U. S. Cellular Corp.

The City of Asheville uses cellular telephone services in the conduct of City business on a daily basis. The City desires to use those services that provide the best cost and coverage possible for its customers. As the communications industry is able to provide increasingly better and less expensive equipment and coverage, the City elected to seek proposals for cellular telephone service. The City advertised in the Asheville Citizen-Times for interested cellular telephone service providers and sent a Request for Proposal for cellular telephone service to prospective bidders. A pre-bid conference was held on September 22 at which three prospective bidders attended. The City received two responses to the Request for Proposal. The bids were originally due on October 1, 1999, however, one bidder expressed a concern regarding a possible need for more time to respond. The due date of the bids was then moved to October 8, 1999. The City has a communications team comprised of various City staff which have reviewed and evaluated the bids for cost and coverage as stated in the Request for Proposal. The team reviewed the proposals, evaluated the equipment submitted by the bidders for clarity and coverage of service, and reviewed certain proprietary information regarding coverage submitted by both bidders. The spreadsheet highlights the basic cost differences between the two proposals. The proposal submitted by U. S. Cellular represents the best overall cost -2-

package to the City while providing satisfactory cellular telephone equipment and service coverage.

Funding is available in the Fiscal Year 2000 operating budgets of the various City departments.

Staff recommends the City Council adopt the resolution which awards the contract to U. S. Cellular and authorizes the City Manager to execute the contract and any related documents.

RESOLUTION BOOK NO. 25 - PAGE 329

C. RESOLUTION NO. 99-164 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY TO THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY THE SEWER SYSTEM AND SEWER SYSTEM EASEMENTS FOR TWIN SPRINGS SUBDIVISION

Summary: The consideration of a resolution authorizing the Mayor to convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements of Twin Springs Subdivision.

The City of Asheville is the owner of record of a 12.27-acre tract of unimproved real property on Broadview Drive within the City limits. Infrastructure improvements have been completed and the final plat has been recorded. The City of Asheville must convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements as shown on the as-built/easement survey.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.27-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm water drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when housing construction is completed.

Community Development staff recommends adoption of the resolution to convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements of Twin Springs Subdivision.

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D. ORDINANCE NO. 2632 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FROM A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE MASTER STREET TREE PLAN PHASE II

Summary: The consideration of a budget amendment, in the amount of \$9,873, from a grant from the N. C. Department of Environment and Natural Resources, to establish a budget for the Master Street Tree Program Phase II.

The City of Asheville applied for funds in August 1999 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program. The grant was recently awarded in the amount of \$9,873 and designated for implementing the next phase of the Master Street Tree Program (MSTP) in the south area of Asheville. -3-

The Parks and Recreation Department is responsible for developing a MSTP for street trees on City rights-of-way located within the city limits of Asheville. The existing inventory is almost fifteen years old and does not accurately reflect the trees of the City. The next phase of the process will identify the location, size, condition, and site conditions of trees located in the south area of Asheville. The MSTP will serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community

organizations.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of \$9,873, to establish a budget for the next phase of the Master Street Tree Plan.

ORDINANCE BOOK NO. 18 - PAGE 30

E. RESOLUTION NO. 99-165 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS FOR THE PURCHASE OF REAL PROPERTY AT 8 CEDAR STREET FOR THE PURPOSE OF MAKING INTERSECTION IMPROVEMENTS IN THE FUTURE

Summary: The consideration of a resolution authorizing the purchase of property located at 8 Cedar Street and a budget amendment, in the amount of \$113,000, for purpose of making intersection improvements in the future.

In recent months, the property located at 8 Cedar Street (PIN No. 9657.07-58-4903) was placed on the market for sale by the owner for \$122,500. The owners of the property are David S. and Robin G. Hylton. City staff became aware of this sale and recognized that this property would need to be acquired in order to make much needed intersection improvements at Cedar Street, Fairview Road, and Liberty Street.

Currently there is a traffic signal located at the intersection of Cedar Street and Fairview Road and another one approximately 100 feet away at Liberty Street and Fairview Road. By purchasing this property, the City could realign these two intersections to create a safer, less congested intersection in the future.

Following purchase of the property, staff will lease the house until such time as the house will need to be relocated to allow for the intersection improvements, move the house to a vacant lot and sell the house, or any combination of the above. These options should generate some revenue from the purchase of the property.

Staff recommends that the Mayor be authorized to execute documents to purchase property located at 8 Cedar Street and to approve a budget amendment, in the amount of \$113,000, for the purpose of making intersection improvements in the future.

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F. ORDINANCE NO. 2633 - BUDGET AMENDMENT TO PURCHASE REAL PROPERTY LOCATED AT 8 CEDAR STREET

Summary: See Consent Agenda Item "E" above.

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G. RESOLUTION AUTHORIZING THE MAYOR TO APPROVE ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS BY THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for further discussion.

H. RESOLUTION NO. 99-166 - RESOLUTION AUTHORIZING THE VICE-MAYOR AND ASSISTANT CITY ATTORNEY TO EXECUTE A DEED OF SUBORDINATION AGREEMENT FOR THE DEED OF TRUST GRANTED BY THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES, INC. TO THE CITY OF ASHEVILLE FOR PROPERTY ON GASTON STREET

Summary: The consideration of a resolution to authorizing the Vice-Mayor and Assistant City Attorney to execute a Deed of Subordination which would subordinate the Deed of Trust granted by the Opportunity Corporation to the City of Asheville for the property purchased on Gaston Street.

By Resolution No. 98-36 the City Council authorized the Mayor to execute any and all documents necessary to exchange property between the City of Asheville and The Opportunity Corporation of Madison-Buncombe Counties, Inc. ("The Opportunity Corporation"), which property was owned by the City of Asheville and located adjacent to the property on which the W.C. Reid Community Center Annex building is located. In exchange for that real property, The Opportunity Corporation was to provide \$20,000 in cash for the city of Asheville Parks and Recreation Department to use in funding "mini-park" in the "West End section" of the City of Asheville and materials and administrative costs of not less than \$16,000 to construct a bridge across the creek at the base of property. The Opportunity Corporation acquired and an easement across the property acquired by The Opportunity Corporation for the city to use for greenway purposes. As part of that exchange, The Opportunity Corporation executed a Promissory Note and a deed of Trust against the property to secure the payments to be made to the City of Asheville.

The Opportunity Corporation has paid the \$20,000 in cash but, the materials and administrative costs in the amount of not less than \$16,000 have not yet been furnished in that City of Asheville is not yet ready to construct the bridge. The Opportunity Corporation desires to construct a new building on the property it has acquired and has secured financing to construct that building. The lender of the construction costs for that building, First Citizens Bank & Trust, desires to have a first lien on that property. The Parks and Recreation Department has no objection to the lien of the City of Asheville being subordinate to the lien of the construction lender for the new building of The Opportunity Corporation.

A Deed of Subordination has been prepared by The Opportunity Corporation, furnished to the City of Asheville, and reviewed and approved by the City Attorney's Office;

The Parks and Recreation Department and the City Attorney's Office recommend adoption of the resolution and execution of the Deed of Subordination.

RESOLUTION BOOK NO. 25 - PAGE 333

Vice-Mayor Hay 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.

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

ITEM REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 99-167 - RESOLUTION AUTHORIZING THE MAYOR TO

APPROVE ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS BY THE

HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

City Attorney Oast said that this is the consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Oak Knoll project

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount of \$6,444,000 for the acquisition, rehabilitation, and equipping of a low- and moderate-income housing project in the City of

Asheville. This project involves the acquisition and rehabilitation of an existing residential rental project currently known as Oak Knoll Apartments, consisting of 180 units located on Future Drive in Asheville.

The project will be acquired by the Silver Street Development Corporation through the Oak Knoll - Asheville Limited Partnership, which will also perform the rehabilitation work. The Housing Authority will use the bond proceeds to provide financial assistance. In a meeting and public hearing held on October 26,1999, the Housing Authority found that the issuance of the bonds would further the Authority's purpose of promoting low- and moderate-income housing in Asheville, found that the developer was financially responsible and capable of fulfilling its debt repayment obligations, if the financing was provided, and that estimated costs of the acquisition and rehabilitation were not excessive. The financing team was also approved.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, concurred in by bond counsel and the attorneys for the developer and issue, this public hearing requirement is satisfied by the public hearing held by the Housing Authority, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Oak Knoll project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

Mr. Daniel Breen urged City Council to require the developer put in writing that rates would not be raised and that current employees would not be fired. He stressed that this issue needed more time to be reviewed and the developer should be required to come in and explain exactly what is proposed.

The Manager of the Oak Knoll property stated that they do have concerns about their current positions and that they do not want their tenants to lose their housing.

City Attorney Oast explained what is being approved is rehabilitation work for a housing project that is projected to be low and moderate income. There are certain limitations on the amount of rent that can be charged for a development like this. With regard to the management -6-

staff at Oak Knoll, he suggested that the Housing Authority be contacted because they are a separate government entity as far as those things are concerned.

Vice-Mayor Hay 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. 99-167. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 335

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO PERMANENTLY CLOSING SPRUCE STREET FROM EAGLE STREET TO SOUTH MARKET STREET

RESOLUTION NO. 99-168 - RESOLUTION TO PERMANENTLY CLOSING SPRUCE STREET FROM EAGLE STREET TO SOUTH MARKET STREET

Vice-Mayor Hay opened the public hearing at 5:17 p.m.

Director of Public Works Mark Combs said that this the consideration of a resolution to permanently close Spruce Street from Eagle Street to South Market Street. The public hearing was advertised on October 15, October 22, October 29 and November 5, 1999.

The petition has been received from Mount Zion Mission Baptist Church, owners of parcels 9648-07-59-0873, 9648-06-49-9911, 8786, and 7794, requesting that South Spruce Street from Eagle Street to South Market Street be permanently closed to public use. Mount Zion Baptist Church believes the closing of the street will help eliminate a public nuisance, help eliminate crime from the area, and enhance overall redevelopment efforts by non-profits in the area.

The Public Works Department staff recommends the resolution to permanently close South Spruce Street from Eagle Street to South Market Street be adopted, with the following retention of easements for the City of Asheville, the Metropolitan Sewerage District, and Carolina Power and Light Company for the full length and width of Spruce Street to be closed for maintenance of existing public utilities and to access to (and maintenance of) an all-weather driving surface as required for Fire Department emergency access and operations.

Mr. Abraham Adams urged City Council to keep the road open in that the road leads to a church. He said that when there is a crowd of people in the area, this is just another way the people can get around without having to wait. He felt that the Sanitation Division should take care of the litter and trash in the area and that the Police Department should take care of drugs and crime. He didn't feel like the road needed to be closed to eliminate those concerns.

Rev. John Grant, representing the Mt. Zion Missionary Baptist Church, presented City Council with a petition containing 218 signatures. Said petition reads "We the undersigned support the closing of S. Spruce Street from 47 Eagle Street to S. Market Street because of illegal activities, urination and defecation happening on and around our property." He said the street is often cluttered with trash, wine and beer bottles, beer cans, brown paper bags, etc. and is frequented by alcoholics, drug addicts, prostitutes and others with arrest records who engage -7-

themselves and often urinate and defecate in the area. They feel the closing will help eliminate a public nuisance, will help eliminate crime from the area and will enhance the overall redevelopment efforts by non-profits in the area.

Ms. Willie Mae Brown, representative from the Mt. Zion Development Community Organization, showed Council pictures of the portion of the road requested to be closed, which she felt would easily let City Council know why they are requesting that it be closed. Ms. Brown said that for the past 8-10 years she has been organizing clean-ups in that area and it's shocking to see the amount of litter and the kind of illegal activity in that area. She said that they have clean-ups scheduled four times a year, however, on that stretch of road, it has to be cleaned up at least twice a week.

Councilwoman Field wondered if closing this portion might make it more attractive for crime and other illegal activities. Rev. Grant responded that if the road is closed, they will work even closer with the Police Department to maintain and police the area. He also felt that if they can stop the traffic on the road, then that will significantly help reduce the problem.

Councilman Tomes applauded the Church and other non-profits in the area that have a strong resolve for rehabilitating the area. He also felt that closing the road is a first step in the right direction.

Councilman Cobb felt that this area has great potential for a walkable community in which businesses can

locate in which will attract visitors to our City.

Ms. Bonnie Love urged City Council to not close this road. She felt that City Council should not close off a street that leads directly to a church, irregardless of the behavior of the people and irregardless of environmental circumstances. She felt to close this road will be segregating a community that is already segregated.

Vice-Mayor Hay closed the public hearing at 5:37 p.m.

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

Councilman Tomes moved for the adoption of Resolution No. 99- 168. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 336

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

ORDINANCE NO. 2634 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

Vice-Mayor Hay opened the public hearing at 5:45 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance amending the Unified Development Ordinance with regard to standards for the location of telecommunications facilities in response to issues identified by service providers at the time of -8-

adoption of the ordinance. This public hearing was legally advertised on October 29 and November 5, 1999.

When the City Council adopted the Telecommunications Facilities Ordinance in January 1999, the service providers identified six (6) areas of concern with the ordinance. City Council directed staff and the Planning and Zoning Commission to study the identified concerns and to propose appropriate revision to the ordinance, if needed. The Commission and staff spent over two (2) months studying the identified issues, even hiring a telecommunications engineer to provide input on the question of tower height. Based upon this study, the Commission is recommending certain revisions to the ordinance. The revisions are presented with the following goals:

- Promote and facilitate co-location of facilities;
- Enable adequate service to be provided to Asheville's citizens and visitors; and
- Protect and preserve Asheville's scenic beauty.

One of the issues of concern identified by the service providers was the tower height limit of 100 feet. The service providers argued that this height limit would limit the ability to provide adequate service and/or result in a proliferation of towers. After studying this issue closely, the Planning and Zoning Commission is recommending the tower height limit remain at 100 feet. Revisions recommended by the Commission include:

- Permitting existing structures (including non-conforming ones) to be improved or rebuilt at the existing height to accommodate co-located equipment;

- Reducing the buffering requirement for co-located equipment;
- Providing City Council authority to reduce the required setback of a new structure from adjacent residential uses and zones;
- Revising the standards for consideration of electric transmission towers as locations for telecommunications equipment;
- Reducing the maintenance/removal bond amount when the equipment is co-located in an existing equipment shelter; and
- Clarify wording regarding the posting of the maintenance/removal bond.

Representatives of the service providers were involved in the development of the proposed amendments.

The Planning and Zoning Commission voted unanimously to recommend adoption of the proposed amendment. The staff of the Planning and Development Department also recommends adoption of the amendment.

Mr. Green responded to various questions from Council, some being, but are not limited to, is the City going to be able to provide adequate service to the citizens, are we limiting competition, and what is and how big is a search radius.

Councilwoman Field felt that protecting our beauty is very important, but going into the next century with the communications needs, she wanted to be absolutely sure that we are not creating an environment that puts us in a second rate position for the kinds of business and the kinds of economic development that we would like to have here.

Mr. Larry McDevitt, attorney representing Bell Atlantic Mobile, felt that the amendments represent some very positive steps to make the ordinance more workable. He did note, however, that he is working with City staff on two other amendments which deal with the height of the towers and the five year conditional use principle.

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Councilman Cloninger felt that the ordinance, with these revisions, achieves the goal of preserving the beauty of our area. In fact, he felt further amendments should not be considered for a while in order to give enough time for the ordinance to be effective.

Vice-Mayor Hay closed the public hearing at 6:00 p.m.

Vice-Mayor Hay 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. 2634. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

C. PUBLIC HEARING TO AMEND THE CITY'S 1999 CONSOLIDATED ACTION PLAN

RESOLUTION NO. 99-169 - RESOLUTION APPROVING AMENDMENTS TO THE 1999 CONSOLIDATED ACTION PLAN FOR THE HOME AND COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

ORDINANCE NO. 2635 - BUDGET AMENDMENT IN THE AMOUNT OF \$70,000 IN CDBG FUNDS FOR THE MONTFORD GATEWAY PROJECT, \$50,000 IN HOME FUNDS FOR HOME RENT ASSISTANCE, AND THE REALLOCATION OF \$35,000 IN THE 1997 CDBG GRANT TO MOUNTAIN HOUSING OPPORTUNITIES

ORDINANCE NO. 2636 - BUDGET AMENDMENT IN THE AMOUNT OF \$130,000 FROM CDBG FUNDS FOR THE ACQUISITION OF LAND IN WEST ASHEVILLE AND PRE-DEVELOPMENT COSTS

Vice-Mayor Hay opened the public hearing at 6:03 p.m.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of an amendment to the City's 1999 Consolidated Action Plan so as to recognize the receipt of additional program income and fund three new projects: (1) purchase of land for housing development in West Asheville; (2) a loan guarantee for the Montford Gateway development; and (3) rent assistance for families at risk of homelessness.

Program income generated by our Community Development Block Grant (CDBG) and HOME programs is estimated at the start of each year. Necessarily, these estimates are conservative. We now have a significant accumulation of unallocated program income from prior years in both the CDBG and HOME programs, and are expecting to receive an additional \$90,000 from the sale of a small piece of redevelopment land on Asheland Avenue. Information shows that a total of \$191,349 in CDBG and \$54,551 in HOME funds is now available for allocation to projects.

Although it would be possible to retain these funds for allocation through the annual process in spring 2000, there are three projects which need funding now, outside the normal cycle.

Purchase of land for Housing Development - The Asheville Housing Authority has offered the City an option to buy a 6.8 acre site at the intersection of Virginia Avenue and -10-

Brotherton Avenue in West Asheville. The site is suitable for a Planned Unit Development of 20-30 single family homes to provide home ownership opportunities to low and moderate income families in a setting designed to foster a sense of community. Design features would include: clustered homes joined by footpaths; peripheral on-site parking; commonly-owned play, garden, and green space area; and, if funds allow, a community house for social activities, laundry, etc.

The site has been appraised at \$120,000. An allocation of **\$130,000 in CDBG** funds is recommended to cover acquisition and pre-development costs.

Montford Gateway Project - In 1998 Neighborhood Housing Services purchased from the City a site at the south end of Montford Avenue for a mixed use development with offices, retail space and apartments. NHS has put together a permanent financing plan incorporating Low Income Housing Tax Credits, a capital advance from Neighborhood Reinvestment Corporation, several foundation grants, a small (\$31,250) CDBG grant made in 1998, and a \$400,000 bank loan. The bank has required NHS to provide a loan guarantee or reserve amounting to two years of interest on the loan in case the commercial parts of the development are slow to lease. NHS has asked the City to allocate **\$70,000 in CDBG** funds for this reserve.

If, as expected, the commercial units are quickly leased, these funds will revert to the City's CDBG fund for re-allocation to other projects through the normal allocation procedure.

HOME Rent Assistance - The State Division of Social Services has announced the availability of \$5 million statewide to assist families on welfare or eligible for welfare in securing safe, affordable housing. City, County, DSS, and non-profit agency staff are collaborating to prepare a \$400,000 competitive grant application. The lead agency is the Affordable Housing Coalition (AHC). The state grant requires a match of

\$1 in local funds for every \$2 in grant funds. This match would be funds contributed by participating agencies, including CDBG funds already allocated to AHC for rental education and counseling, and HOME funding to be applied directly to rent assistance, which is an eligible HOME activity.

An allocation of **\$50,000 in HOME** funds has been requested by the partners in this grant application .

Amendment of 1997 CDBG Grant to Mountain Housing Opportunities - A 1997 CDBG grant made \$262,300 available to MHO for infrastructure improvements associated with its housing development in the West End/Clingman Avenue neighborhood. This project has been slow-moving, due in part to the absence of a detailed, site-specific, land-use and design plan for the neighborhood. MHO has requested that \$35,000 of the 1997 funding be re-allocated for planning. MHO will also proceed with minor sanitary sewer and storm drain improvements near Rector Street and Park Place. No new funds are required.

The changes amount to a substantial amendment to the City's Consolidated Action Plan for 1999-2000 and require a public hearing before Council approval. Notice of the amendment was given on October 29 and November 5, 1999.

At the City Council worksession on November 3, 1999, City Council requested the following additional information on the Virginia/Brotherton site:

Fire Flow - Asheville's fire code includes "fire flow" requirements for new subdivisions and major projects.

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The minimum fire flow requirement for single-family dwellings or townhouses with two-hour fire separations between townhouse units is 500 gallons per minute. Fire flow requirements for all other occupancy types begin at 1000 gallons per minute.

The fire code also provides for a "sprinkler credit"--if a building is equipped with an approved sprinkler system, the fire flow requirement can be cut in half, as long as there is sufficient fire flow to supply the sprinkler system and estimated non-fire water demand.

In the case of sprinkler-equipped single-family dwellings/townhouses, the fire flow requirement would be the flow required to support the sprinkler system and domestic needs, or 250 gallons per minute, whichever is greater.

Water Supply - Virginia Avenue is supplied by a 6-inch cast iron waterline. This 6-inch waterline is connected to an existing 8-inch waterline on Haywood Road and has cross-connecting 6-inch waterlines at Langwell Avenue and Drake Street.

Domestic water service for the entire Virginia Avenue area is excellent. Static pressures range from 120 psi (pounds per square inch) near Haywood Road to near 170 psi at the lower end of Virginia. The additional water demand created by the proposed (20-30) residential units being proposed on Brotherton Avenue will have negligible impact on water service to existing customers in the neighborhood.

Fire flows along Virginia Avenue range from excellent to adequate. Fire flows in excess of 3,000 gallons per minute (gpm) are available on Virginia Avenue at Haywood Road. Hydrant flow tests at the Brotherton/Virginia Avenue intersection have ranged from a low of 460 gpm to a high of 540 gpm. This variation is due to other demands on the water system at the time of the test, but tests on average have been at least 500 gpm. The 540 gpm test was conducted on 11/3/99.

The Water Resources Department is confident that they can provide water service to this proposed development without any negative impact on existing customers in the neighborhood.

Property Values - Twenty-three residential property values closest to the Brotherton Avenue site were assessed using the 1998 taxes. The median value is \$62,400 . Staff estimates that current fair market values would be 10-25% higher, depending on the condition of the property, bringing the median value to about \$75,000. The homes are generally of modest size, built in the middle years of this century, mostly before the second world war. They appear to be in fair to good condition, but because of their age may have somewhat out-dated plumbing, wiring, and heating systems, or lack some amenities generally found in newer homes, e.g. a second bathroom. The proposed development would create homes of comparable size and similar market position, with values within the range of the existing homes but towards the upper end of the range, because they would be newer.

It is unlikely that the proposed new development would have any significant impact on the values of existing homes in the neighborhood.

Use of Sale Proceeds by the Housing Authority - David Jones, Executive Director of the Housing Authority of the City of Asheville, stated at the November 3 worksession that the Authority will apply the proceeds of sale of the Brotherton Avenue Site to the construction of new public housing on scattered sites ("Project 19"), which is currently under way. He said that this is consistent with instructions he has received from HUD.

Staff recommends amending the 1999 Consolidated Action Plan to include rent assistance in the HOME program, to allocate \$200,000 in CDBG funds and \$50,000 in HOME -12-

funds to the three projects described above, and to re-allocate \$35,000 in 1997 CDBG funds from infrastructure improvements to planning in West End/Clingman.

Upon inquiry of Councilman Sellers, Ms. Caplan explained that a planned unit development is a way of arranging the units on a site so that in parts of the site you may exceed the number of units per acre that the site is zoned for, but in other parts of the site you have no buildings - so it evens out. There is a process set out in the Unified Development Ordinance for approval of the site plan.

When Councilman Cobb asked what Ms. Caplan meant by a co-housing development, Ms. Caplan said that the term has nothing to do with communes. It is much more like a condominium than a commune. She said that there are approximately 300 co-housing communities in the United States. She said that the main features are to cluster the housing fairly close, to have footpaths and gardens between the houses, to have common management of the open spaces to encourage community uses of the open spaces, and to have a community building for people to meet. She said the difference between a condominium and a co-housing development would be these community activities and the fact that management of the development is not turned over to a board, but is undertaken equally by the owners. She said that each unit will probably resemble townhouses and will be a normal self-contained house. The owner would own it under normal fee simple deed, in addition to owning a share of the common areas.

When Councilman Cobb noted that under the RS-8 zoning the site is allowed to have up to 50 or more units, Ms. Caplan said that it would be difficult to develop 50-60 units on this site and co-housing development seems to work best with less than 30 homes. She stressed that the City will control how many units are built because the City will be the owner of the land and the site plan will have to be approved by the City too.

Councilwoman Field described some of the following common areas at the Westwood co-housing development: a community building, a workshop area, an area for day care, a garden and orchard, etc.

Mr. Mike Brookshire, Engineer with the Water Resources Department, said that the improvements made was a new 6-inch line on Hudson Street, between State Street and Landwell Avenue. He said that all records and tests indicate that there is also a 6-inch line from Landwell to Brotherton. He said that they were going to dig

the waterline up, but when they got there the Water Resources Department crew found two valves, one on Brotherton and one just past Brotherton further down the hill on Virginia Avenue. They operated the valves and counted the turns, and it is consistent with a 6-inch waterline. He said that to compliment the values that they found, it is physically impossible to flow the amounts of water that we have found on Brotherton through a 2-inch line.

Councilman Sellers noted that the minutes of a 1994 meeting when this site was discussed, the Fire Chief indicated that this area had a 2-inch waterline. The minutes reflect that "if it is a 2-inch line, it would be suitable for domestic purposes, but not for fire flow purposes."

Fire Chief John Rukavina said that at the time the statement was made in 1994, it may have been speculation based on the amount of water flow and information he had at the time from the Water Authority.

Mr. Dick Rice, representing the West Asheville Community League, said that \$130,000 for the Housing Authority's 6.8 acres is a per acre price of \$19,117; however, since only about four acres are considered buildable, the price per acre is \$27,083, which is unreasonable. Mr. Rice said that in the late 1980's or early 1990's the property was purchased by three -13-

businessmen who tried for years to sell the property. It was finally sold to the Housing Authority for a price of \$64,500 and \$9,000 for an additional two acres. He felt that if real estate is so scare and valuable, why haven't developers rushed to buy this property. He said that the 1994 City Council minutes reveal that Mr. Holcombe, former Water Resources Director, and Fire Chief John Rukavina both testified that there is only a 2 inch waterline at the lower end of Virginia Avenue and that the fire flow is inadequate. However, Mr. Brookshire said there is a 6 inch waterline at this location. He felt the waterline needed to be dug up to be sure about it's size. With regard to fire flow, sprinkler systems are worthwhile but they require a lot of water. He felt that the pathways between the housing units will be a breezeway for fire to spread. When the Housing Authority wanted to build on the property back in 1994, the issue was, and still is, safety. He stressed that (1) if the water supply is improved to provide water necessary to protect the number of units proposed to be built, as well as the rest of the neighborhood; (2) if one and two bedroom single-family homes are built according to the RS-8 zoning; and (3) if handicapped people were provided for, then new affordable homeowners would be very welcome in our backyard.

The following individuals spoke against the City purchasing the property on Virginia/Brotherton to build co-housing units for the following reasons: the infrastructure in the area is already overburdened, increased traffic on Virginia Avenue will contribute to the already speeding on that road, the property is not suitable to build houses on, there is presently inadequate water in the area, there are no sidewalks on Virginia Avenue, Virginia Avenue is a narrow road, residents need to see a design of the proposed units, there should be a smaller number of units built and they should become part of the existing neighborhood, I-240 interchange plans may affect the property, 20-30 units are too many for just the two acres of buildable property, and if there is a 6-inch waterline on Virginia Avenue then it is probably very old and rust inside the pipe will restrict the water flow:

Mr. Richard Nantelle, resident on Virginia Avenue

Mr. William Cogburn, resident of the area

Mr. Carlos Montgomery, resident of the area

Mr. Steve Gruber, affordable housing developer

Ms. Lisa Rentis, 32 Virginia Avenue

Ms. Martha M. Gosnell, resident of the area

Ms. Margaret Ballew, resident of the area

Ms. Rebecca Miller, 268 Virginia Avenue

Ms. Kay Cowan, resident of the area

Vice-Mayor Hay closed the public hearing at 7:17 p.m.

Upon inquiry of Councilwoman Field, Fire Chief Rukavina said that the fire flow requirement for a single-family home is 500 gallons per minute and the fire flow for a community center is 1,000 gallons per minute. He noted that if the community center were sprinklered and there was an adequate water supply, there would be a 50% credit for that, so theoretically, that would be 500 gallons per minute.

With regard to traffic, Councilwoman Field felt that Virginia Avenue would be a good candidate for incorporating some of the traffic calming devices. She suggested that the Traffic Engineer report on the street condition.

Councilwoman Field was concerned, as was the rest of City Council, about the whether the waterline on Virginia Avenue is a 2 inch line or a 6 inch line.

Upon inquiry of Councilman Cobb, Mr. Gruber said that 40-50 units could be built on the property under the RS-8 zoning designation. Councilwoman Field also noted that in the Unified -14-

Development Ordinance there are some incentives for building affordable housing that will allow us to increase the density per acre based on the number of affordable units.

Councilman Sellers questioned how close will the I-240 construction come to Virginia Avenue and is the loop to Amboy Road going to take out the Hidden Cove Apartments. Planning & Development Director Scott Shuford said that the I-240 construction has not bee settled and the design has not been set. In fact, we have asked them to look at an alignment there that would move the access roads, in terms of the interchange, a little bit away from this area. However, we do not have an exact alignment, but it will come close.

Councilman Sellers said that he was not comfortable in voting on the land purchase issue with some of the questions raised. He suggested separating that issue from the other three issues (Montford Gateway Project, HOME Rent Assistance and Amendment of the 1997 CDBG grant to Mountain Housing Opportunities) which he was in favor of supporting.

Councilman Cloninger hoped that some of the unresolved issues can be answered so that the City can acquire the property. He felt Council should be specific with the questions they would like to have answered by City staff.

Vice-Mayor Hay has heard the community say that dedicating this site to the creation of affordable housing is a good thing and they favor it. However, they are concerned about what will happen on that property. He noted that there is a long way to go before the City decides what will happen with that property. Some remaining questions are, is the waterline sufficient, is traffic going to be a problem, along with other issues that come up with any development. Until designs and proposals are made and until there has been neighborhood input, City Council will not make any decisions on what will happen to the property. However, the first step is to acquire the property and what is in front of Council today is to take some of some of our federal housing funds and use them to acquire this property and dedicate it to affordable housing. Then we can move forward in designing exactly what we are going to do with it, with neighborhood input. On that basis, he would support the budget amendment to allow the City to purchase the property.

Councilwoman Field agreed with Vice-Mayor Hay, with the caveat that the City Manager be authorized to purchase the property, subject to absolute assurance that the waterline in the area is adequate and that the additional 20-30 units will not have a major impact on Virginia Avenue.

Vice-Mayor Hay agreed that if there is not a 6 inch line in the area and the traffic study shows the additional 20-30 units will increase traffic, then it's inappropriate to build 20-30 units. But, even if there is a 2 inch line, then the City can build what is appropriate for that site, based on what the infrastructure is and what the traffic concerns are and we can get into that as the project is designed.

Councilman Cloninger said then there would be the issue of cost feasibility. If the City is faced with a substantially reduced number of units that can be built, then would the City want to purchase the property for the price that is on the market. He did hope that the City can acquire the property and do a planned unit development, however, he felt some of the questions should be answered before a definite decision is made on acquiring the property.

Councilman Tomes felt that there are two different issues - one is the acquisition of the property and the other is what will be built on the property. Since what will be built on the property (after the unresolved questions have been answered) will have to come back to City Council, then he would be willing to support moving ahead with the acquisition.

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Councilman Cobb felt that the unresolved questions should be answered prior to acquiring the property.

Councilman Cloninger suggested that Council vote to set aside \$130,000 for the purchase of the land, but not actually close on the purchase of the property, subject to receiving a report from staff that satisfactory responds to the concerns raised by City Council. This way, if it comes to light that it's not feasible to build 20-30 units on the property, the City will not have acquired the property.

City Attorney Oast said that he was not certain of what HUD requirements are, however, he felt City Council could (1) go ahead and approve the entire budgetary request, but not authorize the City Manager to close on the property acquisition until the questions have been answered by a report to City Council; or (2) approve the budgetary amendment, minus the \$130,000 for land purchase, and wait until the report from staff on the questions, along with authority for the City Manager to acquire it.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Cloninger moved to adopt Resolution No. 99-169, approving amendments to the 1999 Consolidated Action Plan for the HOME and CDBG Programs, with the deletion of \$130,000 in CDBG funds for the acquisition of land in West Asheville and pre-development costs for the development of 20-30 single family homes. This motion was seconded by Councilman Sellers and carried unanimously.

Councilwoman Field moved to adopt Ordinance No. 2635, a budget amendment in the amount of \$70,000 in CDBG funds for the Montford Gateway Project; \$50,000 in HOME funds for HOME Rent Assistance; and the reallocation of \$35,000 in the 1997 CDBG grant to Mountain Housing Opportunities. This motion was seconded by Councilman Cloninger and carried unanimously.

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Councilwoman Field moved to adopt Ordinance No. 2636, a budget amendment in the amount of \$130,000 from CDBG funds for the acquisition of land in West Asheville and pre-development costs, subject to the City

Manager not actually closing on the property pending a report from staff providing City Council with satisfactory answers to concerns raised by City Council about the property and the impact that a project of 20-30 units would have on the surrounding neighborhood. This motion was seconded by Councilman Cloninger and carried on a 4-2 vote with Councilmen Cobb and Sellers voting "no".

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Councilman Cobb felt it would be better to defer action on the land acquisition until all the questions raised by City Council have been satisfactorily answered.

Councilman Cloninger noted that if the questions are not answered to City Council's satisfaction, then the \$130,000 will remain in the CDBG budget and appropriated somewhere else.

Councilman Cloninger moved to amend Resolution No. 99-169, to amend the CDBG Action Plan for FY 1999 to appropriate \$130,000 in CDBG funds for the acquisition of land in West Asheville and pre-development costs for the development of 20-30 single family homes, provided that authorization for such purchase be considered by City Council following a report by -16-

the City Manager which addresses the following issues: (1) verification of waterline size; (2) report from the Traffic Engineer on if the additional 20-30 units will cause a major impact on the service level on Virginia Avenue, including assurance that the City will consider traffic calming devices to address concerns raised by the neighborhood; (3) whether or not the expansion of I-240 would take a piece of the property; (4) adequacy of sewer in the area; and (5) adequacy of water pressure throughout the day, including peak period. This motion was seconded by Councilwoman Field.

Councilwoman Field felt it was important that the City purchase this property and do something with this piece of land, and whether it is exactly what has been described today may not be what happens. However, she doesn't want to purchase the land without knowing that there is adequate water available.

Vice-Mayor Hay again felt the City should proceed with purchasing the property and design something that is appropriate for the area with the current infrastructure. He said he would vote against the motion because he felt these issues will be addressed before the site plan is approved.

Councilman Cobb again stressed that it would be better to defer action on the land acquisition until all the questions raised by City Council have been satisfactorily answered.

The motion made by Councilman Cloninger and seconded by Councilwoman Field failed on a 3-3 vote with Councilwoman Field and Councilmen Cloninger and Tomes voting "yes" and Vice-Mayor Hay and Councilmen Cobb and Sellers voting "no".

Vice-Mayor Hay moved to reconsider the motion made by Councilman Cloninger and seconded by Councilwoman Field. This motion was seconded by Councilman Cloninger and carried on a 4-2 vote, with Councilmen Cobb and Sellers voting "no".

The main motion made by Councilman Cloninger and seconded by Councilwoman Field was reconsidered and carried on a 4-2 vote with Councilmen Cobb and Sellers voting "no".

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D. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO APPROVE DEVIATIONS FROM CERTAIN DEVELOPMENT STANDARDS

ORDINANCE NO. 2637 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO APPROVE DEVIATIONS FROM CERTAIN DEVELOPMENT STANDARDS

Vice-Mayor Hay opened the public hearing at 7:52 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of amending the Unified Development Ordinance which would create flexible development standards for setbacks, lot area and dimension, and number of parking spaces and would permit structures which comply with design review standards to be exempt from the setback, height, and building floor area requirements of the underlying zoning district. This public hearing was advertised on October 29 and November 5, 1999.

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The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would establish Section 7-11-7 to create flexible development standards. These standards would, under certain conditions, permit the Planning and Development Director to relax the existing standards for setbacks, lot area and dimensions, and number of parking spaces. In addition, it would permit structures which comply with design review standards to be exempt from the setback, height, and building floor area requirements of the underlying zoning district. The Planning and Development Director could approve the following relaxations in the existing standards if certain conditions are met:

- Reduction in required setbacks up to 10% or 24 inches, whichever is greater;
- Up to a 25% reduction in the required number of parking spaces; and
- Up to a 10% reduction in lot area or dimension.

In addition, structures which have been reviewed by a qualified design review board and found to comply with the applicable design guidelines would be exempt from the setback, height, and building floor area requirements of the underlying zoning district.

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

Vice-Mayor Hay closed the public hearing at 7:56 p.m.

Vice-Mayor Hay 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. 2637. This motion was seconded by Councilman Tomes and carried unanimously.

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E. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO REVIEW AND APPROVE REQUESTS FOR ALTERNATIVE COMPLIANCE TO THE LANDSCAPE REQUIREMENTS

ORDINANCE NO. 2638 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO REVIEW AND APPROVE REQUESTS FOR ALTERNATIVE COMPLIANCE TO THE LANDSCAPE REQUIREMENTS

Vice-Mayor Hay opened the public hearing at 7:56 p.m.

Ms. Stacy Merten, Urban Planner, said this is the consideration of an ordinance to allow

the Planning and Development Director to review and approve requests for alternative compliance to the landscape requirements. This public hearing was advertised on October 29 and November 5, 1999.

Currently the Unified Development Ordinance (UDO) requires that any request for alternative compliance to the landscaping requirement of Article 11, must be heard by the Technical Review Committee (TRC). Since the adoption of the UDO, all requests for alternative compliance meeting the criteria have been approved by the TRC based on the recommendation -18-

of staff and the representative from the Tree/Greenway Commission. Most of these requests have been for Level I projects which are typically reviewed in 5-10 days. Often these projects are unnecessarily delayed when seeking alternative compliance due to the current process of review by the TRC. Staff discussed this wording amendment with the TRC and all agreed that it would be beneficial to amend the UDO.

Planning & Development staff presented this wording amendment to the Planning & Zoning Commission at their October 6, 1999, work session and meeting. The Commission voted unanimously to recommend to City Council the adoption of this wording amendment.

Vice-Mayor Hay closed the public hearing at 7:58 p.m.

Vice-Mayor Hay 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. 2638. This motion was seconded by Councilman Sellers and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 22-November 4, 1999: Gene Kelly (Traffic Engineering), Donald Ledford (Traffic Engineering), Steve Parten (Civic Center), John H. Whitmire (Streets), Asheville Smoke (Civic Center), Evelyn Bruhn (Water) and Joe Barlow (Sanitation).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Pack Place Sign

Ms. Nan Davis and Ms. Julie Brandt, representatives of Re-design the Sign, read a statement to City Council objecting to the sign in front of Pack Place. "We were quite surprised when we found out that the sign ordinances DO NOT allow a sign like the one at Pack Place but that City Council approved a wording

amendment that allowed this sign to contradict the regulations that were in place. The City Council, in that amendment, gave Pack Place permission to go beyond the limits that had been set for electronic signs and changed the definition of an electronic sign so that Pack Place could have the frantically active, animated sign it now has. Further the Pack Place Board requested another favor and was granted an encroachment agreement from Public Works so they could put the sign out on the sidewalk, with is public property." They feel that Pack Place is a wonderful asset to our City and they are supportive of the museums and their desire to attract attention to their events. Their objection is that this sign does not belong on the square because it is out of character in scale and materials with Pack Square. They are also concerned about the precedent it sets for other businesses that want and need signage. They feel that guidelines for signage should be a part of the first -19-

information every business receives when planning to come into the City and they should know that even though compliance is not mandatory, that Asheville is very serious about keeping the historical and small mountain town feeling in our downtown. Since Pack Square is going to be studied and the future of the square considered, they ask that City Council consider removing the sign. In the Pack Place encroachment agreement there is a provision for removal of the Pack Place sign should it come in conflict with any project or program undertaken by the City. They urged City Council to remove the sign so that this area of Pack Place Square can be a part of the total plans being made for renovating the Square. They suggested moving the sign to another location where it could be useful in announcing either events at Pack Place or events going on throughout the City. Perhaps move the sign to somewhere that businesses would want to pay to advertise on it or perhaps it could be sold to a business where its scale, materials and animated lights would be appropriate.

It was the consensus of City Council that the City Attorney to review the encroachment agreement and report back to City Council at a worksession to know what their options are with regard to this sign.

Closed Session

At 8:12 p.m., Councilman Tomes moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: CC&J Enterprises, City of Asheville, Jackson Park/Woolsey Neighborhood Association - statutory authorization is contained in G. S. 143-318.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 8:40 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Tomes and carried unanimously.

VIII. ADJOURNMENT:

Vice-Mayor Hay adjourned the meeting at 8:40 p.m.

CITY CLERK MAYOR
