

Tuesday - June 27, 2000 - 5:00 p.m.

Regular Meeting

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

Absent: Councilman Edward C. Hay Jr. and Councilwoman Terry Bellamy

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 2000 AS "NATIONAL RECREATION AND PARKS MONTH"

Vice-Mayor Cloninger read the proclamation proclaiming July, 2000, as "National Recreation and Parks Month" in the City of Asheville. She presented the proclamation to Ms. Susan Roderick, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 13, 2000

B. RESOLUTION NO. 00-99 - RESOLUTION AWARDING THE BID FOR 135 CHERRY STREET TO NEIGHBORHOOD HOUSING SERVICES INC.

Summary: The consideration of a resolution authorizing the Mayor to execute necessary documents for the conveyance of 135 Cherry Street (Disposal Parcels 6D) the Head of Montford Redevelopment Project Area to Neighborhood Housing Services Inc. in the amount of \$105,000.

On June 13, 2000 the City Council directed the City Clerk to advertise for upset bids on 135 Cherry Street. The advertisement ran in the Asheville Citizen-Times on June 16, 2000, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Neighborhood Housing Services of Asheville Inc. in the amount of \$105,000 was not upset and the sale to Neighborhood Services of Asheville Inc. should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 58

C. ORDINANCE NO. 2714 - BUDGET AMENDMENT TO REFLECT INCREASED PROJECT COSTS FOR THREE URBAN TRAIL STATIONS, WHICH INCREASE WILL BE COVERED BY PRIVATE DONATIONS

Summary: The consideration of a budget amendment, in the amount of \$45,250, to reflect increased project costs for three Urban Trail Stations, which increase will be covered by private donations and will not require any additional City funds.

-2-

Costs for the City of Asheville Urban Trail for Station #10-"Grove's Vision" were estimated to be \$10,300.

The scope of the project has been expanded so that the project costs are now estimated at \$20,000, a net increase of \$9,700.

Costs for Station #16-"Legacy of Design" were estimated to be \$6,600. The decision was made to add not only a decorative bench, but also a sculpture of a young boy leaning against the bench. This increased the cost of the station to \$25,000, an increase of \$18,400.

Costs for Station #18-"Wolfe's Neighborhood" were estimated to be \$9,000. Plans have been changed to create a more elaborate station, increasing the budget to \$26,150, an increase of \$17,150.

Donors have been identified and commitments received for the full amount of Stations #10 and #16 and part of #18. Efforts are under way to raise the additional funds for Station #18. No City funds will be required for the completion of any of these stations.

The Parks and Recreation Department is responsible for the maintenance, management and development of the Urban Trail. The program is a result of a collaborative partnership between the City of Asheville and many different private individuals, organizations, and foundations under the guidance of the Urban Trail Committee. Twenty-four of the thirty stations planned for the Trail are now completed. Three bronze cats are being designed for installation this summer on Wall Street as Station #9. Four other stations including the three for which increased funding is requested are under design and scheduled for completion by spring. Plans are still under discussion for Station #1, but it is anticipated that the entire Trail will be completed on schedule by the end of 2001. All of the artwork and plaques on the Trail have been funded by outside funds.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of \$45, 250, to increase the Urban Trail capital budget.

ORDINANCE BOOK NO. 18 – PAGE 383

D. RESOLUTION NO. 00-100 - RESOLUTION CONFIRMING THE APPOINTMENT OF DEBRA FLACK WEAVER, REPRESENTATIVE OF THE MINORITY BUSINESS ALLIANCE, TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of Debra Flack Weaver, representative of the Minority Business Alliance, on the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members from various groups. Each group provides a nominee for consideration and appointment by both the City Council and the Buncombe County Board of Commissioners.

Bonnie Love, representing the Minority Business Alliance, has resigned. The Minority Business Alliance has nominated Debra Flack Weaver to represent them on the Minority Business Commission. Ms. Weaver would serve the unexpired term of Ms. Love, term to expire August 1, 2001, or until her successor has been appointed.

-3-

City staff recommends City Council adopt the resolution confirming the appointment of Debra Flack Weaver on the Minority Business Commission.

RESOLUTION BOOK NO. 26 – PAGE 59

E. RESOLUTION NO. 00-101 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2000 BELE CHERE FESTIVAL JULY 28-29, 2000

Summary: The consideration of a resolution making provisions for the possession and consumption of open containers of malt beverages and/or unfortified wine at the Bele Chere Festival at the time and location shown on the resolution.

The Bele Chere Festival is a community celebration produced by the City of Asheville's Parks and Recreation Department and the Bele Chere Board of Directors.

The Asheville Parks and Recreation Department recommends approval of the resolution at the times and dates as stated in the resolution.

RESOLUTION BOOK NO. 26 – PAGE 60

F. ORDINANCE NO. 2715 - BUDGET AMENDMENT FOR THE MUNICIPAL BUILDING

Summary: The consideration of a budget amendment, in the amount of \$471,676, to appropriate additional funds to the Municipal Building capital project from revenues received from Asheville City Schools, additional proceeds from the sale, plus interest earned on the proceeds of the Certificates of Participation (COPs).

In 1997, City Council appropriated \$14,719,229 from COPs proceeds and anticipated interest earnings for the renovation of the Municipal Building, the Old Water Maintenance Building and the roof of City Hall. These projects were approved unanimously by City Council in an effort to address ongoing maintenance and upgrades needed for the facilities. Because of improvements to the Municipal Building, it was necessary for the Asheville City Schools to relocate from the Municipal Building to the Old Water Maintenance Building. Part of the agreement with Asheville City Schools included a reimbursement to the City of Asheville for improvements made to the Old Water Maintenance Building that were above and beyond what was required for them to occupy the space. A total of \$49,350 revenue received from Asheville City Schools should be appropriated into the Municipal Building account in order to complete additional renovation to this facility. Additionally, an extra \$273,032 was realized on the sale of the COPs and \$149,294 has been earned in interest above the amounts included in the 1997 appropriations. Both of these sources are available for appropriation to the Municipal Building project at this time. These additional funds will allow for completion of the Municipal Building project without further appropriation by the City of Asheville through fund balance.

The Parks and Recreation Department requests approval of the budget amendment, in the amount of \$471,676 , to be appropriated to the Municipal Building renovation project.

ORDINANCE BOOK NO. 18 – PAGE 385

-4-

G. RESOLUTION NO. 00-102 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS TO DEMOLISH THE FIRE DAMAGED CITY-OWNED BUILDING AT THE ASHEVILLE AIRPORT

Summary: The consideration of a resolution (1) authorizing the demolition of the remaining structure known as the FAA building on the southeast side of Airport Road across from the Asheville Regional Airport, (2) authorizing the City Manager to accept the actual cash value after applicable deductible from the City's carrier for the property loss, and (3) authorizing the use of net proceeds from insurance settlement for professional assessment and planning services to prepare plans for potential use of clean site for economic

development purposes; and an associated budget amendment.

In the 1960's the City constructed a wood frame structure of approximately 1152 square feet. Said structure was valued for replacement cost under the City's property insurance program at approximately \$125,000.

Since the building was constructed it has housed by way of a lease agreement the Regional offices and shop facilities for the FAA at a monthly rate of \$747. Negotiations were, as of December 1999, under way to increase that rent upon renewal to a market rate of \$817 per month. FAA had agreed in principal to that rate.

On December 30, 1999, a fire in that building caused serious damage necessitating the FAA to relocate its offices and repair shop to facilities on the airport property in space managed by the Airport Authority. Members of the Asheville-Buncombe Arson Task Force concluded the likely cause of the fire was overheated ballast in a fluorescent light fixture.

Templeton Construction Company was asked to prepare a written estimate to repair the damage to the building and a claim for damages was made with the City's property insurance carrier. Based upon the estimate of Templeton Construction Company, it was determined that repairs would cost approximately \$82,627.14.

The City's coverage form allows for the replacement cost of structures lost due to insured perils is subject to a \$10,000 deductible. Assuming the Templeton estimate is accurate the City could rebuild the building subject to the deductible being paid by the City.

Following conversations with the City Manager, City Attorney, and the Director of Economic Development it was decided that the continued leasing of that facility to the FAA at the previously agreed to rental amount would not be in the best interest of the City. It is believed that the subject property has developable commercial value far in excess of the continued rental and can serve as a resource to support future economic development activity.

Due to a provision in the City's insuring agreement, the City may opt not to rebuild the subject building and recover from the carrier its loss on a depreciated value the net sum after applicable deductible of \$50,150.43.

Templeton Construction Company was asked to prepare a demolition estimate on the remaining structure. Including the cost of removing asbestos floor tiles in two of the rooms and disposing of them in a legally prescribed manner the total cost to demolish is \$18,510. Net recovery after a settlement on actual cash value and demolition would be \$31,640.43.

This resolution will authorize the City Manager to accept \$50,150.43 actual cash value after applicable deductible from the City's carrier for the property loss. Eighteen thousand, five hundred and ten dollars (\$18,510) from said recovery will be used to demolish and clean up the

-5-

site. A budget amendment, in the amount of \$50,150.43, is needed to demolish and clean up the site with the balance to be used for economic development of the site.

Based on the above facts, it is the recommendation of staff to accept the actual cash value settlement of \$50,150.43 and to demolish the remaining structure and to use the net proceeds to secure appropriate professional services to determine the development potential of said property to its highest and best use.

RESOLUTION BOOK NO. 26 – PAGE 63

H. ORDINANCE NO. 2716 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM AN INSURANCE

SETTLEMENT FROM THE FIRE DAMAGED CITY-OWNED BUILDING AT THE ASHEVILLE AIRPORT TO BE USED FOR DEMOLITION AND CLEAN UP OF THE SITE WITH THE BALANCE BEING USED FOR ECONOMIC DEVELOPMENT OF THE SITE

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 18 – PAGE 387

I. RESOLUTION NO. 00-103 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY, GOVERNOR'S CRIME COMMISSION, IN SUPPORT OF A COMMUNITY POLICING GEOGRAPHIC INFORMATION SYSTEM PROJECT

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a community policing Geographic Information System (GIS) Project and an associated budget amendment.

The Governor's Crime Commission has awarded the City of Asheville a grant in the amount of \$63,465 in support of a community policing GIS Project. A local match of \$21,155 is required which will be appropriated from Contingency. The purpose of this project is to enable consolidation of most of the City's geographic information systems data and coordinate this application in support of the City's Community Oriented Government program.

City staff recommends City Council adopt the resolution authorizing the City Manager to accept the grant award and that Council adopt a budget amendment, in the amount of \$63,465, to appropriate funds to the Police Department's budget.

RESOLUTION BOOK NO. 26 – PAGE 64

J. ORDINANCE NO. 2717 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM A GRANT FOR A COMMUNITY POLICING GEOGRAPHIC INFORMATION SYSTEM PROJECT

Summary: See Consent Agenda Item "I" above.

ORDINANCE BOOK NO. 18 – PAGE 389

-6-

K. RESOLUTION NO. 00-104 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY, GOVERNOR'S CRIME COMMISSION, IN SUPPORT OF A SOCIAL WORK AND POLICE PARTNERSHIP PROJECT

Summary: The consideration of a resolution authorizing the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a social work and employee's partnership project and an associated budget amendment.

The Governor's Crime Commission has awarded the City of Asheville a two-year grant in the amount of \$85,900 in support of a social work and employee's partnership project. The first year's grant is \$44,400 and a local match of \$14,800 is required which will be appropriated from Contingency. The purpose of this project is to reduce family violence issues contributing to chronic juvenile runaway behavior.

City staff recommends City Council adopt the resolution authorizing the City Manager to accept the grant award and that Council adopt a budget amendment, in the amount of \$44,400, to appropriate funds to the Police Department's budget.

RESOLUTION BOOK NO. 26 – PAGE 65

L. ORDINANCE NO. 2718 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM A GRANT FOR A SOCIAL WORK AND POLICE PARTNERSHIP PROJECT

Summary: See Consent Agenda Item "K" above.

ORDINANCE BOOK NO. 18 – PAGE 392

M. RESOLUTION NO. 00-105 - RESOLUTION REQUESTING THE N.C. DEPT. OF TRANSPORTATION PROVIDE FOR A RAISED LANDSCAPED MEDIAN IN THE LONG SHOALS ROAD IMPROVEMENT PROJECT

Summary: The consideration of a resolution requesting the N. C. Department of Transportation (NCDOT) provide a raised landscaped median in the Long Shoals Road improvement project.

The NCDOT is preparing plans to widen Long Shoals Road in accordance with the Transportation Improvement Program (TIP). The preliminary plans are for a five lane facility like Hendersonville Road. The Metropolitan Planning Organization (MPO) has asked that the NCDOT substitute a raised landscaped median for the unrestricted center turn lane. Staff is now requesting City Council to join the MPO in supporting a design change that would incorporate a raised landscaped median.

This design will have numerous benefits over the NCDOT's current plan. These benefits include:

- An improved appearance befitting a major City gateway;
- Improved traffic handling capacity due to fewer left turns;
- Improved opportunities for better land use management;
- Improved safety.

-7-

Additionally, the proposed raised median would be consist with the "gateway" concept discussed with and approved by Council earlier in the year.

As a final note, we have a verbal commitment from the Biltmore Park development to maintain the median landscaping proximate to their property. The NCDOT may ask the City to assume landscape maintenance over the remaining portions of the median within the City limits.

City staff recommends that Council approve the resolution requesting that the NCDOT amend its plans for Long Shoals Road to include a raised landscaped median.

RESOLUTION BOOK NO. 26 – PAGE 66

N. RESOLUTION NO. 00-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FOR THE MASTER STREET TREE PLAN PHASE III FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES IN THE DIVISION OF FOREST RESOURCES IN THE URBAN AND COMMUNITY FORESTRY GRANTS PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an

agreement with the N. C. Department of Environment and Natural Resources for a grant to develop Phase III of the Master Street Tree Plan.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City right-of-ways located within the city limits of Asheville. The existing inventory is over fifteen years old and no longer accurately reflects the trees of the city. Phase III of the process will specifically identify the location, size, condition, and site conditions of trees located in the west district of Asheville. Phases I and II inventoried over 7,000 trees in the central and south districts, and were funded by the Urban and Community Forestry Grant Program. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting \$9,873 in grant funds which requires a 100% match. The in-kind match is located in the Parks Division budget and will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the N.C. Department of Environment and Natural Resources in the Urban and Community Forestry Grant Program to assist with implementing the Master Street Tree Plan Phase III.

RESOLUTION BOOK NO. 26 – PAGE 67

O. ORDINANCE NO. 2719 - BUDGET AMENDMENT FROM THE PIGEON RIVER FUND FOR THE BROADWAY GREENWAY

Summary: The consideration of a budget amendment, in the amount of \$21,940, for an appropriation from the Pigeon River Fund for the Broadway Greenway.

The City of Asheville applied for grant funds in March 2000 to the Pigeon River Fund. The grant was recently awarded in the amount of \$21,940 and designated to pay for the cost to

-8-

clean up 0.5 acre of private property along Reed Creek. The land will then be donated to the City for the Broadway Greenway.

On February 8, 2000, City Council authorized the Parks and Recreation Department to apply for and enter into an agreement with the Pigeon River Fund for a grant for \$19,940. Since then, more elements were added to the project, which increased the amount to \$21,940.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of \$21,940, to increase the budget for the Broadway Greenway.

ORDINANCE BOOK NO. 18 – PAGE 395

P. REVIEW OF THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD A CONTRACT TO HOBSON CONSTRUCTION COMPANY INC. FOR CONTRACT A; COOPER CONSTRUCTION COMPANY FOR CONTRACT B; AND BUCKEYE CONSTRUCTION COMPANY INC. FOR THE CONTRACT 4 FOR THE PROJECT KNOWN AS CRITICAL NEEDS PHASE I WATER SYSTEM IMPROVEMENTS

Summary: The consideration of reviewing the award by the Regional Water Authority of a construction

contract to Hobson Construction Company for Contract A; Cooper Construction Company for Contract B; and with Buckeye Construction Company for Contract 4 for the Critical Needs Phase I Water System Improvements.

Sealed bids were received and opened on Wednesday, May 24, 2000 for the Authority's Critical Needs Phase I / Contracts A, B & 4. Four bids were received for Contract A with Hobson Construction Company submitting the low bid of \$ 1,027,847.00. Contract A includes the installation of approximately 2,600 lf of 8-inch and 14,400 lf of 6-inch waterline. A complete list of bidders is provided below.

Three bids were received for Contract B with Cooper Construction Company submitting the low bid of \$ 836,459.00 Contract B includes the installation of approximately 13,500 lf of 6-inch and 1,600 lf of 4-inch waterlines. A complete list of bidders is provided below.

Three bids were received for Contract 4 with Buckeye Construction Company submitting the low bid of \$ 624,016.29. Contract 4 includes the installation of approximately 6,060 lf of 16-inch, 6,900 lf of 6-inch and 960 lf of 4-inch waterlines. A complete list of bidders is provided below.

Critical Needs Contract A - Engineer's Estimate: \$ 1,228,837

COMPANY BID

Hobson Construction Company, Arden, N.C. \$ 1,024,727.50

Cooper Construction Company, Hendersonville, N.C. \$ 1,230,233.00

Steppe Construction Company, Mill Spring, N.C. \$ 1,369,735.00

J & L Specialty Equipment Company \$ 1,822,855.91

Critical Needs Contract B - Engineer's Estimate: \$ 1,029,257.00

COMPANY BID

Cooper Construction Company, Hendersonville, N.C. \$ 836,459.00

-9-

Steppe Construction Company, Mill Spring, N.C. \$ 1,020,105.00

Hobson Construction Company, Arden, N.C. \$ 1,052,180.00

Critical Needs Contract 4 - Engineer's Estimate: \$ 783,381

COMPANY BID

Buckeye Construction Company, Canton, N.C. \$ 624,016.29

Hobson Construction Company, Arden, N.C. \$ 675,927.50

Cooper Construction Company, Hendersonville, N.C. \$ 719,982.00

These three projects comprise the Authority's Critical Needs Phase I program and are funded by the \$ 3 million high unit cost grant the Authority received last year. These projects are focused on locations where our existing infrastructure is old, leaking and inadequate to maintain high levels of customer service.

These bids have been reviewed by the Office of Minority Affairs and this office has approved the award of each contract to the low bidder. McGill Associates, the project engineers for Contracts A & B, have recommended award of these contracts to the low bidder. The City Engineer's Office prepared Contract 4 and has recommended award of the low bid for that contract.

Each contract has a liquidated damages clause of \$ 250.00 per day for failure to complete the project in the time allocated.

The Policies and Priorities Committee of the RWA approved staff's recommendation for award of these construction contracts to the respective low bidders. The full Authority will consider their recommendation on June 20, 2000. City Staff recommends that City Council confirm the award by the Regional Water Authority.

As a result of a legal opinion by City Attorney Oast, Councilman Worley felt it appropriate for City Council to oversee Water Authority contracts, with respect to some aspects of some contracts, in order to protect the City's interests, and to insure that the Water Authority is observing applicable legal and other limitations.

Q. ORDINANCE NO. 2720 - BUDGET AMENDMENT TO AMEND THE WATER 35 FUND TO AUTHORIZES TRANSFERS FROM THE WATER 30 FUND TO CAPITAL IMPROVEMENTS EFFECTIVE JULY 1, 2000

Summary: The consideration of a budget amendment for the 35 Fund to reflect the transfer of capital from the Fiscal Year 2000/2001 Water Fund Budget that was approved by the Authority on May 16, 2000, and to redistribute funds to better reflect the five-year Capital Improvements Plan.

The Fiscal Year 2000/2001 Water Fund Budget, which was adopted by the Regional Water Authority on May 16, 2000, and is effective July 1, 2000, includes \$332,948 in Department-Wide expenses for projects to be performed in the Major Capital Projects Fund, broken down as follows:

Critical Needs State Grant Phase II – Final Matching Funds \$199,948

Master Plan Improvements \$100,000

-10-

Mills River Watershed Protection Project – Matching Funds \$ 33,000

(Third and Final Year of Match) =====

\$332,948

The budget amendment authorizes this \$332,948 to be transferred effective July 1, 2000, from the new Fiscal Year 2000/01 Water Fund Budget to the Major Capital Projects Fund (Fund 35). The Critical Needs Grant Phase II Project and the Mills River Watershed Protection Project are already well into design and the transfer to Capital Projects Fund is needed early in the fiscal year. The funding under Master Plan Improvements will be set aside for oversizing and reimbursement agreements with developers so that water lines are built to meet sizing recommended by the Master Plan.

In addition to the transfer of funding for new Capital Projects from the Fiscal Year 2000/01 budget, the budget amendment also transfers \$91,117 within the 35 Fund from its original designation to "Fiscal Year 1999/2000 Distribution System Improvements" and places these funds also in the Master Plan Improvements project. This better streamlines the program names in the fund without amending the purpose of the original appropriation.

The Fiscal Year 2000/2001 Water Fund Budget also will provide the revenue for the final payment of \$68,599 on the N. C. Dept. of Transportation non-betterment project for Tunnel Road/South Tunnel Road. This project has already been appropriated to the 35 Fund but was designated to be funded by future revenues. In July 2000, the revenues for this payment will be transferred from the Water Fund to the 35 Fund, but this action does not require a new appropriation.

Staff recommends approval of the budget amendment to reflect an appropriation of the transfer to capital from the 30 Fund for Fiscal Year 2000/2001, in the amount of \$332,948, and to redistribute funds to better reflect the five-year Capital Improvements Plan, effective July 1, 2000.

ORDINANCE BOOK NO. 18 – PAGE 397

R. RESOLUTION NO. 00-107 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "BODDINGTON COURT" LOCATED OFF OF RACQUET CLUB ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Boddington Court."

Southoaks of Buncombe, LLC., owners of lots in Southoaks Subdivision,

has petitioned the City of Asheville to accept the street name "Boddington Court." The new street will be a cul-de-sac beginning at Racquet Club Road.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 68

S. RESOLUTION NO. 00-108 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "CARLYLE WAY" LOCATED OFF OF SWEETEN CREEK ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Carlyle Way."

-11-

Sweeten Creek Apartments, LLC, has petitioned the City of Asheville to accept the street name "Carlyle Way." The new street will be a cul-de-sac beginning at Sweeten Creek Road (US 25-A).

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 69

T. ORDINANCE NO. 2721 - BUDGET AMENDMENT FOR THE FRENCH BROAD RIVER PARK IV

Summary: The consideration of a budget amendment, in the amount of \$1,174,000, for the French Broad River Park IV as a result of grants and donations.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to build the first phase of French Broad River Park IV. Staff has developed an overall budget of \$1,174,000 to develop the first phase of the park. In recent months, we have been successful in acquiring \$621,500 in grants and donations. We anticipate raising the remaining funds in the next six to nine months through additional grants and donations. Please see a summary of our fundraising activities below.

City of Asheville: Parks and Recreation Trust Fund \$250,000; and Private Donation \$500

RiverLink: Janirve Foundation \$300,000; Pigeon River Fund \$20,000; Winterberry Fund \$50,000; and French

Broad River Garden Club \$1,000

Pending: Land and Water Conservation Fund \$350,000; and TEA21 \$203,000

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of \$1,174,000 to increase the budget commencing the development of French Broad River Park IV.

ORDINANCE BOOK NO. 18 – PAGE 399

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.

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR ARTISAN PARK LOCATED AT 1773 OLD HAYWOOD ROAD

ORDINANCE NO. 2722 - ORDINANCE AMENDING THE ZONING FOR A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR ARTISAN PARK LOCATED AT 1773 OLD HAYWOOD ROAD

Mayor Sitnick opened the public hearing at 5:12 p.m.

-12-

Mr. Dan Baechtold, Urban Planner, said that this is the consideration of a Planned Unit Development (PUD) overlay designation for 41.53 acres in the Extraterritorial Jurisdiction (ETJ). This public hearing was advertised on June 16 and June 23, 2000.

On June 7, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of a PUD overlay designation for property located at 1773 Old Haywood Road. The property is located near Lakeside Drive in the general area behind the new Lowe's on Patton Avenue. The property is a mostly wooded site with some meadows and an old lakebed that currently contains no water.

The existing zoning of the property is RS4 – Residential Single-Family Medium Density. Under the current zoning, the property could be developed with a maximum of 166 single-family homes. Realistically, the property could not be developed to that density under the current zoning because some of the land area would be needed for street rights-of-way.

The proposed PUD designation would provide incentives to develop the property in a way that provides beneficial elements such as increased open space, tree preservation, affordable housing, and preservation of natural features such as steep slopes and wetlands. The incentives are in the form of density bonuses and flexible development standards. The total amount of the achievable density bonus varies based on the unique features of a particular site.

The Planning and Zoning Commission and the Planning and Development staff determined that this site is an appropriate location to apply the PUD designation. This is a site near the urban fringe of Asheville in a mostly developed area. The site contains woodlands and possible wetlands areas. The Technical Review Committee (TRC) determined that the water, sewer, and street infrastructure in the area are adequate to serve development on this site. The development of this property as a PUD provides an opportunity to further the goals of smart growth and accomplish the following purposes of the PUD District:

1. Encourage better design and management of open space by creating more functional active and passive open space areas within a new development;
2. Retain natural features such as floodplains or steep slopes, and encourage developments that will be compatible with environmentally sensitive areas;
3. Facilitate more affordable housing by providing possibilities for savings in infrastructure, installation costs, and energy costs through clustering of dwellings;
4. Provide an effective use of the transit system within and adjacent to the development by effective organization of uses and the orientation of pedestrian and vehicular facilities; and
5. Encourage pedestrian circulation within and adjacent to the PUD.

The Planning and Zoning Commission also unanimously approved a master plan associated with the proposed PUD that meets the aforementioned purposes. The City Council is not being asked to take action on the master plan. The approval of the master plan by the Planning and Zoning Commission is a final action unless it is appealed to City Council.

The approved master plan proposes a mixed-use development containing a mixture of housing types and small-scale commercial and civic uses to serve the residents of the development. The master plan indicates that mixed-use buildings will be organized in a pedestrian-oriented, village core and surrounded by other residential uses. The master plan also proposes several community buildings for public or institutional use, including a charter school and daycare. The plan proposes a total of 197 residential dwelling units. The plan proposes a system of internal pedestrian circulation through a combination of sidewalks and walking trails. The plan also proposes to dedicate approximately 17 of the 43 acres to a homeowners association to be preserved as common open space.

-13-

The TRC and the Planning and Zoning Commission reviewed the impacts of the proposed master plan and determined that this development is appropriate for the site. The developer prepared and submitted a Traffic Impact Analysis (TIA) as required by the City. The TIA analyzed traffic impacts based on the development proposed in the master plan. The analysis shows that there will be some increase in delay at surrounding intersections as a result of this development. The report concludes, however, that the impact is not enough to warrant improvements to the intersections. Michael Moule, City Traffic Engineer, and Ken Putnam of the N. C. Department of Transportation reviewed the TIA and concur with the findings.

The Planning and Development staff recommends approval of the PUD overlay designation for this parcel of 41.53 acres located at 1773 Old Haywood Road in the Extraterritorial Jurisdiction.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that the question before City Council is whether the application of the PUD overlay zoning classification is appropriate for this particular property. City Council will probably see some representations of specific plans for the property, however, Council should view those with an indication of what can be done, but not what will be done with the property. Again, Council should consider whether this particular zoning classification, with the types of density bonuses and opportunities for implementation of smart growth ideas, is appropriate for this piece of property. Even though the master plan has been approved by the Planning and Zoning Commission, is subject to change,

Mr. Marty Kocot, Engineer of record with Land Design representing Artisan House Inc., gave a brief history of the property along with outlining the topographic features of the property. He stressed that the plan was developed using smart growth and is a classic planned unit development. He explained how the intent of the plan is to meet the five purposes outlined in the UDO for a PUD. He then described how the plan is the best fit for the property. Their intent is to create a close knitted community to what is already located in the Old Haywood Road area. The best feature of the PUD is that it will preserve the natural features, reduce the amount of grading and impacts to the environment, and create an artist related community that is

interconnected where a person might shop, live and work.

Upon inquiry of Councilman Peterson, Mr. Kocot said that Appalachian Way is a recorded, but never built right-of-way for a street. He then explained the plan that they have for Appalachian Way.

Upon inquiry of Councilwoman Field, Mr. Kocot said that since this property is within the extraterritorial jurisdiction, there is no City bus service. However, there are plans to add bus service in the future and they will incorporate that into the project.

Mr. Kocot and City staff then responded to questions about buffering on the property.

Upon inquiry of Mr. Fred English, Mayor Sitnick said that the specifics of who will live in the apartments and their price range have not been determined at this point.

Ms. Betty Fagan, President of the neighborhood association in the area, stated that the owners have worked with the community. She did question the amount of units that could be built on the property with the PUD overlay. She hoped that the trees on the property could be preserved and that adequate buffering will be required. She voiced concern over the traffic that the new units will cause on the two lane street and also questioned the dam and overflow of the area. She stated that the majority of the area feels that the master plan will be an asset to the community and hoped that the approved master plan would not change.

-14-

City Attorney Oast said that the master plan that the Planning and Zoning Commission approved is pretty close to final form. There can be no significant changes unless it goes back to the Planning and Commission, which will require another public hearing.

Mr. Jim Fagan pointed out that a condition was placed on the master plan that the Metropolitan Sewerage District (MSD) has to upgrade the downstream sewer line. Mr. Baechtold explained that MSD is in the process of doing that upgrade.

Mr. David Peifer, 15 East Starnes Cove Road, was concerned about the number of apartments and commercial things being built on the southeast corner of the development which surround the RS-4 community. He also stated concerns about buffering, particularly in that area where that community will take the brunt of the impact of the development.

Mr. Evan Beverage spoke in support of the overlay and stated that they have worked very hard with the terrain to accomplish the density that will make the development economically feasible to incorporate all the concepts contained within the PUD.

Mayor Sitnick closed the public hearing at 6:08 p.m.

Upon inquiry of Councilman Peterson about if there is some limitation on how much commercial space would be permitted, City Attorney Oast said that was considered in connection with the master plan which has already been approved. The Planning and Zoning Commission has made the findings with respect to that plan that are listed in the UDO with regard to other development standards and the combination of uses, lot sizes, lot widths, lot setbacks, etc.

Mayor Sitnick asked that whatever the plan is, can City Council require that the old growth trees remain in the southeast corner of the development. City Attorney Oast said that making that finding is inappropriate because this is a rezoning. However, he did point out that preservation of existing vegetation is one of the features of the more specific development standards that would be attached to the master plan approval.

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. 2722. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick said that she met the Beverages several years ago when they first came to Asheville. One thing that attracted them to this property was the trees. At that time she felt sure they would do everything they could to work with the neighborhood to preserve the trees and make their concept to create a community appropriate for the area.

ORDINANCE BOOK NO. 18 – PAGE 401

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE MAXIMUM FOOTPRINT FOR ACCESSORY STRUCTURES IN RESIDENTIAL DISTRICTS

ORDINANCE NO. 2723 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE MAXIMUM FOOTPRINT FOR ACCESSORY STRUCTURES IN RESIDENTIAL DISTRICTS

-15-

Mayor Sitnick opened the public hearing at 6:10 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the maximum footprint for accessory structures in residential districts. This public hearing was advertised on June 16 and June 23, 2000.

Approximately 2-½ years ago, City Council approved an amendment to the UDO establishing a maximum footprint of 600 square feet for accessory structures in residential districts. Staff has received comments from the public that the current size limit for accessory structures is too restrictive. Staff reviewed the current standards, spoke with citizens regarding the standards, and worked with the Planning and Zoning Commission in revising the standards. The Planning and Zoning Commission at their May 3, 2000, meeting recommended the proposed ordinance amendment for approval. Maximum footprints for accessory structures in residential districts proposed by the ordinance amendment are:

Lot Size Single Structure Total – All Structures

< 1 acre 770 sq ft 1,000 sq ft

1 – 3 acres 1,200 sq ft 1,600 sq ft

> 3 acres No limit No limit

The other standards for accessory structures in residential districts (setback, building height, etc.) would remain unchanged. The proposed standards would meet the needs of the community for accessory structures adequate to meet their storage needs while protecting neighboring residential properties from obtrusive structures.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment establishing revised maximum footprints for accessory structures. The Planning and Development staff recommends approval of the wording amendment.

City staff recommends City Council consider an amendment to the UDO to establish revised maximum footprints for accessory structures.

Mayor Sitnick closed the public hearing at 6:17 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2723. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 403

C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE APPROVAL PROCESS FOR PRELIMINARY PLATS FOR MAJOR SUBDIVISIONS

ORDINANCE NO. 2724 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE APPROVAL PROCESS FOR PRELIMINARY PLATS FOR MAJOR SUBDIVISIONS

Mayor Sitnick opened the public hearing at 6:18 p.m.

-16-

Mr. Gerald Green, Senior Planner, said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the process for approval of preliminary plats for major subdivisions. This public hearing was advertised on June 16 and June 23, 2000.

In response to direction provided by the Fast Trackers Development Review Team and the Sustainable Economic Development Plan, Planning and Development staff reviewed current processes to identify streamlining opportunities. The proposed preliminary plat review process change was identified as a way to improve the development review processes of the City. The Planning and Zoning Commission, at their May 3, 2000, meeting, reviewed and recommended approval of an amendment to the UDO to revise the approval process for preliminary plats for major subdivisions. Major subdivisions are those subdivisions that require the construction of new streets and/or utilities or the dedication of new easements or rights-of-way. Under the current preliminary plat review process, the preliminary plat is reviewed and approved by the Planning and Zoning Commission following review and recommendation by the Technical Review Committee (TRC). The approval process currently requires approximately 4 weeks. The TRC would be authorized to review and approve preliminary plats for major subdivisions by the proposed amendment. Time required for review and approval of preliminary plats would be reduced to two weeks. Public notification of proposed subdivisions would be provided prior to the TRC meetings and the meetings are open to the public. The proposed ordinance amendment would streamline and improve the preliminary plat review process with no reduction in the quality of the review process.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment regarding the preliminary plat approval process for major subdivisions. The Planning and Development staff recommends approval of the wording amendment.

City staff recommends City Council consider an amendment to the UDO regarding the preliminary plat approval process for major subdivisions.

Mr. Green answered various questions from Councilman Peterson relative to the thresholds for residential development. Mr. Green explained that Level I is up to 8 units, Level II is from 8 units to 50 units, and Level

III is more than 50 units. Currently Level I projects can receive final approval by the TRC; Level II projects receive final approval by the Planning and Zoning Commission, after TRC recommendation; and, Level III projects receive review by the TRC, Planning and Zoning Commission and City Council makes final approval. This amendment would allow the TRC to give final approval on both Level I and Level II projects and Level III approvals would still need to go to City Council for approval.

Mr. Gerry Hardesty felt that there is very little opportunity for public input in this process. He felt that since the TRC is made up of City employees or City agencies, there is no input from the public other than what the TRC will entertain from the public at those meetings. He doesn't think that the public has the opportunity to give input on these kinds of major developments, especially with the approval process only being two weeks.

Upon inquiry of Vice-Mayor Cloninger, Mr. Green explained that when you're talking about preliminary plats, the review process is a technical review process. The UDO sets out certain specific technical requirements that those plats have to meet and the process is to determine whether or not the plat meets those technical requirements – it is not in the nature of a discretionary review. He said that the review ensures that those standards that are set forth are met.

Mayor Sitnick said since we are cutting the review process by two weeks, there should be a little more outreach with regard to public notification. Even though the public does not have an opportunity to change the technical requirements, the notification process should go beyond

-17-

400 feet –so that if someone wants to come to a TRC meeting and express a concern, that at least it will be in the record so it won't be overlooked. Mr. Green said that staff will look at the notification procedures for all developments and report back to Council at a later date. Currently all notification requirements are standard, regardless of the type of development.

Planning & Development Director Scott Shuford stressed that subdivision plat review deals with things like lot sizes, water and sewer line sizes, locations of roads, etc., which are very technical. He would hate to see us separate having a more stringent public notification process for something that is basically a use by right. He did state that they would look at the notification procedures.

City Attorney Oast suggested the following addition to Section 7-5-8 (a) (8) (a) which may address Council's concern: "Appeals may be taken by other parties aggrieved by actions of the Technical Review Commission. Appeals shall be taken to the Planning and Zoning Commission which, for this purpose, is designated to perform the functions of the Board of Adjustment. Appeals must be taken within 30 days."

Upon inquiry of Councilman Peterson, Mr. Green said that, to his knowledge, the Planning and Zoning Commission has never denied a preliminary plat review after it was approved by the TRC. In addition, he did not recall the public ever providing input to the TRC that they were not already aware of.

Mayor Sitnick closed the public hearing at 6:31 p.m.

Councilman Worley felt that the more we can do to cut the cost of some developments, the more we can do to create affordable housing. He stated that preliminary plats must meet the technical requirements of the UDO and if those requirements are met, then it is approved - if it doesn't meet those requirements, then it is not approved.

Councilman Peterson was concerned that for developments of up to 49 units there is only public input at the TRC meeting. He agreed that Level I final approvals from the TRC are fine. However, if the development is more than 8 units, then we should continue the current process because the public may make a point at the TRC meeting and the TRC doesn't have enough information to make an informed decision. It is only at the

Planning & Zoning Commission meeting that the public will actually know what the developer is proposing. Again, he felt that the gap between 8 and 49 units is too much and there should be Planning & Zoning Commission approval necessary.

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. 2724, with the following addition to Section 7-5-8 (a) (8) (a): "Appeals may be taken by other parties aggrieved by actions of the Technical Review Commission. Appeals shall be taken to the Planning and Zoning Commission which, for this purpose, is designated to perform the functions of the Board of Adjustment. Appeals must be taken within 30 days." This motion was seconded by Councilman Worley and carried on a 4-1 vote, with Councilman Peterson voting "no".

Mayor Sitnick said that if it is brought to her attention that there is not enough opportunity for public input, then she will ask that this ordinance be revised

City Attorney Oast said that since this ordinance amendment did not pass by a 2/3 vote, it will require a second reading which will occur at Council's next formal meeting on July 11, 2000.

-18-

ORDINANCE BOOK NO. 18 – PAGE 405

D. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES, TRIPLEXES AND QUADRAPLEXES IN SINGLE FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES

At the request of City staff, Councilman Worley moved to continue this public hearing until August 8, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2725 - ORDINANCE APPROVING THE CROWELL FARMS MASTER PLAN

City Attorney Oast said that this is the consideration of an ordinance adopting an order approving the master plan for Crowell Farms development.

On April 25 and 26, 2000, City Council held a public hearing and adopted Planned Unit Development Overlay Zoning for approximately 71 acres located in the extraterritorial jurisdiction and known as Crowell Farms. The Planning and Zoning Commission had previously approved the Master Plan for the PUD. That approval was appealed by other residents of the area around the proposed Crowell Farms development. City Council held a public hearing on that appeal on May 23, 2000, wherein evidence was presented by City staff, persons opposed to and persons in support of the development. At the close of this public hearing, City Council voted to approve the Master Plan, and directed City staff to prepare an Order for consideration.

If City Council approves of the findings and conclusions set forth in the Order, adoption of the ordinance approving it is recommended.

City Attorney asked that the following two additions (underlined> be added to the Order: "Accordingly, the City Council hereby APPROVES the Master Plan for Crowell Farms, subject to the conditions approved by the Planning and Zoning Commission and subject to compliance with other applicable provisions of the

Asheville City Code, including all subdivision regulations, and subject to the following additional conditions: (1) That significant trees, stands of trees, and buffers be preserved and protected during the construction and development of the Project, as required by Section 7-11-2 (c) of the Unified Development Ordinance; and (2) That walking trails be easily accessible from all developed portions of the Project, including public streets, parking areas, and children's play areas."

City Attorney Oast also suggested an amended Finding 9 (g) as follows: "If developed as proposed, a substantial number of the existing trees on the site having a six-inch caliper measurement, and at least 20 such trees, will be preserved, in addition to the trees that the developer proposes to plant."

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

Councilman Worley moved for the adoption of Ordinance No. 2725, with the three amendments outlined by the City Attorney above. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

-19-

ORDINANCE BOOK NO. 18 – PAGE 407

V. NEW BUSINESS:

A. RESOLUTION NO. 00-109 - RESOLUTION ADOPTING THE SMART GROWTH DEFINITION AND POLICIES

Mr. Scott Shuford, Planning & Development Director, said that this is the consideration of a resolution adopting Smart Growth Definition and Policies.

As an outgrowth of the Sustainable Economic Development Task Force findings and City Council direction regarding Smart Growth development patterns, staff has been charged with creating a definition for Smart Growth that meshes with the City of Asheville's needs and characteristics.

The Smart Growth Definition and Policies outlines issues relating to Smart Growth and sustainable development, provides a definition for Smart Growth based on local conditions and characteristics, and suggests several interim policies to guide staff in making land use and transportation decisions while the 2010 Plan is being updated and the Unified Development Ordinance is being amended.

City staff recommends that Council approve the resolution on Smart Growth that establishes a Smart Growth definition and implementation policies consistent with the document entitled Smart Growth Definition and Policies.

He explained that Asheville is faced with several threats to its character and quality of life. Those include: air quality, expensive housing, outdated infrastructure, sprawl development trends, disconnected roadway system, shortage of developable land, and limited regional growth management.

Smart growth is a proposed City of Asheville development pattern that makes efficient use of our limited land; fully utilizes our urban services and infrastructure; promotes a wide variety of transportation and housing options; absorbs and effectively serves a significant portion of the future population growth of Buncombe County and Western North Carolina, protects the architecture and environmental character of the City through compatible, high quality and environmentally-sensitive development practices; and recognizes the City's role as a regional hub of commerce and employment. He said that smart growth must be implemented through comprehensive, consistent and effective policies, regulations, capital projects and incentives.

Smart growth land use policies include mixed use, "vertical density" infill, sustainability, traditional neighborhood patterns, supported by housing investment, industrial land reservation, environmentally-sensitive land preservation, and strengthen existing neighborhoods through a comprehensive approach.

Smart growth transportation policies include new development supports a connected street network, implement bike and pedestrian plan, make multi-modal connections, new development supports mass transit, implement transit plan, monitor and maintain traffic capacity, maintain an interconnected street network, and use traffic calming.

Vice-Mayor Cloninger felt that there should be some addition to the policies regarding making Asheville more walkable and more bicycling. Mr. Shuford suggested the following

-20-

amendment to the transportation policies: "Strongly encourage improvements that make Asheville a premier walking and biking community including the use of evaluative and regulatory tools and capital improvements."

Mayor Sitnick said that a letter has been written to the N. C. Dept. of Transportation asking them to do a better job of maintaining their streets, keeping them clean, repairing the traffic islands, etc. – all which benefit a walkable community.

Mr. Fred English, 17 Pressley Road, said that sidewalks should be built if Asheville wants to be a walkable community.

Mr. Jim Bannon, representative of Smart Growth Partners, generally spoke in support of this issue and encouraged Council to continue in their efforts.

Mayor Sitnick requested that the City advise the public of this direction through available means of public contact. Councilman Worley suggested educating the public by some type of panel discussion on the Government Channel.

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

Vice-Mayor Cloninger moved for the adoption of Resolution No. 00-109, as amended above by Planning & Development Shuford. This motion was seconded by Councilwoman Field and carried unanimously.

Councilwoman Field said that City Council is setting some policies that could have a major affect on how Asheville looks and how Asheville continues to develop and re-develop with the small amount of land we have left. She suggested that we take a hard look at what happens when these policies come into conflict, i.e. a developer wants to build another development with a cul-de-sac and we are encouraging connecting streets. We need to study how we set our policies - to either encourage or possibly provide incentives to make Asheville grow the way we want it to grow.

RESOLUTION BOOK NO. 26 – PAGE 70

B. ORDINANCE NO. 2726 - ORDINANCE REGULATING NOISE IN THE CITY OF ASHEVILLE

City Attorney Oast said that this is the consideration of a revision of the City's noise ordinance.

In 1998 the City undertook a review of the noise ordinance, which was last revised in 1994. This was done largely in response to community concerns about the difficulty of enforcing the current ordinance. The review

process included a well-attended community meeting, meetings among City staff, and with citizen representatives.

The problems that were identified included:

- 1) Difficulty in getting police response to noise complaints;
- 2) Even when citations are issued, courts are not receptive to enforcement; and
- 3) Some noises (barking dogs, boom boxes) are not sufficiently regulated.

There were also some matters that needed to be addressed legally.

-21-

The revised noise ordinance has several important features:

1. The basic "unreasonably loud and raucous" standard is retained. This has been upheld in State and federal cases, including the United States Supreme Court.
2. Certain types of activities are identified as tending to produce loud and disturbing noises or noise levels. The City cannot ban or regulate these activities except to the extent that they actually do constitute a disturbance, but they are enumerated for the purpose of putting the public on notice that certain activities are prone to generating complaints in certain circumstances.
3. Certain types of activities are exempted from the noise ordinance. This was done in recognition that such activities (a) may be necessary for the public health and safety; (b) are non-recurring and of limited duration; (c) are associated with civic or community-wide events; or (d) are subject to constitutional or other legal protection.
4. Civil penalty for violation. Under the current ordinance, the only means of enforcement are by criminal penalty (\$50.00 fine/imprisonment) for misdemeanor infraction, or by equitable remedies (injunctions, etc.). There was no provision for civil penalty, and research discloses that this was specifically removed from a previous revision. As a practical matter, this means that the ordinance can only be enforced by the police, by a citizen swearing out a criminal warrant, or by the City initiating a civil action for injunctive relief. The use of civil penalties allows for escalating fines for repeat offenders.
5. Noise ordinance appeals board. To address the problems of "he said/she said," and to allow citizens an informal, but official, way of addressing noise based disputes, the ordinance establishes a hearing board with the power to adjudicate complaints and issue civil citations, and the power to consider appeals from citations issued by City staff. Appeals from the noise ordinance appeals board are to the City Manager.
6. Responsibility. The ordinance provides that the owner or occupant of property where a violation occurs may be liable for violations. Notice is required for owners who do not live on the premises.

If City Council agrees with the proposed revisions, adoption of the ordinance is recommended.

City Attorney Oast suggested the following amendments to the proposed noise ordinance Council which is based on comments from the Council's worksession to the present:

1. Change catchline of Section 10-83 from "General Prohibition" to "General Regulation"
2. Change catchline of Section 10-84 from "Specific Prohibitions" to "Noise producing activities; frequent

sources of complaint; noise sensitive areas."

3. Change first paragraph of Section 10-84 to read: "In addition to the general regulation set forth above, the following activities are recognized as having historically been frequent sources of noise complaint, and as tending to constitute noise disturbances when conducted or permitted in an unreasonable manner."

4. Change last paragraph of Section 10-84 to read: "It is further recognized that certain uses, including churches, synagogues and other places of worship, medical and convalescent facilities, schools and courthouses are particularly sensitive to sound and

-22-

noise. Noise-producing activities, including those specified above, may become noise disturbances when conducted in the immediate vicinity of those uses during their hours of operation."

5. Change paragraph 10-85 (i) to read: "Sound emanating from regularly scheduled athletic events at city or county parks, athletic facilities, public or private schools, and McCormick Field;"

6. Change paragraph 10-85 (l) to read: "Unamplified noncommercial speeches made from a fixed location, provided such speeches are made in a non-residentially zoned area."

7. Change paragraph 10-85 (m) to read: "Sound or noise emanating from construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission."

8. Add paragraph 10-85 (o): "Sound or noise emanating from aircraft flight activity at the Asheville Regional Airport, provided said activities are conducted in accordance with FAA regulations."

Councilwoman Field asked if the issue of conflicting activities in downtown been addressed. City Attorney Oast said that there always is going to be some friction when there are two different uses in the same building or in close proximity. It may be something more appropriately resolved by the Noise Ordinance Appeals Board.

At the request of Mayor Sitnick, it was the consensus of City Council to amend Section 10-85 (g) to read: "Lawnmowers and agricultural equipment operated between the hours of 8:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;"

Discussion surrounded the hours of operation of refuse collection vehicles in Section 10-84 (n). She felt that the commercial garbage trucks are unbelievably noisy and they start as early as 5:00 a.m. and sometimes earlier. City Manager Westbrook said that there are some difficult situations making refuse collection vehicles to operate either in the wee hours of the morning or late at night, e.g., it is the only time they can get into an area with difficult parking situations like in the downtown area, or when pedestrians are not walking by.

Mr. Fred English asked that City Council prohibit tractor trailers using their engine brakes in the City of Asheville. City Attorney Oast said that he was not sure the City of Asheville could regulate that, however, he would look into it.

Mr. Meredith Hunt, representing Life Advocates, said that on the surface, this proposed ordinance maintains much of the current ordinance and adds to it other complicated layers of enforcement, penalties and potential subjective interpretations. He asked in what other municipalities has the Noise Ordinance Appeals Board been used and has it worked. He questioned why the existing Buncombe County ordinance (which requires a decibel test) and the proposed City ordinance is so different. He also wondered how an animal control is qualified to determine if an amplified human voice is too loud. With regard to the exception to City sponsored

events, in theory, the City is allowed to put on loud rock concerts at Bele Chere but a private individual would come under scrutiny for doing the same thing on his own property or even on public property. He understands that some kind of workable governing ordinance or method is needed for public noise, while at the same time, he believes that free speech must be protected. He felt that how the picketing ordinance was written in 1995 may be a good process model for working on a revised noise ordinance. He proposed a creation of a task force consisting of interested citizens, members of organizations who would be affected by a noise

-23-

ordinance, and pertinent representatives from the City of Asheville. Also, the attorneys from the American Liberties Institute have offered to contribute to ensuring that the ordinance is constitutional as far as free speech is concerned. This would give key parties an opportunity to learn about the proposed ordinance and to offer ideas and amendments and hopefully come to a consensus on its major points.

Upon inquiry of Councilman Peterson, City Attorney Oast explained why this proposed ordinance does not rely on a decibel limitation. But, he said this ordinance doesn't prohibit the use of decibel equipment – it is one tool that enforcement people can use. He pointed out that calibrated decibel meters are expensive to buy, it involves training officers, and, in a lot of respects, it is more cumbersome to administer. In addition, you have to try to get rid of ambient noise and the noise may have stopped by the time to get a meter to the place. He pointed out that the three cases in North Carolina that have been decided by our state courts have all upheld standards similar to our proposed ordinance.

Councilman Peterson felt the use of decibel equipment should be used in conjunction with the other enforcement measures in the ordinance.

Mayor Sitnick said that people have contacted her about the constant noise of large trucks and buses left running for hours. City Attorney Oast said that may be an issue for the Noise Ordinance Appeals Board.

City Attorney Oast said that the Noise Ordinance Appeals Boards was a recommendation from the committee who worked on this proposed ordinance and he didn't see any reason why the Board would not work.

At the request of Councilman Peterson, it was the consensus of Council to amend Section 10-89 (a) to add that the first violation is \$50.00.

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

Councilman Peterson moved for the adoption of Ordinance No. 2726, with the 8 amendments outlined by City Attorney Oast above, the amendment to Section 10-85 (g) as recommended by Mayor Sitnick, and the amendment to Section 10-89 (a) to state that the first violation is \$50.00. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 412

C. RESOLUTION WAIVING CONFLICT OF INTEREST AND PERMITTING VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A., TO FILE ACTIONS OF EMINENT DOMAIN ON BEHALF OF THE CITY OF ASHEVILLE

RESOLUTION AUTHORIZING THE FILING FOR CONDEMNATION OF WATER LINE EASEMENTS ALONG A PRIVATE ACCESS ROAD KNOWN AS UPPER MOFFITT BRANCH BROAD TO THE EXTENT THAT ADJACENT PROPERTY OWNERS IDENTIFIED AS LARRY AND ROBIN BROOKS AND MARGARET BROOKS HAVE INTEREST

City Manager Westbrook said that Larry & Robin Brooks and Margaret Brooks have signed the easement agreements for the right-of-way needed on Upper Moffitt Branch Road. Therefore, City staff requests this item be pulled from City Council consideration.

-24-

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 9-15, 2000: BellSouth (Water), BellSouth (Water), Geraldine Jerome (Water), Kathy Feeney (Water), A-B Tech (Fire) and Karen Franklin (Water).

The following claims were received by the City during the period of June 16-22, 2000: Geneva Fate (Parks and Recreation), Philip Constable (Inspections), Sheril Chambers (Water) and Rita Kay (Water).

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

B. LAWSUITS

The City received the following Petition for Writ of Certiorari on May 15, 2000, which is generally described as follows: Malcolm M. Malloy III and Pioneer Welding Supply v. Zoning Board of Adjustment – Seeking reversal of Board of Adjustment's decision that a new 9,000 gallon liquefied oxygen storage tank (replacing old 3,000 gallon tank) constituted an expansion of a non-conforming use. This matter will be handled in-house.

The City filed the following Complaint on June 16, 2000, which is generally described as follows: City of Asheville v. Robert Penland and Teresa Penland – Complaint for injunction from placing a mobile home in an RM-8 District and for money judgment in the nature of civil penalty for violation of City Code Section 7-8-6. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Street Addresses

Mayor Sitnick urged residents and businesses to have their street numbers on the front of their property.

Comments by Fred English

Mr. Fred English commented on the number of events that have left the City of Asheville area.

Closed Session

At 8:07 p.m., Councilman Peterson moved to go into closed session for the following reasons. (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - statutory authority is contained in G.S. 143-318.11(a)(4); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Morris Communications, Inc. d/b/a Fairway

Outdoor Communications; Lamar OCI – South Corp.; Maple Cove, Inc.; Carl and Janis Ricker; Asheville Board of Adjustment; and City of Asheville. -

-25-

The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Worley and carried unanimously.

At 9:15 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:15 p.m.

CITY CLERK MAYOR
