

Tuesday - April 11, 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; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Whitmire gave the invocation.

CHANGE TO AGENDA

At the request of Mayor Sitnick, a brief report on the future of the WNC Regional Air Pollution Control Board was added to the agenda under "Other Business."

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 11, 2000, AS "PARKINSON'S DISEASE AWARENESS DAY"

Mayor Sitnick read the proclamation proclaiming April 11, 2000, as "Parkinson's Disease Awareness Day " in the City of Asheville. She presented the proclamation to Mrs. Samuel Bingham, who briefed City Council on some activities taking place during the day.

II. CONSENT:

- A. APPROVAL OF THE MINUTES OF THE WORKSESSIONS HELD ON MARCH 21, 2000, AND APRIL 4, 200, AND THE FORMAL MEETING HELD ON MARCH 28, 2000**
- B. MOTION SETTING A PUBLIC HEARING FOR APRIL 25, 2000, TO CONSIDER ADOPTION OF DRAFT CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT PLAN**
- C. RESOLUTION NO. 00-66 - RESOLUTION AUTHORIZING THE RESTRUCTURING OF THE REDEVELOPMENT LOAN TO ROBERT EIDUS AT 102 MONTFORD AVENUE**

Summary: The consideration of a resolution authorizing the restructuring of a redevelopment loan in connection with the redevelopment of Disposal Parcel 5B of the Head of Montford Redevelopment Project.

Robert Eidus purchased property known as Disposal Parcel 5B of the Head of Montford Redevelopment Project from the City of Asheville on March 15, 1999. The property is located at 102 Montford Avenue and was formerly known as the Miller Cab property. As part of the consideration for Disposal Parcel 5B, the City received a Promissory Note, secured by a Deed of Trust on Disposal Parcel 5B, in the principal amount of \$23,850.00. The Note is a balloon note with principal and interest at 7% per annum due and payable on February 16, 2001.

-2-

Mr. Eidus obtained a construction/permanent loan from Clyde Savings Bank to finance the redevelopment of the property in the amount of \$30,000.00 at an interest rate of 7.75% and 15

year term. Redevelopment has been completed in accordance with the plan submitted by Mr. Eidus and approved by the City.

In order to pay off his obligation to the City as a balloon note due in 2001, Mr. Eidus would have to refinance his loan with Clyde Savings Bank. Refinancing would increase the interest rate to 8.5-8.75%. The higher interest rate would adversely impact the economic viability of the property based on its rental income potential. Mr. Eidus has requested the restructuring of his obligation to the City in order to avoid refinancing the loan from Clyde Savings Bank. As a result of negotiations with staff Mr. Eidus has agreed to pay monthly installments with interest at 8% over a period of twenty (20) years.

The terms proposed for restructuring the City's loan are reasonable and the restructuring will contribute to the economic viability of the property and the success of the Head of Montford Redevelopment Project.

Approval of the resolution will authorize the Community Development Director to restructure the loan.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 6

D. ORDINANCE NO. 2682 - BUDGET AMENDMENT APPROPRIATING REVENUE AND EXPENDITURES FOR THE BELE CHERE 2000 FESTIVAL

Summary: The consideration of a budget amendment appropriating revenue and expenditures for Bele Chere 2000 Festival.

This budget has been approved by the Bele Chere Board and Parks & Recreation Department staff. This request represents a balanced budget with appropriate revenue offsetting expenditures.

The Bele Chere Board and Parks & Recreation Department staff recommend City Council adopt the budget amendment in order to recognize revenue and appropriate funds for Bele Chere 2000 Festival.

ORDINANCE BOOK NO. 18 – PAGE 191

E. ORDINANCE NO. 2683 - ORDINANCE AUTHORIZING THE CITY MANAGER TO DESIGNATE OTHER CITY DEPARTMENTS TO ENFORCE CHAPTER 3 OF THE CODE OF ORDINANCES REGULATING ANIMAL CONTROL

Summary: The consideration of an ordinance authorizing the City Manager to designate other City departments to enforce Chapter 3 of the City Code regulating animal control.

By Ordinance No. 2631, adopted by the City Council on October 27, 1999, keepers of animals within the City were specifically ordered to clean up after said animals. That ordinance authorized "appropriate officials" of the City to issue a civil penalty to violators of the ordinance. To determine what constitutes an "appropriate official," Section 3-6 of Chapter 3 of the City's Code must be reviewed. That Section of the Code restricted the enforcement personnel. This

-3-

amendment will authorize the City Manager to administer the ordinance by designating other City

departments to enforce some or all of the provisions of Chapter 3 of the Code of Ordinances and also authorizes the City Manager to create an Animal Control Division within a City Department. For example, enforcement of this ordinance in City parks be delegated to Parks and Recreation Department employees. Buncombe County Friends for Animals will provide training for City staff in enforcement of the ordinance.

The Police Department recommends adoption of the ordinance.

ORDINANCE BOOK NO. 18 – PAGE

A. RESOLUTION AMENDING PRESERVATION, OPERATING AND RESTORATION AGREEMENT FOR GROVE ARCADE BUILDING

This item was removed from the Consent Agenda due to a conflict of interest by Vice-Mayor Cloninger.

B. MOTION SETTING A PUBLIC HEARING ON APRIL 25, 2000, TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR CROWELL FARMS LOCATED ON WEST OAKVIEW ROAD NEAR EAGLE'S NEST LANE

H. MOTION SETTING A PUBLIC HEARING ON APRIL 25, 2000, TO CONSIDER THE REZONING OF 655 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO OFFICE I, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE REZONING)

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

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

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 00-67 - RESOLUTION AMENDING PRESERVATION, OPERATING AND RESTORATION AGREEMENT FOR GROVE ARCADE BUILDING

Due to a conflict of interest by Vice-Mayor Cloninger, Councilman Worley moved to excuse Vice-Mayor Cloninger from voting on this matter. This motion was seconded by Councilman Hay and carried unanimously.

Summary: The consideration of an amendment to the Preservation, Operation and Restoration Agreement between the City and the Grove Arcade Public Market Foundation regarding the location of a proposed portico.

During the course of preparing documents for the reorganization for the tax credit financing for improvements to the Grove Arcade at the end of last year, it was discovered that the Preservation, Operation and Restoration Agreement provides in Paragraph VII.E.2. that a pergola may be built on the north side of the building. The intent was and has always been to put the structure on the south side of the building. This mistake was the probable result of confusion arising from Battery Park Avenue being on the south side, while the Battery Park Hotel is on the north.

The Grove Arcade architects have suggested that the proposed structure is more correctly a "detached portico" than a "pergola", and an amendment to this effect has also been requested.

Adoption of the resolution authorizing the amendment is recommended.

Councilman Hay moved for the adoption of Resolution No. 00-67. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 7

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A NEW CHARLOTTE STREET TRANSITION OVERLAY DISTRICT AND APPLICATION OF THAT DISTRICT TO 43 PROPERTIES LOCATED IN THAT AREA

Due to an error in posting the property, Councilwoman Field moved to schedule the public hearing on April 25, 2000. This motion was seconded by Councilman Worley and carried on a 5-2 vote, with Councilman Peterson and Councilwoman Whitmire voting "no".

A. PUBLIC HEARING RELATIVE TO AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ALLOW TEMPORARY TELECOMMUNICATIONS FACILITIES AT APPROVED SITES

ORDINANCE NO. 2684 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ALLOW TEMPORARY TELECOMMUNICATIONS FACILITIES AT APPROVED SITES

Mayor Sitnick opened the public hearing at 5:32 p.m.

Senior Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) which would allow temporary telecommunications facilities at approved sites. This public hearing was legally advertised on March 31 and April 7, 2000.

The Planning and Zoning Commission, at their March 1, 2000, meeting, reviewed and recommended approval of an amendment to the UDO which would amend Section 7-14-2 to allow temporary telecommunications facilities at approved sites. The proposed amendment would permit a temporary telecommunications facility to be located at sites that have been approved for the location of a permanent facility (telecommunications tower, concealed telecommunications facility, or co-located facility). A temporary telecommunications facility could be placed on the approved site for a period of up to 6 months while the permanent facility is being constructed and/or installed. The time period for the temporary facility could be extended for another 6 months if the construction has begun but has not been completed. With the proposed amendment, telecommunications service providers could begin providing service from an approved site almost immediately instead of waiting for the construction and/or installation of the permanent facility.

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

the amendment.

-5-

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

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

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2684. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2685 – ORDINANCE WAIVING SECTION 7-11-6 OF THE CODE OF ORDINANCES WITH RESPECT TO A SIDEWALK AT 1190 SWEETEN CREEK ROAD

City Engineer Cathy Ball said that this is the consideration of a request to waive the Unified Development Ordinance (UDO) requirement for a sidewalk along Sweeten Creek Road for a proposed warehouse.

Mr. Karl Lail, owner of the Have a Cup, Coffee Service, Inc., located at 1190 Sweeten Creek Road, is requesting a waiver of the UDO requirement for a sidewalk along Sweeten Creek Road for a proposed warehouse.

Section 7-11-6 of the UDO requires that new commercial construction place sidewalks as specified in the Asheville Standard Specifications & Details Manual along street rights-of-way or pay a fee in lieu of constructing the sidewalk. Mr. Lail proposes to construct a new warehouse at 1190 Sweeten Creek Road. Sweeten Creek Road is a State maintained road. The State proposes to widen this section of Sweeten Creek Road from Roberts Street to Rock Hill Road within the next two years.

This development meets the requirements for a paying a fee in lieu of constructing the sidewalk due to the fact that sidewalks are scheduled to be installed as part of a State project which has been funded for construction. This development has approximately 100 linear feet of frontage on a public street with a twenty-four foot wide driveway. The amount of the fee in lieu of construction will be approximately \$1,520.00.

As a part of the N.C. Dept. of Transportation (NC DOT) project, the City will be requested to participate in the cost of sidewalks by paying 40% of the cost of sidewalks for the portion of the project within the corporate limits. Staff **does not** recommend that City Council waive the requirement that the developer pay the fee in lieu of construction for a proposed warehouse at 1190 Sweeten Creek Road.

City staff requests that City Council not waive the requirement that a sidewalk be placed along Sweeten Creek Road or a fee in lieu of construction be paid as required by the UDO Section 7-11-6 for the proposed warehouse located at 1190 Sweeten Creek Road.

Mr. Karl Lail, owner of the property located at 1190 Sweeten Creek Road, said that he would have no problem with paying the fee, however, the sidewalks are already funded as part of the NC DOT project. He requested City Council waive the fee in lieu of construction in the amount of \$1,520.00.

-6-

Discussion surrounded the fairness of making Mr. Lail paying the entire fee when in two years sidewalks are scheduled to be installed by the State. Since the City will be requested by the State to pay 40%, Vice-Mayor Cloninger moved to waive the provision of the UDO which requires that a sidewalk be constructed for new development or a fee in lieu of construction of the sidewalk to require Mr. Lail pay 40% of \$1,520.00 and waive the remaining 60% of the costs for a sidewalk at 1190 Sweeten Creek Road. It was noted that this partial fee waiver is site specific only. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 – PAGE

Mayor Sitnick pointed out that this City Council is making significant efforts and strides to improve the permitting process to make it easier for development to occur in the City and has held several meetings with developers, realtors, home builders, architects, etc. to address any concerns.

B. REPORT FROM THE TASK FORCE ON THE FUTURE OF THE CIVIC CENTER

Councilman Hay, and Chair of the Future of the Civic Center Task Force, briefly reviewed the report in which he went over in detail at the April 4, 2000, worksession. In summary, he stated that the civic leaders who planned our present multi-purpose civic center gave us a facility which has served our City very well for almost 30 years, but we believe our needs have outgrown the present location. We propose that we preserve the multi-purpose civic center concept by relocating the arena and dedicating the existing facility to a convention/conference center and performing arts center. In furtherance of that goal, we recommend that City Council commission the Task Force to do the follows: (a) Build support for a dedicated funding source for a convention/conference center, to be located at the site of the present Civic Center; (b) Investigate promptly and aggressively the prospects of creating a first-class performing arts center, also to be located at the present location; and (c) Explore location and construction of a new arena.

Councilman Hay then reported on a trip that he and several others went to the Bi-Lo Center in Greenville, S.C. Even though that Center doesn't meet the needs Asheville has, there was a lot that was learned with regard to site location, funding, operation, etc.

Vice-Mayor Cloninger endorsed the report but was concerned that as we explore building a new arena that we not defer making renovations to our existing facility. He also expressed concern about the need and economic feasibility of a new arena.

Councilman Hay stressed that this is a challenge and we need to make sure the arena is what Asheville wants and what they need.

Mayor Sitnick said that if discussions cannot move forward with an arena, possibly a regional partnership can be explored

Councilwoman Field voiced concern about siting anything outside of the downtown area.

Councilman Worley moved to accept the report from the Task Force on the Future of the Civic Center. This motion was seconded by Councilwoman Field and carried unanimously.

VI. OTHER BUSINESS:

-7-

A. WNC REGIONAL AIR POLLUTION CONTROL BOARD AND AGENCY

Mayor Sitnick updated City Council on the issue of the Haywood County withdrawing from the WNC Regional Air Pollution Control agreement. She reviewed the options available to Council stating that Council's number one concern is the public health. A recommendation will need to be sent to the Environmental Management Commission (EMC) prior to June 1 with a recommendation on how the program should be operated in the future. She said that the Buncombe County staff made a presentation to the Buncombe County Commissioners recommending that the County take over the functions of the Board and Agency and have the agency be a part of County government to be administered by the County and rather than have an independent board, that an advisory committee be formed. Mayor Sitnick has asked the County Commissioners to have a joint public hearing with the City Council in order to receive the public's input on the future of the Agency and Board.

Vice-Mayor Cloninger felt that the City Council should proceed with a public hearing, hopefully with the County Commissioners, and reach a decision on what City Council would like the future of the Agency to be.

Upon inquiry of Councilman Peterson, City Attorney Oast said that if City Council recommends that we work with Buncombe County to develop a joint agency and the County is agreeable to that, the process would be that we inform the EMC of what our intentions are and then work with the County to develop a new interlocal agreement based on the old one. Once the agreement is approved by both bodies, then it can be submitted to the EMC for their approval. If the City and County vote differently on the future of the Agency, then the City will have to decide what position they want to recommend to the EMC.

Mayor Sitnick passed out correspondence she has complied with regard to the issue of the future of the Agency and Board.

Ms. Hazel Fobes gave a brief update of the Buncombe County Commissioners meeting on this subject stating that the County has not taken any official position as of yet. She urged the City and County to have a joint public hearing on this matter.

It was the consensus of City Council to hold the public hearing as soon as possible in order to get on record the City's position regarding the Agency and

still allow us time to work with the County.

Vice-Mayor Cloninger moved to schedule a public hearing on Tuesday, April 18, 2000, at 7:00 p.m. in the Council Chamber located on the 2nd Floor of the City Hall Building to receive public comments on the future of the WNC Regional Air Pollution Control Agency and to officially invite the Buncombe County Commissioners to equally participate in this public hearing process. This motion was seconded by Councilman Peterson and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the period of March 24-April 6, 2000: Kathleen Waters (Streets), Patricia Farmer (Water), Billy Helton (Police), Robert Zieber (Streets), Eckel Bradley (Engineering), Peggy Griffin (Police) and Kristi Outlaw (Police).

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

-8-

A. LAWSUIT

The City received a Complaint on April 7, 2000, which is generally described as follows: Mark Gibney v. City of Asheville. The nature of the proceeding is small claims action for unlawful taking of property. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Minimum Housing Complaint

Mr. J. T. Black expressed concern about the problems he has been having with code inspections on his property at 331 Fairview Road. He felt that this house is not unsafe housing and his tenants should be allowed to return to the house. City Manager Westbrook said that he would look into the situation, noting that Asheville does have a very stiff Minimum Housing Code.

Economic Development

Mr. Peter Dawes felt that the City and County should work closer together, especially with regard to economic development.

WNC Regional Air Pollution Control Agency

Ms. Hazel Fobes, representing Citizens for Safe Drinking Water, read the following statement: "Water and air are the two universal life sustaining elements. They need to be protected by each continent – country, state, county and village in their purest possible state. To gain progress toward such a state requires cooperation in nations, through the United Nations system. In state and local agencies it will require governments and citizens working together. This will call for a special arrangement, supervision of air

and water. No one agency of government should attempt to control an air pollution agency and/or board. That would be interpreted as an act of narrow-mindedness – selfishness – hidden agenda. Regionalism in water and air is vital to their survival in the purest condition possible."

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:25 p.m.

CITY CLERK MAYOR
