

Tuesday - December 14, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

City Attorney Oast announced that Councilman Charles R. Worley was administered his Oath of Office on December 9, 1999, by City Clerk Burleson.

### **CONSENT:**

#### **Budget Amendment to Amend Water Capital Project - 29 Fund**

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to reflect transfer of completed projects to fixed assets and to restate budgeted revenues and appropriations to better reflect what is expected to be received and spent.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. Staff recommends the following changes to the capital project ordinance:

Revenues:

- Investment earnings are increased to reflect additional unexpected interest received on the 1992 General Obligation Bonds and the 1996 Revenue Bonds.
- The Contribution From Other Funds (General Obligation Bonds), Sale of Water Revenue Bonds 1996, and State Clean Water Loan are adjusted to reflect transfer of completed projects to fixed assets.
- Contribution from other Funds - Water Resources and Appropriated Fund Balance are being deleted. These budgets were set up to reflect the Authority's contribution of \$5 million to the 1996 Revenue Bond Projects that was required in the 1996 Bond Indenture. This contribution was made in the 30 Fund (operating budget) and the 35 Fund (major capital projects) and will not be made to the 29 Fund.

Appropriations:

- General Operations/Bond Issue is being changed to \$1 million to reflect bond issue costs and some arbitrage payments. The Debt Service Reserve Fund and Capitalized Interest are being deleted. Debt Service and Interest has been budgeted and expended in the 30 Fund (operating budget).
- The Mills River Regional Water Resources Project, Water Distribution Master Plan, Leak Reduction/Mapping, and Pipeline Replacement Phase II are being decreased to reflect transfer of completed projects to fixed assets. There are also some excess funds remaining after closing projects that are being reprogrammed to other projects or deleted to offset decreases in revenue.
- Broadway Water Line (DOT), Pipeline Phase III, and Chemical Improvements have been completed and

are being closed to reflect a transfer of the completed projects to fixed assets. -2-

The Regional Water Authority approved these changes at their October 19, 1999, meeting.

Staff recommends approval of a resolution amending Capital Project Ordinance 92-17 to better reflect expected revenues and appropriations.

### **MSD Easements Over Portion of Property on Galax Street**

Summary: The consideration of a resolution authorizing the Mayor to convey easements over a portion of property located on Galax Street in connection with the Fairfax Avenue Asheville Master Plan Project.

The subject property is located on Galax Street and backs up to property fronting on Fairfax Avenue. It is shown as Lots 51, 52, 53 and 54 on a plat recorded in Plat Book 154, Page 102, Buncombe County Registry (PIN 9638.17-22-2169) and contains 40,946 square feet. Due to its size, shape and topography it is suitable for subdividing into four buildable parcels.

Metropolitan Sewerage District of Buncombe County, North Carolina, has requested a Permanent Easement containing 171 sq. ft. along with a Temporary Construction Easement containing 561 sq. ft. over a portion of said Galax Street property. The easement would enable MSD to complete the sewer improvements in the Fairfax Avenue Asheville Master Plan project which will benefit the community as well as the subject property.

Approval of the resolution will authorize conveyance of the easement to MSD.

Community Development staff recommends adoption of the resolution.

### **Fair Housing Assistance Program Grant Funds**

Summary: The consideration of a budget amendment, in the amount of \$40,400, to increase federal funding for the Fair Housing Assistance Program for Fiscal Year 1998/99.

The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988, using HUD Fair Housing Assistance Program (FHAP) funds. The City's Community Development Division serves as Lead Entity and monitors the program. On November 24, 1998, City Council approved a 1998/99 budget of \$18,400, equal to the HUD FHAP grant for the twelfth year of this program. HUD amended this in June 1999 adding \$25,000 to give a total of \$43,400.

The City has now received another grant agreement from HUD allocating a further \$40,400 in Fiscal Year 1999 FHAP funds. HUD has treated this as a second amendment to the 1999 agreement, because it is using last year's funds in a "catch-up" process. A budget ordinance is needed to appropriate the new funds. Our next FHAP grant will be for Fiscal Year 2000, using Fiscal Year 2000 funds.

Community Development staff recommends adoption of the budget amendment.

### **Unattended Fuel Facility**

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Summary: The consideration of a resolution authorizing installation and operation of unattended fuel facility at the City's service station.

The City's service station is operated by the Department of Public Works. Mark Combs, Director of Public Works, has asked for Fire Department assistance with meeting fire code standards so that the motor fuel pumps at the service station can be operated by vehicle drivers without an attendant. Those standards having been met, and the installation having been approved by the Fire Department's Life Safety Division, the State Fire Code now requires City Council approval.

The Fire Chief recommends City Council authorize installation and operation of an unattended fuel facility at the City's service station through adoption of the resolution.

### **Financing the Purchase of Revenue Control and Gate Equipment**

Summary: The consideration of a resolution authorizing the installment financing of revenue control and gate equipment for the City's parking decks.

The City of Asheville Fiscal Year 1999-2000 Budget for the Parking Services Fund includes authorization for the installment purchase of revenue control and gate equipment for the Rankin Avenue, Wall Street and Civic Center Parking Decks (amount to be financed \$295,474.00).

The Finance Department had previously sought proposals from 31 firms to finance the purchase of a fire truck and 4,000 trash cans. Twelve proposals were received, the best of which was submitted by Crestar Leasing Corporation - - 4.96% for five years. Crestar Leasing Corporation has offered to extend those very favorable rates to finance the revenue control and gate equipment purchase.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Crestar Leasing Corporation for the purchase of the revenue control and gate equipment and authorizes the City Manager, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Council adopt the resolution and enabling budget amendment.

When Mayor Sitnick asked about the broken gate arms at the Rankin Street deck, City Manager Westbrook said that we have been aware of those problems, however, they can't be repaired because they don't make repair parts for them anymore.

### **Amendment to the Asheville-Buncombe Minority Business Plan**

Summary: This is the consideration of a resolution to amend the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, to expand participation in the Mentor-Protégé Program.

At their meeting on November 23, 1999, the Minority Business Commission recommended that the Plan be amended to enhance and clarify provisions of the Plan. The most significant changes include a listing of the requirements of minority businesses for certification under the Plan (page 15). The requirements have not changed; but, have been listed in the Plan in order to make the public aware of the policy and process. The only other significant -4-

amendment (page 8) allows contractors the opportunity to submit all of the minority business forms necessary to document the level of "good faith effort" made during the time of the bid (as is done presently) or to submit only the MB Form 1 (the Utilization Commitment listing which minority businesses will be used as subcontractors) with the bid; then turn in the rest of the documentation within 72 hours after the bid opening. This change evolved as a result of a roundtable discussion held with utility contractors, City department directors and the Office of Minority Affairs. This does not dilute the good faith effort requirement

that must be made during the initial bidding process; however, it does allow a little more time for completion of the paperwork to document that effort.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

The Minority Business Commission recommends City Council adopt the resolution.

### **Renaming Old Fire Station 4 at 300 Merrimon Avenue in Honor of Harley Shuford, Asheville Fire Investigator**

Summary: The consideration of a resolution naming Old Fire Station 4, located at 300 Merrimon Avenue, in honor of retiring Fire Investigation Supervisor Harley Shuford.

Asheville Fire Department Fire Investigation Supervisor Harley Shuford is retiring from his position after more than 30 years of service to people in Asheville and Buncombe County (and beyond) as a Firefighter , Fire Investigator and Fire Investigation Supervisor. He has determined the cause of hundreds (if not thousands) of fires during his career, and, in cooperation with the District Attorney's office, has established an arson arrest and conviction rate that is significantly above the national average.

Harley Shuford also played a crucial role in the development of the Asheville-Buncombe Arson Task Force, was unanimously selected as the Task Force's first director, and continues as director of the Task Force to this day. In large part because of Harley Shuford's contributions, the Asheville-Buncombe Arson Task Force has been selected by the U.S. Fire Administration as a model arson task force for study by other communities wishing to establish a local arson task force.

Harley Shuford is retiring from service, effective January 1, 2000. It is proposed that an appropriate City commemoration of Harley Shuford's service would be the naming of Old Fire Station 4, 300 Merrimon Avenue, in honor of Harley Shuford. (Old Fire Station 4 has served as headquarters for the Asheville-Buncombe Arson Task Force in recent years.)

The Fire Chief recommends adoption by City Council of the resolution providing for the naming of Old Fire Station 4 in honor of Harley Shuford.

### **Authority for the Water Authority to Acquire Property by Eminent Domain and Waiver of Conflict in Legal Representation**

Summary: The consideration of resolutions: (1) authorizing the institution of legal proceedings to acquire an easement for waterline installation on part of Monte Vista Road; and (2) waiving a conflict in legal representation to allow the Water Authority's counsel to bring the action in the City's name.

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(1) Eminent Domain – the Regional Water Authority of Asheville, Buncombe and Henderson will soon need to complete installing new water lines and extending its service to an area on the west side of town beyond the City limits that includes Monte Vista Road. A waterline is proposed for installation in the area between the road and the drainage ditch along Monte Vista Road. Other than the temporary inconvenience associated with construction, this installation will not impair the usability of the affected residential properties, which will be served by the new line.

Agreements have been reached with other property owners on Monte Vista Road and the property at 721 Monte Vista Road, owned by Oris and Elizabeth Balding, is the only holdout. The Water Authority authorized

the initiation of legal proceedings to acquire the property in its meeting on September 21, 1999.

Pursuant to the Water Agreement, any real property or interest in real property acquired by the Water Authority must be held in the City's name. By extension, any proceeding in eminent domain to acquire the property must be brought in the City's name, and the City's authorization is therefore required in order for the Water Authority to take this action.

(2) Waiver of Conflict – The Water Authority is specifically authorized, pursuant to Section VI. N. of the Water Agreement, to employ its own legal counsel. The Authority's counsel is the law firm of Van Winkle, Buck, Wall, Starnes and Davis. That firm is also counsel for parties who oppose the City in several pending legal proceedings, notably the billboard litigation, and regularly represents property owners in land use disputes with the City. Technically, representation of the City by Van Winkle in this eminent domain matter is a conflict that the City must waive. This is a minimal conflict and Van Winkle's representation of the City in this eminent domain proceeding will not give them access to any information that could compromise the City's position in any matter where they represent parties opposing the City.

City staff recommends City Council (1) adopt the resolution authorizing the institution of eminent domain proceedings in the City's name, as the Water Authority has requested; (2) if the City Council has no objection to the Water Authority's use of the law firm of Van Winkle, Buck, Wall, Starnes and Davis in this eminent domain proceedings, the resolution waiving the conflict should also be adopted.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

### **CITY OF ASHEVILLE/UNC-ASHEVILLE COOPERATIVE AGREEMENT**

UNC-Asheville Chancellor Jim Mullen said that he has been working with the City Manager on a concept of bringing young kids to the UNC-Asheville campus. There are already a number of programs in place and he hoped they could expand them and work in partnership with the City to create a community building which would result in a wonderful win-win situation for both the City and UNC-Asheville.

City Manager Westbrook said that the City needs a larger community center in north Asheville and they have also discussed the use of some of UNC-A's ballfields as an adjunct part of this whole agreement. It appears that the University's part would be the land and the City's portion would be the cost of the building and some of the programming. Before proceeding further, he asked for Council's authority to continue working with the University on this concept and trying to track down some grants.

Councilwoman Field said that she was aware of the possibility of a downtown campus for a portion of UNC-A's art department in building a gallery, etc. If we are indeed considering -6-

renovations and expansions to the Civic Center, she felt there may be a possibility for the City and UNC-A to partner in something in the future regarding that.

It was the consensus of City Council to instruct the City Manager to continue working with UNC-A on this concept.

### **LEAD POISONING PREVENTION PROGRAM**

Ms. Nan Burnett, Program Coordinator for the Lead Poisoning Prevention Program ("LPPP"), and Mr. Charles McKenzie, Regional Environmental Health Specialist, explained that lead is the number one environmental health disease for children in the country. Countless numbers of children are unknowingly exposed to other dangers of lead poisoning which can cause damage to the brain and nervous system, learning and behavior problems, reduced attention span and hyperactivity, and numerous other health

problems. Yet, Buncombe County has one of the lowest rates of blood-lead level screening of children in the state.

The Lead Poisoning Prevention Program, based out of UNC-Asheville, and funded by the Center for Disease Control and the United Way, is working to increase awareness of the sources and risks of lead poisoning in children. LPPP and the Buncombe County Health Center are working together in an effort to carry out free blood-lead screening for all children between the ages of six months and six years.

The most effective way to ensure that the greatest number of children are tested for lead is to include the test in the required vaccination schedule provided by the state using federal guidelines.

Locating children at risk should also include identifying those that are most likely to be exposed to lead. Lead-based paint, lead-contaminated dust, old plumbing fixtures and pipes, and many other features of older homes continue to be the main sources of lead-poisoning in children. There are 18,891 homes in Buncombe County built before 1950 and all except those that have recently been remodeled are likely to have lead-based paint. Houses constructed between 1950 and 1978 have an 85% chance of having lead somewhere in the house. Surveys have shown that lead-contaminated dust is the major source of lead poisoning. These fine dust particles are particularly dangerous because they scatter easily and are difficult to control and it is easy for them to enter the body with every breath.

Although sellers and landlords are required by law to provide an EPA pamphlet about lead in the home to all buyers and renters, this regulation is often not enforced. All sellers and landlords are required to notify new buyers or renters of the likelihood of lead contamination in the home being sold or leased. Incorporating a lead inspection with the certificate of occupancy would ensure a lead free safe home. In addition, renovations or home repairs of houses containing lead-based paint must follow the strict guidelines prepared by the Dept. of Housing and Urban Development. A certified lead-abatement contractor should be utilized whenever there is any disturbance to lead-based paint. Currently, no such contractor exists in Asheville.

They hoped that these recommendations would be followed.

Mayor Sitnick suggested some ideas in order to get spread this information to the community and thanked Ms. Burnett and Mr. McKenzie for expanding Council's knowledge on this matter.

### **ADDITION TO THE COLBURN GEM AND MINERAL MUSEUM**

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Mr. Dan Lazar, representing the Colburn Gem & Mineral Museum, said that they are requesting the Mayor to execute a Waiver and Release of Building Restriction to allow the construction of an addition for the Colburn Gem & Mineral Museum on property conveyed to the City of Asheville and leased to Pack Place Education Arts & Science Center, Inc. He explained that they need to increase the size of the Museum to accommodate the increase in growth for earth science education. By the use of a map, he showed Council the approximate location of the portion of the courtyard on which the building would be constructed.

The City of Asheville owns property on which Pack Place Education Arts & Science Center, Inc. ("Pack Place") is located. Colburn Gem & Mineral Museum ("Colburn Museum") is located within Pack Place. Colburn Museum desires to expand the portion of the Pack Place building occupied by it into a portion of an area known as a "courtyard," which is identified as "Tract Two" on "Lot D" on that plat recorded in Plat Book 56 at Page 64 in the Office of the Register of Deeds for Buncombe County.

In the deed wherein Pack Plaza Associates Limited Partnership ("Pack Plaza") conveyed to the City of Asheville certain properties, including Lot D shown on the above-referenced plat, there is a provision wherein the City and Pack Plaza promised that they would not permit the construction of any permanent

building or roof structure in, on or above the property identified as Tract Two of Lot D as shown on the above-referenced plat.

In a Memorandum of Understanding dated October 28, 1988, by and among the City, Pack Place and Pack Plaza, the City and Pack Place agreed that they would not construct any permanent building or room structures in the courtyards, including Tract Two of Lot D of the above-referenced plat.

Landmark Management, PBL Investment, LLC ("Landmark") is a successor to the interests of Pack Plaza. Landmark and Pack Place have agreed to permit the construction of the extension of the building for Colburn Museum. It is necessary to execute a document wherein the consent of the parties to the construction of the extension of the Colburn Museum can be recorded in the Office of the Register of Deeds for Buncombe County.

The City Attorney's Office recommends adoption of the resolution.

Councilman Hay said that he is a member of the Pack Place Board and space at Pack Place is very precious. He stated that this request is the end of a year-long process.

After Councilwoman Field looked at the architect's drawings of the expansion, she said that she had some serious technical questions but would meet with the architect to have her concerns addressed. However, she did state that the concept is fine.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

### **UDO AMENDMENT REVIEW**

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on Tuesday, January 11, 2000, and Tuesday, January 25, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

### **Supplemental Development Standards for Large Retail Structures**

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Senior Planner Gerald Green said that this is the consideration of amending the Unified Development Ordinance which would establish supplemental development standards for large retail structures.

The Planning and Zoning Commission, at their November 10, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would establish supplemental development standards for large retail structures. Structures subject to the supplemental development standards are identified in the amendment as:

- Single tenant retail structures with a gross floor area of more than 75,000 square feet in the Highway Business District;
- Single tenant retail structures with a gross floor area of more than 100,000 square feet in the Regional Business, Commercial/Industrial, Industrial, and River Districts; and
- Multiple tenant retail structures with a gross floor area of more than 100,000 square feet in the Highway Business, Regional Business, Commercial/Industrial, Industrial, and River Districts.

Goals of the supplemental development standards are to:

- Employ high quality building design;
- Blend building design and layout with other site features;
- Avoid bland and monotonous building design; and
- Ensure that buildings contribute to the community character of the City.

To achieve these goals, the ordinance amendment establishes supplemental development standards addressing building design, building material and color, landscaping and buffering, lighting, pedestrian amenities and circulation, and customer entrances. Design professionals and developers are provided a great deal of flexibility in meeting the supplemental development standards through the provision of a variety of design standards from which they may choose. Meeting approximately 70% of the standards will result in a recommendation for approval of a basic retail structure; bulk retail structures will have to meet approximately 50% of the supplemental standards.

The amendment identifies large retail structures as conditional uses. During the review process they would be reviewed for compliance with the supplemental development standards. The amendment does not require an additional review process for these structures, as they are currently reviewed as conditional uses.

The Asheville Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mr. Green answered several questions from Council on this proposed amendment.

### **Detached Garages as Accessory Uses**

Urban Planner Carl Ownbey said that this is the consideration of an ordinance amending the Unified Development Ordinance regarding detached garages as accessory uses.

The Planning and Development staff has received several requests over the past several months proposing the placement of detached garages in front of the principal structure. Since this placement is not permitted under section 7-16-1.c.2.d of the Unified Development Ordinance, these requests have been taken to the Board of Adjustment for a variance. -9-

This wording amendment will permit the location of a detached garage in front of the principal structure if:

- 1) the garage is not located in the front setback;
- 2) the garage is located and/or designed so that it is not the principal structural feature on the lot and the scale is subordinate to and the building materials are compatible with the principal structure or other design features; and
- 3) the garage doors are not oriented to the front street.

Given the topography of the Asheville area and the unusual shapes of some lots in the City, the proposed ordinance amendment will provide reasonable options and flexibility in the location of detached garages.

The Planning and Development staff presented this proposed wording amendment to the Planning and

Zoning Commission at their December 1, 1999, regular meeting. After presentation by staff, the Planning and Zoning Commissioners voted 6-1 to recommend to City Council the adoption of this wording amendment.

Since City Council did not want to amend the ordinance to permit anyone to place a detached garage in front of the principal structure if they didn't have a hardship of either the lot size or the topography, it was the consensus of City Council to have staff revise the language in the proposed ordinance which would delegate some flexibility of the planning staff to determine if a hardship exists.

### **Banks as Residential Related Commercial Services in RM-16**

Urban Planner Stacy Merten said that this is the consideration of an ordinance amending the Unified Development Ordinance to allow banks to be included as residential related commercial services in RM-16 Residential Multi-Family High Density districts.

Currently the Unified Development Ordinance (UDO) limits residential related commercial services to dining halls, beauty shops, barber shops, laundry facilities, food stores, newsstands, drug stores, and flower and gift shops as uses by rights subject to special requirements in the RM-16 zoning district. This amendment will expand the limits to allow banking facilities. This amendment was precipitated by a specific request from the Deerfield Community to locate a small, 423 square foot, banking center in one of their buildings for use only by residents of the community. The amendment also prohibits drive-through facilities for all residential related commercial services and specifies that all of the services shall occupy no more than 25 square feet per dwelling within the residential development. There was no comment at the public hearing

Planning & Development staff presented this wording amendment to the Planning & Zoning Commission at their December 1, 1999, meeting. The Commission voted unanimously to recommend to City Council the adoption of this wording amendment.

Ms. Merten responded to questions regarding design criteria.

### **North Area Extraterritorial Jurisdiction Extension and Zoning**

Vice-Mayor Cloninger stated that the law firm of which he is a partner in represents the owner/developer of property which would be brought into the extraterritorial jurisdiction in the north area and therefore, he would not be participating in any discussions concerning this matter.

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Urban Planner Mike Matteson said that this is the consideration of an ordinance extending the City's Extraterritorial Jurisdiction (ETJ) in an area north of the City's corporate limits and the zoning of properties within the area.

In response to direction from both the Planning and Zoning Commission and City Council, the Planning and Development Department staff is proposing the extension of the City's ETJ in an area north of the City's corporate limits.

The provisions for exercising powers in an area of ETJ are governed by N. C. Gen. Stat. sec. 160A-360. These provisions grant a city the authority to extend ETJ "within a defined area extending not more than one mile beyond its limits". With the approval of the Board of County Commissioners, a city of more than 25,000 population can extend its ETJ up to three miles beyond its corporate limits. Upon the establishment of extraterritorial jurisdiction, property within the ETJ area becomes subject to the City's zoning, subdivision and other land development ordinances.

The area proposed for ETJ extension totals approximately 616 acres and is primarily either undeveloped or

developed at a low residential density. The topography of the area is generally steeply sloping and mountainous. The proposed Reynolds Mountain Subdivision, which received preliminary plat approval from the Planning and Zoning Commission in December of 1998, is partially within the area proposed for ETJ extension.

The proposed boundaries for the ETJ area follow the phase line within the Reynolds Mountain Subdivision (as illustrated on the approved preliminary plat) and otherwise generally follow property lines or streets. At one point, at the northern end of the area, the boundary coincides with the one-mile distance from the City's corporate limits.

The Town of Woodfin is also pursuing the extension of ETJ in the area. Staff from the Planning and Development Department worked with Town of Woodfin officials to determine a line of demarcation separating potential City of Asheville ETJ with potential Town of Woodfin ETJ. This general line of demarcation has been endorsed by the Asheville City Council on August 10, 1999, and the Town of Woodfin Board of Aldermen.

Another issue associated with the ETJ extension is the zoning of the properties within the area. Staff has studied the area and is recommending a combination of RS-2 (residential single-family low density) and RS-4 (residential single family medium density) zoning. RS-2 zoning is recommended for the majority of the area, where current lot sizes are generally large and where steep slopes suggest low densities. RS-4 zoning is recommended in an area which is generally developed with a number of properties which, due to their size (under ½ acre), would be non-conforming within the RS-2 zoning district.

He reviewed a map which shows the area proposed for ETJ extension and another showing the proposed zoning within the area.

Council is asked to (1) determine whether to extend the City's ETJ in this area; and if so, to zone the properties within the area.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on January 11, 2000, and January 25, 2000.

## **GROVE ARCADE**

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Vice-Mayor Cloninger said that his firm represents the Grove Arcade Public Market Foundation and he would not participate in this matter.

City Attorney Oast said that the lessee and developer of the Grove Arcade are proposing some amendments to the Lease and Operating Agreement between the Grove Arcade Public Market Foundation ("GAPMF") and the City that will assist GAPMF and its sublessees in financing the renovations and improvements to the building.

In the Spring of 1997, the City acquired the Grove Arcade Building by Quitclaim Deed from the United States Government. The building was built originally as a public market and was so operated until 1942, when the federal government took it over in connection with the country's World War II efforts. The building's exterior windows and doors were bricked up by the federal government, which used the building until 1994.

The conveyance to the City was essentially without consideration, but it was subject to significant restrictions on how the City could dispose of the building and how it could be used. The Grove Arcade Public Market Foundation (herein "GAPMF"), a non-profit corporation, was established for the purpose of rehabilitating Grove Arcade. In August of 1997, the City entered into a long term lease of the Grove Arcade building to

GAPMF. The redevelopment proposal calls for the public market to be reestablished on the First Floor and Mezzanine and for a combination of office and residential uses on the Third and Fourth Floors. GAPMF, with the permission of the City, subleased the upper floors to Skelton Development of Atlanta to develop the office and residential uses.

The City's lease with GAPMF recognized that the financial structure for the rehabilitation was subject to change, depending on the availability of such things as tax credits and possible participation of other financial partners. While GAPMF remains ultimately responsible to the City for the debt service on the Certificates of Participation that were issued to finance public market part of the renovations, the City has the authority to approve amendments as necessary to accommodate financial arrangements and participation by other developers.

The uniqueness of the Grove Arcade Rehabilitation project has made conventional financing difficult to obtain, and construction, primarily design work and demolition, have proceeded more slowly than anticipated. Marketing and leasing, however, have gone better than expected. After long negotiations involving GAPMF, Skelton Development, local and national financial institutions, real estate companies, and the United States Government, and after some changes in tax laws, a financial structure has finally been proposed that will: (1) allow GAPMF to take advantage of the significant tax credits available for the historic rehabilitation of the building; and (2) provide for substantial financial participation by another party on both the public market side and the residential/office side of the project.

Since a for-profit (taxpaying) entity was needed to take advantage of the available tax credits, the City Council earlier this year approved the assignment of the lease by GAPMF to Grove Arcade Preservation Inc., a for-profit subsidiary corporation wholly controlled by GAPMF. This was to permit investments in the project and the utilization of legally available tax credits by a qualified New York Stock Exchange investor.

Under the current proposal, the investor will still participate in the project as before, but instead of those tax credits running through one for-profit subsidiary corporation, there will be two for-profit limited liability companies (herein "LLC"):

(a) One of the LLC's will be Grove Arcade Restoration LLC (herein "GAR"), consisting of GAPMF as the managing partner and operating entity, and an investor corporation as a 99% financial participant. GAR will be responsible for developing the first floor, together -12-

with portions of the mezzanine and basement, of the Arcade Building as a public market in the same way that GAPMF proposed to do, GAPMF will still have full control as developer and manager of this part of the project.

(b) The other LLC will be the Historic Grove Arcade LLC (herein "HGA"), consisting of a management company controlled by Skelton Development as the managing partner and an investor corporation as a 99% financial participant. HGA will be responsible for developing the second, third and fourth floors of the Arcade Building, together with portions of the mezzanine and basement, in the same way that Skelton Development had previously been approved to do.

Each LLC will essentially be subject to the same agreements as are currently in place with GAPMF and Skelton Development, and each LLC will be managed and controlled by the entities that are currently developing the building. GAPMF will continue to be financially responsible to the City to the same extent as before. Negotiations between GAPMF and Skelton, on the one hand, and the potential investor corporations on the other, for participation in the subsidiary LLC's are not yet finalized, but according to representatives of GAPMF, agreements in principal have been reached, and closing will occur by year's end if the City approves. The extent of the financial participation by the investor corporations is expected to be worth millions of dollars, and should kick the entire project into high gear, such that it will come on line nearly as

scheduled, despite delays in the start of construction.

One feature of the new proposal will involve the City becoming an organizational participant in the Grove Arcade development. In order to preserve the ability to use the rehabilitation tax credits, it is necessary that GAPMF, as the managing partner of the for-profit GAR LLC, have 21% participation by an entity that is not controlled by GAPMF. This could be any person or corporation, but GAPMF and its attorneys have suggested that, in order to ensure that the City remains apprised of all activities of GAR, the City would form a wholly-owned subsidiary corporation whose sole purpose is to participate with GAPMF in the ownership structure of GAR. The City's participation would be for ownership purposes only, would be in the nature of a limited partner, would not require any additional financial commitment by the City, and would not expose the City to any additional risk of loss in the event of financial problems.

It is anticipated that within six (6) years, GAPMF will acquire the ownership interest of the investor in GAR, and that Skelton will acquire the ownership interest in HGA. At that point, the ownership structure will revert to its original form. In order to accomplish all of this, several things must occur:

- (1) the previously adopted resolution approving assignment of the Grove Arcade lease to Grove Arcade Preservation Inc. must be rescinded;
- (2) the lease must be amended to permit the above-described ownership structure.
- (3) the subleasing (or assignment) to the LLCs GAR and HGA, by GAPMF must be approved;
- (4) certain amendments to the Operating Agreement and the Lease between GAPMF and the City must be approved. The major features of these amendments include:
  - (a) the City may not unilaterally terminate the lease with GAPMF for five (5) years (currently, there is no such limitation). This five (5) year non-termination provision is necessary for purposes of the tax credits; -13-
  - (b) the City must agree that the terms of the Quitclaim Deed from the United States are being complied with in the new arrangement (this approval has been obtained);
  - (c) the City must agree to a "Non-disturbance and Attornment Agreement," which essentially provides that the City will honor the subleases to the LLC's if GAPMF drops out; (this is a standard feature in a commercial sublease);
  - (d) the City must agree to the sublessees using their leasehold interest as security to obtain financing (the Lease and Operating Agreement specifically contemplate this);
  - (e) The City agrees to a starting date for renovation work of 36 months after the date of its Lease to GAPMF (currently, that date is 18 months, and some work has in fact already begun). This will not extend the five (5) year time period for a substantial completion of the improvements.
- (5) the City must agree to formation of a corporation to participate with GAPMF in the ownership of the GAR LLC for the public market phase of the projects, or some other arrangement.

What the City gets in return is a guarantee from the investor corporations that, in the event of financial failure by either GAR or HGA, the investor corporation will continue to make half of the ongoing debt service payments to the City to retire the COPs. As noted above, GAPMF is still responsible for the entire payment, but this is an additional source of funds. Also, the investor corporations will immediately make a "bridge loan" of \$500,000 to provide for immediate resumption of work on the building until the loan is closed and funds are disbursed next month.

These arrangements are still being worked out in anticipation that the transactions can close by the end of the year. What will be needed from the City is approval to proceed with the items enumerated above, and authority for the Manager and the Mayor to execute appropriate documents. Through its ability to approve subleases, the City will have final approval over the new financial participants in the subsidiary LLC's. If Council agrees to the formation of a subsidiary corporation, the work will be done by GAPMF attorneys, or otherwise paid for by GAPMF.

There is no recommendation at this time, pending further discussion with GAPMF and the receipt of additional information.

City Attorney Oast, Executive Director Aaron Zaresky, Executive Director of the GAPMF, and Mr. Lou Bissette, Attorney for the GAPMF, answered numerous questions from Council relative to this proposed financial structure, some being, but are not limited to: how are historic tax credits used; what is the benefit for the community if this transaction occurs; what is the liability of the City if something happens to the GAPMF; what avenues are available to the City since they would not be able to terminate the lease for five years; what would happen if the City did terminate the lease during the five year period; what constitutes a breach of the lease; what other rights are we giving up over the five year period; when the building is completed, what will be the tax base to the City; who is in charge of construction of the building; how many cents on the dollar is being received on the tax credits; and what are the City's benefits if they agree to form a corporation. -14-

City Attorney Oast said that he will continue discussions with GAPMF and its attorneys in anticipation that the matter will be ready for Council consideration and action at your December 21<sup>st</sup> meeting.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At this time, 5:54 p.m., Mayor Sitnick announced a short break.

### **CENSUS 2000 UPDATE**

Urban Planner Carl Ownbey said that this is the consideration of resolution formulating a Census Complete Count Committee to direct the awareness campaign for the Census 2000 Update.

The Census Complete Count Committee will be responsible for the awareness campaign in "getting the word out" to the citizens of the community about the upcoming census count on April 1, 2000. The United States Bureau of the Census has prepared an operations guide to assist the community in the campaign. The Mayor is required to appoint a chairman for the committee and together they must appoint chairmen for the eight (8) subcommittees. These subcommittees, as outlined in the operations guide are:

Government Education

Religion Media

Business Recruiting

Community-Based Special Housing

A press conference is required announcing the formulating of this committee and the committee must begin work in January of 2000.

The Planning and Development staff recommends the formulating of the Census Complete Count Committee and will provide the committee with staff support during the campaign process.

Mayor Sitnick said that she is in the process of developing a list of people in the community who might be interested in serving on these committees. She encouraged City Council to provide her with any names and she would add those to her list.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on an upcoming formal City Council agenda.

### **BUNCOMBE COUNTY APPOINTMENT ON THE REGIONAL WATER AUTHORITY**

City Manager Westbrook said that this is the consideration of a request from Buncombe County to permit Mr. Thomas Sobol to serve an additional three year term on the Water Authority from October 1999 through September 2002.

The Water Agreement between the City of Asheville and Buncombe County prescribes that each member of the Regional Water Authority be appointed for a three year term, and prescribes that the concurrence of the Water Authority, the City Council, and the Buncombe County Commissioners is required for members to serve additional terms.

The Water Authority By-Laws amended in 1986 by the joint concurrence of the City, County, and Authority, provided that a member of the Authority could serve up to two -15-

consecutive terms. Under these by-laws, it has been the practice of the Authority that the appointing authority (the City, Buncombe County, or Henderson County) could re-appoint a member to the Water Authority to a second consecutive term but not longer than two consecutive terms. Several re-appointments have been made since 1986 by both the City and County under these By-Laws. One of these was Mr. Tom Sobol, who was appointed to the Water Authority by Buncombe County in 1993 and reappointed in 1996. He completed two consecutive three-year terms in September 1999.

The County Attorney presented a request to the Water Authority in October 1999 to permit Mr. Sobol to serve a third term. At the regular meeting in November, the Water Authority endorsed this request. The Buncombe County Commissioners reappointed Mr. Sobol as a County representative to the Water Authority for a third term at their December 7, 1999, meeting. Under the terms of the Water Agreement, the City Council must concur in the decision to authorize Mr. Sobol another term.

The staff advises that the City Council exercise strong discretion in the review of all requests for Water Authority members to serve additional terms, to avoid setting a broad precedence that the same members can serve unlimited terms. In this particular case, Mr. Sobol has been a member of the County Commissioners since 1984, and has also served the community over a long period of time in the areas of tourism development and economic development. Should Council agree to reappoint Mr. Sobol, it should be clear that the appointment is for one term and is specifically made in view of the unique circumstances and experience of Mr. Sobol.

Vice-Mayor Cloninger felt this is a unique circumstance since Mr. Sobol is an elected official and we would be confirming an appointment made by the County Commissioners.

Councilwoman Field wondered if Mr. Sobol were not elected to the County Commissioners in 2000 would be remain as a member on the Water Authority.

If Mr. Sobol were not re-elected to the County Commissioners in 2000, Councilman Worley said that the Authority would have the option to have him remain on the Authority since the confirmation would be for an additional 3-year term, or, they could remove him by a 2/3 vote.

Councilman Peterson felt that there were good reasons behind the by-laws that limit serving for two

consecutive terms and felt that we should not make exceptions for elected officials.

Councilwoman Field disagreed with the concept of term limits entirely. She felt that term limits don't recognize the knowledge of the person who has served on the committee. She had no problem with confirming Mr. Sobol to another three-year term in his capacity of a County Commissioner, however, she did have concerns if Mr. Sobol was no longer a County Commissioner.

Mayor Sitnick agreed with Councilman Peterson in not making exceptions for officials, however, she does understand the Commissioners wanting representation on the Authority. She was concerned that if Mr. Sobol is not re-elected in 2000 and the County chooses not to replace him with another Commissioner, then he would be serving outside of what the County has asked the City to confirm. She wondered if the County would be willing to ask the City to confirm Mr. Sobol's reappointment for one year and then if he is re-elected, City Council could then reconsider the reappointment at that time. She supported term limits because they bring in fresh ideas and allow other members of the community to serve.

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Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on an upcoming formal City Council agenda.

### **BRIEFING ON CITY'S Y2K PREPAREDNESS**

It was the consensus of City Council to have the City Manager make his report at the formal meeting on December 21, 1999, in order to have the report taped and broadcast on the government channel.

### **PUBLIC HEARING ON THE CONDITIONAL USE PERMIT FOR A CELL TOWER AT 200 TUNNEL ROAD**

Vice-Mayor Cloninger said that at the request of American Tower, City Council continued this matter from its November 23, 1999, meeting to its December 21, 1999, meeting in order to allow time for them to conduct a balloon test at the site to simulate the height of the tower. This balloon test is scheduled for Friday, December 17, 1999. The City's consultant has requested a continuance of the December 21, 1999, hearing in order to provide him additional time to analyze the results of the balloon test and prepare a report for the public hearing before City Council.

It was the consensus of City Council to postpone the December 21 public hearing and to contact American Tower to work with the Planning staff on a rescheduled date.

### **I-26 CONNECTOR**

Mayor Sitnick and Vice-Mayor Cloninger recently attended a Transportation Advisory Committee ("TAC") meeting (which the TAC unanimously voted to encourage the State to proceed expeditiously with the design and construction of the I-26 Connector) and realized that the public is not ready to settle on the issue of the I-26 Connector. It was their recommendation for the City to sponsor a Charette on the I-26 Connector Project with the design issues involved. There is still controversy over the project and a lack of consensus in the community. Since the N. C. Dept. of Transportation (NC DOT) has expressed that they are looking for the community's input and there has been precedence set that the NC DOT does take into account the community's suggestions, the need for this Charette is clear. This in no way will interfere with the resolution City Council passed that asked that the project be completed in a timely manner. However, after the Charette, it may be time to consider another resolution requesting the NC DOT to revisit, review and possibly re-design the I-26 connector.

It was the consensus of City Council to instruct the Planning & Development Director to investigate what other communities have done which led to a successful conclusion on an NC DOT project. Council further

instructed the Planning & Development Director to report back as soon as possible on how a Charette with community, former I-26 Asheville Connector Advisory Committee members and design professionals might work. It was hoped that if design professionals are brought in, that community groups help pay for that cost.

### **ASSIGNMENT OF BOARD/COMMISSION LIAISONS**

City Council members were assigned to various boards and commissions as liaisons and/or regular board members.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place appropriate items on an upcoming City Council agenda.

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### **CLOSED SESSION**

At 7:25 p.m., Councilwoman Whitmire moved to go into closed session for the following reason: To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. Statutory authority is G.S. 143-318.11 (a) (4). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 7:50 p.m. Councilwoman Field moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

### **ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 7:50 p.m.

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CITY CLERK MAYOR

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