

Tuesday - February 8, 2000 - 5:00 p.m.

Regular Meeting

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 (participated by speaker phone); Assistant City Attorney S. Patterson Brison Meldrum; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO THE AGENDA

City Manager Westbrook asked that a resolution setting a public hearing date for February 22, 2000, for the voluntary annexation of property identified as Oakbrook, Phase 1 at Biltmore Park be added to the Consent Agenda.

Mayor Sitnick asked that a disclosure statement regarding Councilwoman Whitmire be entered into the minutes under "Other Business."

City Manager Westbrook asked that the approval of City Council goals be added to the agenda under "Other Business."

I. PROCLAMATIONS:

A. RESOLUTION NO. 00-17 - RESOLUTION IN MEMORY OF OSBORNE M. HART

Councilwoman Whitmire read the resolution in memory of Mr. Osborne M. Hart. She then presented the resolution to Mr. Hart's wife Louise, and his son Darryl J. Hart.

Resolution No. 00-17 was adopted by acclamation.

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B. RESOLUTION NO. 00-18 - RESOLUTION IN MEMORY OF JAMES E. McCracken III

Mayor Sitnick read the resolution in memory of Mr. James E. McCracken III. She stated that the resolution will be sent to Mr. McCracken's wife Marilyn.

Resolution No. 00-18 was adopted by acclamation.

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C. PROCLAMATION PROCLAIMING FEBRUARY 2000 AS "BLACK HISTORY MONTH"

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Mayor Sitnick read the proclamation proclaiming February 2000 as "Black History Month" in the City of Asheville. She presented the proclamation to Mr. John Hayes.

II. CONSENT AGENDA:

Councilwoman Whitmire asked that Item A (minutes of the January 25, 2000, City Council meeting) be removed from the Consent Agenda for further discussion.

Mayor Sitnick asked that Item E be removed from the Consent Agenda for further discussion.

At the request of Councilman Worley, Items I and J were removed from the Consent Agenda for further discussion.

Councilman Hay requested Item N be removed from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2000, AND THE WORKSESSION HELD ON FEBRUARY 1, 2000

This item was removed from the agenda for further discussion.

B. RESOLUTION NO. 00-19 - RESOLUTION AUTHORIZING THE APPLICATION FOR A GRANT WITH THE PIGEON RIVER FUND TO ASSIST WITH THE CLEANUP OF PRIVATE PROPERTY ALONG REED CREEK FOR A DONATION OF 0.5 ACRE OF LAND WHICH WILL BE USED FOR THE BROADWAY GREENWAY

Summary: The consideration of a resolution to apply for grant funds through the Pigeon River Fund to assist with the clean up of private property along Reed Creek for a donation of approximately 0.5 acre of land, which will be used for the Broadway Greenway.

The Broadway Greenway represents one of the City of Asheville's top greenway priorities in greenway development along Broadway. Funds are available through the Pigeon River Fund to assist with the development of greenways that make a significant impact on water quality. The grant will be used to clean up and restore approximately 540 feet of streambank along Reed Creek located in the Montford neighborhood. The City will retain the corridor amounting to 0.5 acre for use for the Broadway Greenway. The funds will be used to remove overgrowth of kudzu, remove debris, and restore the streambank, which is highly scoured and degraded. The streambank will be replanted with native riparian trees and shrubs.

The Parks and Recreation Department is requesting \$19,940 in grant funds from the Pigeon River Fund. The grant does not require matching funds but strongly encourages a cash or in-kind match. The in-kind match of project management is valued at 25% of the request, and is available in the Parks Division operating budget.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the Pigeon River Fund to assist with the clean up of private property for an easement for the Broadway Greenway.

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C. RESOLUTION NO. 00-20 - RESOLUTION AUTHORIZING THE APPLICATION FOR A GRANT WITH THE COMMUNITY FOUNDATION OF WNC TO ASSIST WITH THE EXPANSION OF THE YOUTH EMPLOYMENT PROGRAM

Summary: The consideration of a resolution to apply for and enter into an agreement with the Community Foundation of Western North Carolina in the New Horizon Grant Program to assist with the expansion of the Youth Employment Program currently managed by the Parks and Recreation Department.

The Youth Employment Program represents the City of Asheville's commitment to provide youth with valuable opportunities that have significant impact in their development preparation to be employable members in our community. The expansion of the Youth Employment Program is a result of a recent collaboration between the City of Asheville, the Community Foundation, Job Link, the Asheville Housing Authority, and the Chamber of Commerce. The Parks and Recreation Department is requesting \$7,500 in grant funds from the Community Foundation. The grant does not require matching funds.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for the grant funds through the Community Foundation of Western North Carolina to assist with expanding the Youth Employment Program.

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D. RESOLUTION NO. 00-21 - RESOLUTION AUTHORIZING GRANT APPLICATIONS FROM THE N.C. ARTS COUNCIL, THE COMMUNITY FOUNDATION OF WNC, AND ADVANTAGEWEST NORTH CAROLINA TO ASSIST WITH PUBLIC ART AND HERITAGE TRAIL PROGRAMS

Summary: The consideration of a resolution applying for funds Funds are available through the North Carolina Arts Council,; the Community Foundation of Western North Carolina, ; and AdvantageWest North Carolina to assist with programs that support the arts and provide for tourist related economic development. The City of Asheville wishes to apply for these grant funds to accomplish two objectives: to assist with the development of a Public Art Master Plan and to promote the Asheville Urban Trail as part of its Public Art and Heritage Trails Program.

The City of Asheville wishes to apply for grant funds to accomplish two objectives: to assist with the development of a Public Art Master Plan and to promote the Asheville Urban Trail as part of its Public Art and Heritage Trails Program.

The first request is to establish a Master Plan for Public Art that will include a five year strategy on how best to provide art in public places. This will include selection criteria, a capital budget, funding sources, and a process for gaining community input. The Plan would be submitted to City Council for approval and be used to guide the activities of the Public Art Board. The plan itself will be prepared by staff and members of the Public Art Board.

The second request reflects the fact that the Asheville Urban Trail is nearing completion and requires additional promotional materials to enable visitors and residents to use the Trail.

Requested grant funds are primarily to assist with the cost of printing and distribution of promotional materials for the Urban Trail and the Master Plan for Public Art, and to obtain community input on and support for the Public Art and Heritage Trails Program .

The Parks and Recreation Department is requesting \$6,000 in grant funds from the North Carolina Arts Council which requires a 50% cash and/or in-kind match. It is anticipated that -4-

the \$3,000 required for the cash match will come from proposed project funds (percent-for-art) for the public art program. The in-kind match is available in the Park Maintenance Operational budget. The Parks and Recreation Department also requests \$6,000 from the Community Foundation of Western North Carolina; and \$5,000 from AdvantageWest North Carolina. It is anticipated that the \$3,000 required for the cash match will come from proposed project funds (percent-for-art) for the public art program. The in-kind match is available in the Parks Division budget.

s: The Parks and Recreation Department recommends the City of Asheville apply for and enter into an

agreement for grant funds through the North Carolina Arts Council, Community Foundation of Western North Carolina, and AdvantageWest North Carolina to assist with the development the Public Art and Heritage Trails Program.

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E. BUDGET AMENDMENT TO FUND THE 1999-2000 ANIMAL CONTROL CONTRACT FOR ANIMAL CONTROL SERVICES WITHIN THE CITY

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

F. ORDINANCE NO. 2657 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE NO. 92-17 (29 FUND) TO FUND CURRENT AND EXPECTED CHANGE ORDERS ASSOCIATED WITH THE MILLS RIVER PROJECT

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to fund current and expected change orders associated with the Mills River Project.

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. In October 1999, the Authority approved a change order with CDM to extend full-time on-site construction management services for the Mills River Water Treatment Plant from August 29, 1999, to November 15, 1999 (79 day delay). This was approved in the amount not to exceed \$104,549. Since that time, there has been an additional 39 day delay, but the amount has been negotiated to remain at \$104,549. In addition, a change order has been negotiated in the amount of \$71,483.05 for necessary additional work required to complete the contract with Metric. There is sufficient funding of \$236,307 in the Mills River Project Contingency for these change orders.

In addition to these change orders, there are the following anticipated change orders: approximately \$20,000 for a change order with Hays and Lunsford (the electrical contractor) for the Mills River Project and \$86,790 with NC DOT for the Mills River Transmission Main. Further, the Director recommends \$81,378.61 be set aside to use any part as necessary for legal and engineering services pertaining to the issue of liquidated damages.

There is not enough Mills River Contingency to fund all of these changes, so staff is requesting the transfer of \$49,760 from the Brevard Rd/Sand Hill Bridges line item. This was targeted for design and engineering for Sand Hill and Brevard Road Bridges that will have to be postponed until additional funding is available from pay-as-you-go CIP or from a bond issue in Fiscal Year 2000-01. A Budget Amendment will transfer \$49,760 from the Brevard Rd/Sand Hill Bridges to Mills River Contingency.

The Water Authority approved an amendment to Capital Project Ordinance 92-17 at the January 18, 2000, meeting to fund current and expected change orders associated with the Mills River Project.

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The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 92-17 to reprogram funds to increase the Mills River Contingency in order to fund current and expected change orders associated with the Mills River Project.

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G. ORDINANCE NO. 2658 - BUDGET AMENDMENT TO APPROPRIATE FEDERAL GRANT FUNDS TO THE POLICE DEPARTMENT BUDGET

Summary: The consideration of a budget ordinance amendment, in the amount of \$6,500, to appropriate funds to offset expenditures from the Police Department (safety equipment) budget.

In July of 1999, with the approval of the City Manager, the Police Department applied for partial reimbursement for bullet proof vests through the Bureau of Justice Assistance. Total funds expended were approximately \$12,000. On October 13, 1999, the Police Department was notified that 50% of the funds it expended for bullet proof vests (\$6,537.13) was awarded to them through the Bulletproof Vest Partnership Grant Act of 1998.

Staff recommends adoption of a budget ordinance amendment appropriating \$6,500 to the Police Department budget.

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H. RESOLUTION NO. 00-22 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO CONSIDER THE VOLUNTARY ANNEXATION OF 65 AND 67 LONG SHOALS ROAD

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I. RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY FOR A NEW ANNUAL ASPHALT AND CONCRETE REPAIR CONTRACT BY APAC CAROLINA INC.

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

J. RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY OF CONTRACTS TO MCGILL ASSOCIATES AND CAVANAUGH & ASSOCIATES P.A. TO FURNISH ENGINEERING SERVICES FOR \$3 MILLION CRITICAL NEEDS/INFRASTRUCTURE STATE GRANT

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

K. ORDINANCE NO. 2659 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES TO IMPLEMENT FACILITY IMPROVEMENTS AND PURCHASE EQUIPMENT FOR THE SENIOR OPPORTUNITY CENTER AND HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of \$12,658, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging to implement facility improvements and purchase equipment for the Senior Opportunity Center and Harvest House.

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The City of Asheville applied for funds in January 2000 for the 1999 Senior Center Allocation from the State of North Carolina, Department of Health and Human Services, Division on Aging. The allocation was recently awarded in the amount of \$12,658 and designated for facility improvements and purchasing equipment at Senior Opportunity Center and Harvest House.

The Parks and Recreation Department is responsible for the management and operation of two senior centers. The annual allocation from the State of North Carolina will assist the department in implementing facility improvements and purchasing equipment and supplies.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of \$12,658, to establish a budget for the next phase of improvements at Senior Opportunity Center and Harvest House.

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L. RESOLUTION NO. 00-23 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO (1) SCHEDULE A CITY COUNCIL COMMUNITY MEETING ON TUESDAY, FEBRUARY 29, 2000, BEGINNING AT 7:00 P.M. AT THE SHILOH COMMUNITY CENTER LOCATED AT 121 SHILOH ROAD, ASHEVILLE, N.C. ; AND (2) RESCHEDULE THE TUESDAY, MARCH 14, 2000, CITY COUNCIL FORMAL MEETING, UNTIL WEDNESDAY, MARCH 15, 2000, BEGINNING AT 5:00 P.M. IN THE COUNCIL CHAMBER, CITY HALL BUILDING

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M. MOTION APPROVING THE FISCAL YEAR 2000-01 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2000/2001 budget schedule.

The proposed Fiscal Year 2000/2001 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e. City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2000/2001 budget is scheduled for June 2, 2000.

City staff recommends City Council adopt the Fiscal Year 2000/2001 budget schedule.

N. ORDINANCE EXPANDING THE MEMBERSHIP OF THE PUBLIC ACCESS CHANNEL COMMISSION FROM FIVE TO NINE MEMBERS

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

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O. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO ZONE INITIALLY VOLUNTARY ANNEXATION AREAS IN BILTMORE PARK AS FOLLOWS: BILTMORE PARK COMMON AREA AS RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND SCHENCK PARKWAY, 100 -7-

TECHNOLOGY DRIVE AND THE VOLVO BUILDING PROPERTY AS CI COMMERCIAL INDUSTRIAL DISTRICT

P. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE A PARKS AND OPEN SPACE DISTRICT

Q. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE CONDITIONAL USE ZONING

R. RESOLUTION NO. 00-24 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED NORTH OF LONG SHOALS ROAD KNOWN AS OAKBROOK, PHASE I AT BILTMORE PARK

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2000, AND THE WORKSESSION HELD ON FEBRUARY 1, 2000

This matter was pulled off of the Consent Agenda to make certain that the cross reference to Consent Items were correct. They were correct. Councilman Hay moved to approve the minutes of the formal meeting held on January 25, 2000, and the worksession held on February 1, 2000. This motion was seconded by Councilwoman Whitmire and carried unanimously.

ORDINANCE NO. 2660 - BUDGET AMENDMENT TO FUND THE 1999-2000 ANIMAL CONTROL CONTRACT FOR ANIMAL CONTROL SERVICES WITHIN THE CITY

Summary: The consideration of a budget ordinance amendment, in the amount of \$34,000, to appropriate funds to the Police Department budget to fund the Fiscal Year 1999 - 2000 animal control contract for animal control services within the City.

The City contracts with Buncombe County Friends for Animals (BCFFA) for the provision of animal control services. The Fiscal Year 1999/2000 contract is in the amount of \$135,000. This is \$34,000 over what was budgeted. An appropriation from the City contingency fund, 110-0601-414-5097, to the Police Department budget, 110-3503-421-3010, Professional Services, in the amount of \$34,000 is requested.

The increase is necessary because the initial contract for animal control services was underfunded to provide the required services. The \$135,000 more closely matches the required funding for the services received. This information was not brought to the City's attention at a time when it could have been included in the Fiscal Year 2000 budget proposal.

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Staff recommends adoption of a budget ordinance amendment appropriating \$34,000 to the Police Department budget.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that this is part of the City's general contract with BCFFA and is a part of the Police Department's budget, however, it is in turn paid to BCFFA for services rendered.

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

Vice-Mayor Clonger moved to adopt Ordinance No. 2660. This motion was seconded by Councilwoman Field and carried unanimously.

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RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY FOR A NEW ANNUAL ASPHALT AND CONCRETE REPAIR CONTRACT BY APAC CAROLINA INC.

Summary: The consideration of a resolution confirming the contract award by the Regional Water Authority for a new annual asphalt and concrete repair contract by APAC Carolina Inc. which is an average 5% less than the current contract with APAC.

Bids for unit prices for contracted asphalt and concrete replacement work resulting from utility repair excavations have been received by the City's Engineering Department. The bids were advertised twice and only one bid was received, from APAC Carolina Inc. The bid has been evaluated and is responsive to the Minority Business Plan. Unit prices are on average about 5% lower than the current contract.

The contract establishes the unit prices for all work performed by APAC but does not guarantee any minimum quantity. Generally, the contractor under this agreement has provided asphalt and concrete work on State highways and in the unincorporated areas of the County.

The alternate bid includes unit prices for after hours and weekend work and those prices will only be paid when the work is specifically authorized by the Water Resources Department under an after-hour requirement. Immediate asphalt repair is required by the N. C. Dept. of Transportation on major thoroughfares such as US 19/23, US 25, US 70, etc.

In addition to this contract, the City repairs some utility cuts with in-house crews. In past years, the City of Asheville Street Division has provided the work on City streets, but under a re-engineering proposal, based on a Memorandum of Understanding, the Water Resources Department took direct control over the City crews for utility cut repair on October 1, 1999. The Water Resources Operations Manager will oversee this contract and the City repair crews and will evaluate what repairs are more cost-effective to contract and what repairs are more cost-effective to perform with our crews.

Staff recommends that the City Council approve the execution of a contract with APAC Carolina Inc. for the annual asphalt and concrete repair, which was awarded by the Regional Water Authority on January 18, 2000.

Councilman Worley explained that under the terms of the Water Agreement the Regional Water Authority has the ability to award it's own contracts and they do not need City Council approval. He suggested that no action be taken on this item. -9-

City Manager Westbrook said that this item has been brought before City Council because the contract is written so that other public utilities, such as CP&L, MSD and Public Service Natural Gas, can also avail themselves of the contract price with this particular vendor. In addition, the concrete and asphalt will be used on City streets. Out of an over abundance of caution, staff recommended City Council concur in the Water Authority's award. He did state that if City Council did not concur, it would have no affect.

Councilwoman Whitmire said that she had no problem in taking no action on this item, however, she did want to be kept apprised of repairs on City streets.

Assistant City Attorney Meldrum said that City Council approval would be necessary on a contract for construction on City property. However, since this doesn't relate to ownership of property or construction of improvements on City property, it was her opinion that City Council action was not necessary.

Councilman Worley moved that this matter be removed from City Council consideration and that no action be taken on it. This motion was seconded by Vice-Mayor Cloninger and carried on a 4-3 vote, with Mayor Sitnick, Councilman Peterson and Councilwoman Whitmire voting "no".

RESOLUTION NO. 00-25 - RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY OF CONTRACTS TO MCGILL ASSOCIATES AND CAVANAUGH & ASSOCIATES P.A. TO FURNISH ENGINEERING SERVICES FOR \$3 MILLION CRITICAL NEEDS/INFRASTRUCTURE STATE GRANT

Due to a conflict of interest and at the request of Vice-Mayor Cloninger, Councilwoman Whitmire moved to

excuse Vice-Mayor Cloninger from participating in the matter. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a resolution confirming the contract award of engineering services contracts to McGill Associates and Cavanaugh & Associates, contingent upon the Water Authority receiving selection for a State grant based on an application submitted by the Water Authority on November 23, 1999.

On Friday, January 7, 2000, six proposals were received from consulting engineering firms for engineering services for Contracts 1-4 defined under an application dated November 23, 1999, by the Authority for a \$3.0 Million State grant. On Thursday, January 13, 2000, a selection committee approved by the Water Authority's Policies & Priorities Committee and consisting of Ms. Leslie Thornton, Mr. Mike Brookshire, and Mr. Tom Frederick met after reviewing the proposals. The selection committee ranked the proposals based on the following criteria set out in the Request for Proposals (RFP): firm's demonstrated qualifications, ability to meet the design schedule, project approach, financial standing of firm, and the firm's minority business plan. Based on these criteria, the committee selected McGill Associates and Cavanaugh & Associates for this work.

Following the evaluation based on RFP criteria, the committee also reviewed fees for these two firms. The Director was authorized by the Selection Committee to conduct further negotiations with the selected firms and the fees recommended in the resolution are very competitive and within the budget prepared in the grant application.

Other firms submitting proposals include W. K. Dickson, William G. Lapsley & Associates, Mattern & Craig, and Vaughn & Melton.

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The staff expects to receive word from the State of North Carolina on grant selections about February 1, 2000. With the adoption of the resolution, staff will complete the final contracts for execution by the engineering firms, but the Chairman will not execute the contracts until a grant award is made by the State. The State requires final engineering design be completed and permitted within 120 days of award to confirm the grant offer, therefore, engineering work must start immediately after an award is confirmed.

On January 18, 2000, the Regional Water Authority unanimously approved the staff recommendation.

Staff recommends the City Council approve the execution of engineering contracts with McGill Associates for \$122,500 and with Cavanaugh & Associates for \$83,000 contingent upon the Authority's November 23, 1999 application being selected by the State of North Carolina for a grant.

Councilman Worley explained that under the terms of the Water Agreement the Regional Water Authority has the ability to award it's own contracts and they do not need City Council approval. He suggested that no action be taken on this item.

Assistant City Attorney Meldrum said that since this is approval of an engineering services contract for a critical needs infrastructure grant, it was her opinion that City Council action was not necessary.

City Manager Westbrook said that out of an over abundance of caution, staff recommended City Council concur in the Water Authority's award. He noted that the infrastructure that the grant would create will be turned over to the City and will become City property once it is in the ground. In addition, our accounting system is going to have to administer those grants and since the City does approve receipt of the grant we feel we should approve requests of them as well.

Councilman Worley moved that this matter be removed from City Council consideration and that no action be

taken on it. This motion was seconded by Councilwoman Field and failed on a 2-4 vote, with Mayor Sitnick, Councilmen Hay and Peterson and Councilwoman Whitmire voting "no".

Councilman Hay moved to approve Resolution No. 00-25. This motion was seconded by Councilman Peterson and carried unanimously.

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ORDINANCE NO. 2661- ORDINANCE EXPANDING THE MEMBERSHIP OF THE PUBLIC ACCESS CHANNEL COMMISSION FROM FIVE TO NINE MEMBERS

Councilman Hay moved to expand the membership of the Public Access Channel Commission from five to nine members. The Commission shall serve three year staggered terms, with five of the first appointees serving three year terms and four of the first appointees serving two year terms so that the terms may be staggered. This motion was seconded by Councilman Worley and carried unanimously.

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III. PUBLIC HEARINGS:

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A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Mayor Sitnick said that a letter has been received by the petitioner American Tower Company requesting that the public hearing be continued until March 15, 2000. They are still working with Crown Castle regarding the potential co-location on the adjacent tower. City staff, however, has requested that the hearing be continued until March 28, 2000, in order to avoid further continuances. Therefore, Vice-Mayor Cloninger moved to continue the public hearing until March 28, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR HOME DEPOT LOCATED AT THE INTERSECTION OF ACTON CIRCLE AND MONTE VISTA ROAD

Vice-Mayor Cloninger said that his law firm represents the petitioner and asked to be excused due to a conflict of interest. Councilman Worley moved to excuse Vice-Mayor Cloninger due to conflict of interest. This motion was seconded by Councilwoman Whitmire and carried unanimously. Vice-Mayor Cloninger then left the room.

Assistant City Attorney Meldrum reviewed with Council the conditional use permit process by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. It has been Council's practice to have two separate votes, one today to either grant or denial of the request. At the next formal meeting, staff would prepare a written Order summarizing the finding and conclusions either granting or denying issuance of the permit and there would be a separate vote on that written Order.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:54 p.m.

Upon inquiry of Councilman Peterson, Assistant City Attorney Meldrum said that City Council are elected officials and that members of the public and applicants expect that they will be able to contact them on

matters, notwithstanding whether or not they are a legislative or a quasi-judicial matter. That alone is not taken into consideration where a Council member has to be excused from voting because they have previously been contacted. It's where a member has previously made up their mind based on facts outside of the hearing, either by yourself, without disclosing it, or if you stated publicly that you have looked into this matter and decided how to vote, without considering what you heard at the hearing. As far as disclosing if you have seen site, there is no problem with that. If you want to disclose that you have attended meetings, that certainly can be done on the record on that particular item. She would then ask if the Council member can consider the issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Mr. Scott Shuford, Planning & Development Director, said that this is the first case involving the new large retail structure point-based ordinance Council recently adopted. -12-

Basically what that does is allow Council the opportunity to use the conditional use permit process to establish special standards for parking lot location, buffering requirements, site lighting, the design and materials used in the building facade, accommodation of transit, the provision of sidewalks, etc. The intent is to have a higher quality development and site design and we are expecting better compatibility with surrounding uses as a result. Traffic is not really a part of that ordinance but is part of the conditional use process in the Traffic Impact Analysis (TIA).

Mr. Dan Baechtold, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certificate of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report received by City Council on January 25, 2000).

Mr. Baechtold said that this is the consideration of a Conditional Use approval and permit as outlined in the Unified Development Ordinance (UDO) to construct a new Home Depot store at the intersection of Acton Circle and Monte Vista Road.

He said that on December 6, 1999, The Home Depot Company submitted development plans for Level III site plan review. The proposal is to construct a Home Depot store on a 22 acre parcel of land on the northwest corner of the intersection of Acton Circle and Monte Vista Road. Using a location map (attached to City Exhibit 3) Mr. Baechtold described the property and its location. The property is zoned Highway Business. The Technical Review Committee (TRC) reviewed the plans on December 20, 1999, and took action to approve with conditions. On January 19, 2000, the applicant submitted revised site plans to the Planning and Development Department. The revised plans satisfy all of the conditions of the TRC.

The parcel of land for the proposed Home Depot is mostly undeveloped and partially wooded. The parcel is a "second-tier" parcel behind the "first tier" of commercial development to the east which fronts on US Highway 19/23 (McDonald's, Shoney's, and the Ramada Inn). The property is bordered by Interstate 40 to the North. Across Interstate 40 is a large undeveloped commercially-zoned piece of land. To the West is existing residentially-used, but commercially-zoned property. To the south is a mix of residential and commercial uses. Most of the property to the south is zoned Residential Multi-Family Low Density District (RM-6).

City Exhibit 4 (overview of site plan) was used in explaining that the proposed Home Depot store is approximately 108,000 square feet plus a garden center of approximately 22,000 square feet. The proposed orientation of the store is facing Acton Circle and US 19/23. The plan proposes 490 parking spaces in front of the store. Two driveway connections are proposed – one on Acton Circle and one on Monte Vista Road.

The proposed Home Depot store, parking lot, and driveways occupy approximately 18 acres of the 22 acre site. The plan identifies three remaining tracts to be used as potential outparcels for future development – a

parcel of 2.04 acres behind the Home Depot Store; a parcel of .83 acres at the corner of Acton and Monte Vista; and a parcel of .75 acres in front of the store near the curve in Acton Circle.

This project meets all of the technical standards set forth in the UDO and other applicable codes. In addition, the project is the first to undergo a new review procedure for large retail structures. The Planning and Development staff reviewed the project using the administrative guidelines titled "Supplemental Development Standards for Large Retail Structures" as set forth by the ordinance which establishes large retail structures as conditional uses. These guidelines are based on a point system in which developers may choose among elements of improved site design and building design in order to achieve an overall design that meets the intent of the ordinance. The Home Depot proposal exceeds the target point total for bulk retail facilities. By complying with these standards, the Home Depot is afforded, and is -13-

taking advantage of, a structure size bonus of 50%. The baseline structure size limit in the Highway Business District is 75,000 square feet. By complying with the standards for large-scale retail, the Home Depot proposes to build a store of 108,000 square feet. He pointed out that under the current zoning someone could subdivide the property and put two structures of 75,000 square feet, if the site would accommodate that, but this allows a single structure to be larger than 75,000 square feet.

The Home Depot chose the following design elements to achieve the required number of points and meet the standards for large retail structures (City Exhibit 5 - copy of landscape plan) and (City Exhibit 6 - copy of front half of landscape plan):

- The parking area is buffered from the street with a landscaped buffer with a minimum width of fifty (50) feet which incorporates 150% of the plantings called for in a "D" buffer.
- Parking and loading areas are buffered from residential areas with a landscaped buffer with a minimum width of fifty (50) feet which incorporates 150% of the plantings called for in a "D" buffer.
- The buffer areas preserve existing trees where possible.
- Building facades facing the street have at least three distinct massing elements including changes in roof line height, changes in building color and pattern, and recessed entrances with columns.
- Predominant exterior building materials on the visible facades of the structure are brick and stucco.
- Facade colors are low-reflectance, subtle, neutral, or earth-tone colors.
- Parking lot landscaping is provided at the ratio of one tree and two shrubs for every 1500 square feet of impervious surface area. Half of these trees are planted in interior islands in the parking lot.
- The height of light fixtures will not exceed thirty (30) feet. All lights will be shielded and directed away from residential areas.
- The development provides an internal transit stop which includes a shelter and will be provided at the developer's expense to City transit specifications.
- The roof incorporates parapets concealing flat roofs and rooftop equipment from public view.
- Sidewalks are provided along the full length of the building along the facade providing customer entrances and abutting the parking area.
- Beds are provided for landscaping along the foundation of the building (south facing).
- Parking lot design and parking space orientation are consistent.
- The front entrance to the building is connected to a public sidewalk and public transit stop by a handicapped accessible sidewalk and crosswalk.
- Sidewalks are provided along all sides of the property which abut a public street.
- The building has multiple entrances facing the street spaced at intervals averaging 135 feet.

The above provisions exceed the ordinary requirements of the UDO. The landscaping provisions mentioned above are in addition to requirements for street trees and other landscaping required by the UDO.

Mr. Baechtold then outlined some of the features from an elevated view of the building. In reviewing the project, City staff assigns points for each of the items and based on the review of the Home Depot, they

achieved the target number of points that the guidelines require.

Acton Circle and Monte Vista Road are both maintained by the North Carolina Department of Transportation and are classified as Secondary Roads. Acton Circle is a two-lane facility that is eighteen (18) feet wide. Monte Vista Road is a two-lane facility that is twenty (20) feet wide. The intersection of Acton Circle and Monte Vista Road is offset slightly and is not signalized. The intersection is controlled by a four-way stop. Acton Circle terminates at US -14-

19/23 at both ends. Monte Vista Road turns into Sand Hill Road to the east. To the West, Monte Vista Road provides access to a number of single-family neighborhoods.

The TIA is prepared by an independent engineer and paid for by the developer. The report is reviewed by the City's Traffic Engineer and by the N. C. Dept. of Transportation (NC DOT). The TIA looks at existing traffic levels projects additional traffic from the development onto the roadway system. These projections also take into account background traffic, which will increase over time. The TIA identified existing roadway congestion problems - some in the morning and some in the evening peak travel times. The existing traffic problems are evident primarily at the intersection of Monte Vista Road and Acton Circle and also at the intersection of Acton Circle and US 19-23 next to McDonalds. The developer is proposing to construct a number of roadway improvements to accommodate the traffic generated by the Home Depot and to alleviate some of the existing problems. (City Exhibit 7)

- Widening Acton Circle to three lanes along the portion next to McDonald's to provide an additional exit lane from Acton Circle onto US 19/23.
- Widening Acton Circle to provide a right turn lane into the front entrance of the Home Depot.
- Widening Acton Circle to provide a right turn lane on to Monte Vista Road at the intersection.
- Widening the remaining portion of Acton Circle that borders the property by six feet and installing curb and gutter in order to meet the appropriate NCDOT standard for a two lane road.
- Widening Monte Vista Road to provide a right turn lane onto Acton Circle at the intersection.
- Widening the remaining portion of Monte Vista Road along the property by five feet and installing curb and gutter in order to meet the appropriate NC DOT standard for a two lane road.
- Providing signal changes to the traffic signal at the intersection of Acton Circle and US 19/23 to accommodate the additional turn lane.
- Providing additional signal system changes along the US 19/23 corridor.

All of these improvements are the responsibility of the developer. However, the signal system changes will likely be completed by the NC DOT. Costs to the NC DOT could be reimbursed by the developer. Before implementation of these signal improvements can take place, the Signals Division of NC DOT in Raleigh will review the TIA and perform additional analyses. The Signals Division will then make a recommendation to the Division office in Asheville for signal timing changes. According to the Division office, a time-based coordination system for several of the intersections on US 19/23 is likely to be installed for implementation of the recommendations of the TIA.

The Planning and Development staff has received input on the traffic issue from residents in the area surrounding the proposed development. Some area residents are concerned about the existing traffic problems that they experience during daily travel. The calls and letters express concern about existing problems during the morning and evening travel times; an increase in traffic levels from Home Depot; potential safety hazards posed by the Home Depot traffic exiting the driveways; the impact of trucks and heavy vehicle traffic; and the impact of increased traffic on the area schools.

Upon inquiry of Councilman Hay about how Home Depot will be involved with the signal system changes, Mr. Baechtold explained that Home Depot will be involved basically by cost participation in upgrading those signals to accommodate the additional turn lane and also in coordinating the signals. -15-

Using Applicant's Exhibit 1 (proposed Home Depot site prepared by Kimley-Horn & Associates Inc.), Mr. Baechtold explained the proposed traffic improvements.

Mayor Sitnick requested that in the future with regard to public hearings, two drawings of each exhibit be furnished in presentations to City Council (especially in conditional use permit public hearings) - one for City Council to view and one for the audience to view.

Mr. Baechtold said that according to the TIA for this site, the proposed changes will produce improvements in traffic flow that will allow all of the intersections to operate at acceptable levels of service and accommodate the additional traffic generated by the Home Depot. The City's Traffic Engineer will review his findings with Council which conclude that he is in agreement with the assumptions and conclusions in the TIA. The traffic issue is one that City staff has taken very seriously and they have made every effort to ask the applicant to do some additional analyses at different times of day. The City's Traffic Engineer has worked closely with the Traffic Engineer for the applicant to review the data in detail and analyze the traffic issue.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the Unified Development Ordinance. City Council must make seven findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings.

1. That the proposed use or development of the land will not materially endanger the public health or safety;

The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments. The project is required meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards which protect the public health and safety.

2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or the region;

The project is a large-scale retail facility serving a regional market.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The size of the tract of land allows room for adequate buffering to alleviate impacts of noise and lighting on adjacent properties. Traffic impacts are an important consideration and will be discussed separately. The impact of a future development on property values is difficult to quantify.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The property is zoned Highway Business, which allows single-tenant structures up to 75,000 square feet and multiple-tenant retail structures up to 200,000 square feet with floor area bonuses available upon conditional use approval by the City Council. Some of the -16-

neighboring developed property is zoned Highway Business and is commercially developed. There are also

large tracts of essentially undeveloped land bordering the property. The 22 acre size of the tract allows the coverage of the property to remain at a reasonable scale.

5. That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the City;

The City's Comprehensive Plan, Asheville City Plan 2010, was adopted in 1987. This area was outside the City's zoning jurisdiction at that time. The proposed development is consistent with the zoning assigned to this location.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

The project received technical approval from the Technical Review Committee which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works. The adequacy of the transportation facilities are addressed in a Traffic Impact Analysis conducted by the developer.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The developer submitted a Traffic Impact Analysis (TIA) as required by the UDO. The TIA considered the impact of this development and other projected traffic on the transportation system. The TIA proposes several improvements to the transportation system to alleviate traffic problems. The developer is offering to construct these improvements.

In issuing conditional use permits, City Council has the discretion to impose conditions on a particular development to ensure that the design, operation, and configuration are compatible with the surrounding area and ensure the health, safety, and general welfare. If City Council chooses to approve the conditional use permit for the Home Depot, staff is recommending several additional conditions for approval. These recommended conditions appear in draft form below. The final wording of any conditions imposed by City Council shall be determined at the time of writing the Ordinance Granting a Conditional Use Permit. The draft recommended conditions are as follows:

1. All proposed on-site and off-site improvements and amenities shown on the revised development plans dated January 17, 2000, and indicated in the Traffic Impact Analysis shall be the responsibility of the developer. These improvements include, but are not limited to: roadway improvements, sidewalk improvements, and construction of a transit shelter.
2. Any required changes to the traffic signal system resulting from changes to the roadway system shall be the responsibility of the developer. This includes changes to the coordinated traffic signal system on US 19-23.
3. In addition to the proposed sidewalk shown on the development plans, the developer shall construct a sidewalk built to City standards along the widened portion of Acton Circle.
4. Detailed roadway construction plans for all proposed roadway improvements shall be reviewed and approved by NC DOT and the City Traffic Engineer.
5. Future driveway access for the three sites identified as potential outparcels shall be limited as follows: The outparcel of 2.04 acres behind the Home Depot store shall be limited to one driveway on Monte Vista Road. The outparcel of .83 acres at the intersection of Acton Circle and Monte Vista Road shall not be allowed driveway access to the public streets. The outparcel of .75 acres on Acton Circle in front of the Home Depot shall be limited to one driveway on Acton Circle.
6. A revised Traffic Impact Analysis shall be required at the time of development of any of the sites identified as future outparcels.

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7. The following development standards shall be imposed upon the outparcels: parking shall be provided at the side or rear of structures and not closer to the street than the edge of the structure. Buildings shall be oriented to face the street and shall have customer entrance(s) on the street facing wall.

Mayor Sitnick asked if this project is approved could City Council prohibit variances. Assistant City Attorney Meldrum said that since that authority has already been given to the Board of Adjustment in the City Code, she felt it would be best to keep that procedure separate.

Mr. Baechtold responded to a question from Councilman Peterson about buffer requirements if the outparcels are developed. He said the site plan the developers have submitted for this development for those buffer areas on the outparcels show they are to remain undisturbed. Additional language in the form of a condition can be added that ensures that the out-parcels also preserve those buffers. It is staff's understanding that approval of this site plan which shows those buffers would require that those buffers would run with the land and any subsequent development on the parcel.

Mr. Baechtold also responded to questions from Councilman Peterson regarding buffering requirements in the Highway Business District and what are the developers doing in addition to that to earn the points. He said they can meet the intent of the guidelines by fronting the street with a building facade that meets our design standards, rather than a 50-foot landscape buffer. However, if it's the preference of Council to maintain a 50-foot buffer along the entire front of the property, we could also incorporate that into the conditions.

Councilman Peterson wondered what could be built in the outparcel of .83 acres at the intersection of Acton Circle and Monte Vista Road since no driveway access is allowed to the public streets and they have to maintain the buffering along the parking lot. Assistant City Attorney Meldrum said that a condition might be included that whenever that outparcel is developed that interior access be permitted through the parking lot of the Home Depot project and give some further condition for replacement of the buffering that is taken out when that driveway is put in to be located somewhere else on the site.

Mr. Michael Moule, City Traffic Engineer, summarized the traffic analysis (City Exhibit 8 -A). Based on nationally accepted guidelines, the traffic consultant estimated that the Home Depot store will generate 2,310 vehicles entering and 2,310 vehicles exiting the site on a typical weekday. He estimated approximately the same values using Trip Generation software.

The traffic consultant estimated the distribution of the site-generated traffic throughout the surrounding area. He agreed that this distribution is a reasonable estimate of how drivers will access the site. However, based on neighbors' concerns and the potential for a different distribution in reality, he asked the traffic consultant to analyze an alternate trip distribution for one intersection.

The other factors used by the consultant to project traffic volumes to full build-out are reasonable as well. These include:

- Turning movement counts at five intersections near the project;
- No recently approved developments in the area;
- 3% per year historical growth factor to project traffic from 1999 to 2001.

(City Exhibit 8) The nationally recognized resource for traffic analysis is the *Highway Capacity Manual*

(HCM). According to the HCM, in order to estimate the operating characteristics

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of a road segment or intersection, a Level of Service (LOS) should be calculated. LOS is a qualitative measure that describes operational conditions and the perceptions of motorists in a traffic stream. The HCM defines six levels of service, LOS A (best) through LOS F (unacceptable). For both signalized and unsignalized intersections, LOS is defined in terms of the delay experienced by motorists. LOS can be defined for individual movements or for an entire intersection. The following chart displays the relationship between LOS and delay for signalized and unsignalized intersections.

Level of Service (LOS)	Signalized Intersections Average Stopped Delay (seconds per vehicle)	Unsignalized Intersections Average Total Delay (seconds per vehicle)
A	<5	<5
B	>5 and <15	>5 and <10
C	>15 and <25	>10 and <20
D	>25 and <40	>20 and <30
E	>40 and <60	>30 and <45
F	>60	>45

From the 1994 *Highway Capacity Manual* (TRB Special Report 209, 1994)

In the original TIA, the following intersections were analyzed during the PM peak hour.

- Acton Circle South and US 19/23
- Acton Circle and Monte Vista Road
- Acton Circle North/I-40 Eastbound Ramps and US 19/23
- I-40 Westbound Ramps and US 19/23
- Old Haywood Road and US 19/23
- Site Driveway and Acton Circle
- Site Driveway and Monte Vista Road

Only the PM peak hour was analyzed because a development like Home Depot generates significantly more traffic in the afternoon than in the morning. During the Technical Review Committee (TRC) meeting, residents expressed a concern about morning traffic at the intersection of Acton Circle and Monte Vista Road and the intersection of Acton Circle North/I-40 Eastbound Ramps and US 19/23. Consequently, the intersection of Acton Circle and Monte Vista Road was analyzed during the AM Peak.

Acton Circle South and US 19/23 (City Exhibit 8-E)

As shown in the TIA, this signalized intersection currently operates at LOS B, which is very favorable. The study shows an LOS of A after build-out of the site. The improved LOS is due to signal timing changes including an increased cycle length. This intersection will likely continue to operate favorably during the PM peak hour whether or not the signal timing is changed. It should be noted that while the proposed increased cycle length improves the LOS for the entire intersection, it degrades the LOS for movements from Acton Circle. Based on the analyses in the TIA and their own analyses, the NC DOT will ultimately decide whether to implement these signal changes at this intersection.

