

Tuesday - December 12, 2000 - 3:00 p.m.

Worksession

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

Absent: None

**CONSENT:**

**Property Donation on Merrimon Avenue**

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Merrimon Avenue from Verne Rhoades Jr. and William W. Rhoades for the City of Asheville parks and greenway system.

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville. The land for Weaver Park, located on Merrimon Avenue and Murdock Avenue, was donated by Mr. & Mrs. Verne Rhoades, Sr. in memory of Mr. & Mrs. W. T. Weaver. Verne Rhoades Jr. and William W. Rhoades, in complement of the gift by their parents honoring their grandparents, have offered to donate an approximately 0.715 acre parcel on Merrimon Avenue adjacent to Weaver Park (PIN Nos. 9649.10-37-6455 and 9649.06-37-6547) to become part of Weaver Park.

A Phase I Environmental Site Assessment has been completed by Patrick Price and the property has been surveyed by J. Glenn Haynes. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for assemblage with Weaver Park.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on Merrimon Avenue from Verne Rhoades Jr. and William W. Rhoades.

**New Street Name – Nettlewood Drive**

Summary: The consideration of a resolution accepting the new proposed street name "Nettlewood Drive."

Nettlewood, Assoc. LLC; owners of lots in Nettlewood Professional Park, has petitioned the City of Asheville to accept the street name "Nettlewood Drive." The new street will begin at Deerlake Drive and end at Peachtree Road.

City staff recommends adoption of the resolution.

Councilman Peterson asked that he be assured that this is acceptable to the residents of Deerwood Condominiums.

**Fiscal Year 2001-2002 Budget Schedule**

Summary: The consideration of a motion approving the Fiscal Year 2001/2002 budget schedule.

The proposed Fiscal Year 2001/2002 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e., City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2001/2002 budget is scheduled for June 26, 2001.

City staff recommends City Council adopt the Fiscal Year 2001/2002 budget schedule.

### **Clean Water Trust Fund Grant for Erosion Control Program and State Grant for Erosion Control Program.**

Summary: The consideration of authorizing the City to apply for grant funds to the Clean Water Management Trust Fund and the N. C. Sedimentation Control Commission Local Program Assistance Contracts Fund to partially fund the expansion of our local Stormwater/Erosion Control Division.

The Clean Water Management Trust Fund was established by the N.C. General Assembly to provide monies to help finance projects that specifically address stormwater control management as well as funding to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. Currently, \$800,000.00 has been allocated in this trust fund for the period ending December, 2000. The City of Asheville is interested in applying for a grant to partially fund the expansion of our local stormwater/erosion control division. The total funding requested for this project is \$231,800.00, and we are requesting \$69,500.00 from this source.

The N.C. Sedimentation Control Commission Local Program Assistance Contracts Fund was established to make funds available to be used to support the start-up of new local erosion and sedimentation control programs or the enhancement of existing or expanding local programs. Currently, \$150,000 has been allocated in this trust fund for the period ending January, 2001. The City of Asheville is interested in applying for a grant to partially fund the expansion of our local stormwater/erosion control division. The total funding requested for this project is \$231,800.00, and we are requesting \$75,000.00 from this source.

The City will match/in-kind with an additional \$87,360 which will be collected through normal operations by Stormwater, and Soil and Erosion Permit fees.

City staff recommends the City Manager and/or Mayor be authorized to apply for or enter into agreements for funding through the Clean Water Management Trust Fund and the Sedimentation Control Commissions Local Program Assistance Contract Fund.

### **Utility Agreement with the N. C. Dept. of Transportation regarding NC 151 Pisgah Highway Phase II Roadway Project**

Summary: The consideration of a resolution authorizing the Mayor to execute a Utility Agreement with the N.C. Dept. of Transportation (NCDOT), for the non-betterment relocation of an existing water main.

NCDOT is requiring the City of Asheville to relocate a 6" cast iron water main in Pisgah Highway (NC 151), between Medford Branch Road and Lower Glady Fork road, south of Candler, as a part of the highway improvements which have recently begun construction. This requirement is pursuant to current North Carolina law. NCDOT has designed the new relocated

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water line and has included the construction of this new water line in the NCDOT construction contract. NCDOT has also presented to the City of Asheville a Utility Agreement which reduces to writing the

obligations of each party in the relocation of this water line. Funding for the Pisgah Highway water line relocation project (\$633,500) is currently in the 329 Water Bond Capital Improvement Fund. The Utility Agreement for this project was reviewed with the Regional Water Authority on October 17, 2000, and action was taken by the Authority on November 21, 2000.

In the past all Utility Agreements for non-betterment relocation have been between the City of Asheville and NCDOT, although they have been reviewed with the Regional Water Authority. The Authority's action on November 21, 2000, was to adopt a resolution prepared by the Authority's attorney directing that the Utility Agreement for this project be a three-party agreement among the Authority, City, and NCDOT, and directed that the Authority's attorney meet with the City Attorney to review the language of the agreement.

The Water Agreement permits the Regional Water Authority to enter directly into contracts for work related to the water system, but the Agreement does not prohibit the City of Asheville from being the contracting party. The Water Agreement further provides that the City owns the water system and owns the assets and real property. The Authority routinely enters into contracts for construction with contractors. However, the City is the entity involved in transactions affecting its property interests in the water system assets, such as real estate acquisition or bond financing. The Water Authority has not previously been party to a Utility Agreement with NCDOT. NCDOT has traditionally preferred to contract with the City, and requires a provision in each Utility Agreement which allows NCDOT to withhold Powell Bill funds (street maintenance funds distributed annually to the City and other municipalities from State-collected gasoline taxes) from the City of Asheville if the State is not reimbursed for the expenses of relocating the water lines.

Because the City owns the system, and because the City's Powell Bill funds may be withheld in the event of non-compliance, the City should be the entity that contracts with NCDOT in the Utility Agreement. The Agreement may be amended to include a provision that describes the relationship between the City and the Authority, and this should provide the needed clarification. If there are issues between the City and the Water Authority regarding administration of the Utility Agreement, these may be addressed in a separate agreement between the City and the Authority.

The recommendation is to adopt a resolution authorizing the City to enter in the Utility Agreement with NCDOT, subject to appropriate revisions to reflect the relationship between the City and the Water Authority, and to protect the City's interests. The initial recommendation to the Regional Water Authority was for the Authority to adopt a resolution recommending the City of Asheville enter a Utility Agreement with the NCDOT. The recommendation of the Regional Water Authority, based on a revised resolution adopted on November 21, 2000, is that the City of Asheville authorize the Mayor to enter a Utility Agreement with the Authority and NCDOT.

### **Approval of Issuance of Bonds by Housing Authority for Oak Knoll Apartments**

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Oak Knoll project. This is the same bond issuance that was proposed and approved last year.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount of \$6,444,000 for the acquisition, rehabilitation, and equipping of a low- and moderate-income housing project in the City of Asheville. This project involves the acquisition and rehabilitation of an existing residential rental project currently known as Oak Knoll Apartments, consisting of 180 units located on Future Drive in Asheville.

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This is the same bond issuance that was proposed by the Housing Authority and approved by the City last year. The law requires that the entity issuing the bonds, in this case the Housing Authority, conduct a public

hearing on the question of the issuance of the bonds, and that the bonds actually issue within one year from the date of the hearing. Because the bonds in this case were not issued within a year of the October 26, 1999 public hearing of the Housing Authority, another public hearing must be held by the Housing Authority (scheduled for December 12, 2000), and the governing body's (City Council) approval is again required.

The project will be acquired by the Silver Street Development Corporation through the Oak Knoll - Asheville Limited Partnership, which will also perform the rehabilitation work. The Housing Authority will use the bond proceeds to provide financial assistance. In a meeting and public hearing held on October 26, 1999, the Housing Authority found that the issuance of the bonds would further the Authority's purpose of promoting low- and moderate-income housing in Asheville, found that the developer was financially responsible and capable of fulfilling its debt repayment obligations, if the financing was provided, and that estimated costs of the acquisition and rehabilitation were not excessive. The financing team was also approved. Since nothing about the project or the developer's financial capability has changed significantly since last year, it is anticipated that the Housing Authority will confirm its earlier actions.

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

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

Councilwoman Field noted that Oak Knoll Apartments has approximately \$30,000 of fees and fines against it and would like something worked out to pay this off. Ms. Patsy Meldrum, attorney representing the Housing Authority, stated that Housing Authority does not own the apartments, however, after receiving the appropriate information from the City's Building Safety Department, she would be happy to talk to the property owner and make that request.

### **Issuance of \$13,400,000 Water Revenue Bonds**

Summary: The consideration of a resolution providing for the issuance of \$13,400,000 Water Revenue Bonds, Series 2001 of the City of Asheville.

The issuance of water revenue bonds is the most prudent method of financing programmed enhancements to the water system. The significant projects to be financed include: payments to N. C. Dept. of Transportation for non-betterment expenses necessitated by highway projects; renovation of existing lines; equipment and facilities; and state-mandated renovations to the Bee Tree Dam spillway

The resolution provides the particulars for issuance of the bonds, to include:

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- o \$13,400,000 maximum aggregate principal amount to finance the project costs and costs of issuance;
- o Retains Parker, Poe, Adams & Berstein L.L.P. as bond counsel; Robinson-Humphrey Company LLC as underwriters and Raffelis Environmental Consulting Group, Inc. as feasibility consultant;

Approves Hunton & Williams as underwriter's counsel; The Bank of New York as trustee and Central Carolina Bank as co-trustee;

- o Directs the Finance Director to file an application with the Local Government Commission (LGC) for its approval of the issuance of the bonds;
- o City Council determines and requests the LGC to determine that the issuance is necessary; the principal amount is sufficient but not excessive; the projects are feasible; the City's debt management and policies are excellent and the bonds can be marketed at a reasonable cost to the City;
- o Authorizes the Mayor, City Manager and Finance Director to do all things necessary for the issuance of the bonds;
- o Requests that LGC sell the bonds through negotiation to Robinson-Humphrey at terms as may be agreed on but at a true interest cost not exceeding 7.5%;
- o Approves, authorizes and confirms the form and content of the Preliminary Official Statement and its use by the underwriter in connection with the sale of the bonds.

City staff recommends City Council adopt the resolution.

### **Change in Health Benefits Administrator**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with "The Pheil Company" for administration of group medical claims and provision of specific and individual stop-loss coverage.

Since 1983 when the City first began self-funding its group benefits it has contracted with several third party administrators (TPA's) for administration of its claims and with various stop-loss reinsurers for its stop-loss needs.

The current hardening of global reinsurance markets necessitated the City securing competitive proposals this year prior to its January 1<sup>st</sup> renewal date. A very responsible and competitive proposal has been received from PAI, Inc., d/b/a The Pheil Company. This proposal as received will reduce the City's fixed costs for its program by \$272,000 in the coming year. In addition to their proposal they have also committed to opening an Asheville claims office within the first quarter of the coming year. The City has never had a local TPA capacity to service its claims needs.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with "The Pheil Company" for administration of group medical claims and provision of specific and individual stop-loss coverage.

### **Lease of City-Owned Property at 43 Wall Street**

Summary: The consideration of a resolution authorizing the City to enter into a lease for its building located at 43 Wall Street, adjacent to the parking deck.

The City owns property on the north side of Wall Street that was redeveloped in the 1980's through the use of Certificates of Participation (COPs). The City leased the property to a development corporation, which constructed the deck and some attached commercial space on the Wall Street elevation. The development corporation leased the property back to the City,

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and the City subleased it to the Wall Street Limited Partnership, which subleased part of the commercial space to ClimbMax in 1995. The City entered into an agreement directly with ClimbMax for the construction

and use of the climbing wall on the outside of the building in 1995. These leases expired in August of 1999, and ClimbMax has continued to lease directly from the City on a monthly basis. ClimbMax desires now to enter into a lease for a period of years for the part of the building that they currently occupy, and the climbing wall.

The basic terms are that ClimbMax will lease the property for an initial term of 4-1/2 years, with an option to renew for up to five additional years. ClimbMax will pay the City a monthly rental of \$1,100.00, subject to annual escalation after the first 18 months. The current rental is \$900.00. Although the rental market in the downtown area might support a higher rent, the space occupied by ClimbMax is essentially unfinished, and we are limited by law as to how much "private use" income we can realize from the (non-taxable) COPs-financed structure, and \$1,100 is approaching the top of that range.

Currently, the space occupied by ClimbMax is without a functioning HVAC system. Due to the unique configuration of the space used by ClimbMax, the parties propose that ClimbMax should arrange for HVAC to meet its needs, and the amount of rent reflects this. ClimbMax proposes to use natural gas heat, and a supply line for this purpose needs to be built from the Wall Street main to the building. Since the City will receive a permanent benefit from this work (estimated at \$2,500.00) we are recommending that ClimbMax arrange and pay for the gas line installation, and that their first year's rent obligation be reduced by that cost.

If Council approves of the proposed lease arrangement, adoption of the resolution is recommended.

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

#### **PUBLIC ACCESS CHANNEL COMMISSION UPDATE**

Ms. Beth Lazer, Chair of the Public Access Channel Commission, explained that public access television is the most powerful, non-commercial medium that community residents can use to share their ideas. It encourages programming produced by and for the general public.

Public access television can help our community by giving all voices an opportunity to be heard. It can help to: (1) empower people by providing a forum for their messages; (2) encourage public discourse and an awareness of diversity; and (3) create community by providing the means for all individuals and groups to express their ideas in a public forum.

Mass media is important in ensuring diversity in public discourse. As was stated in 1996 by the Supreme Court Justices Kennedy and Ginsburg: "Minds are not changed in streets and parks as they once were. To an increasing degree, the more significant interchanges of ideas and shaping of public consciousness occur in mass and electronic media." Public access television can be America's electronic soapbox.

Members of the Public Access Channel Commission hope and believe that public access television will enrich the lives of the residents of Asheville just as it has across America. Anyone with a message, a camera, and the time will be able to create programming for the public access channel. Children and adults may talk about and demonstrate what it's like to live in our community. Non-profit agencies will disseminate information about their services. Social service agencies and Spanish language advocacy groups will more effectively broadcast public service messages to all local residents.

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Because our local public access station will offer every resident and local organization the opportunity to stand and be heard, we believe there is no more effective media whereby the Asheville/Buncombe County community can celebrate its diversity and its common ground. Therefore, the Public Access Commission members are pleased to share our recommendations for expeditiously establishing Asheville's public access

channel.

In the following report, she (1) apprised Council of their activities since they were formed in Feb, 2000; (2) offered their recommendations for establishing Asheville's public access channel; and (3) presented items which require City Council's consideration relative to setting up the channel.

Commission members have shared information about other public access operations obtained from the internet, publications, access consultants, and by visiting other facilities. Commission members visited the Greensboro Community Television (GCTV) facility and met with Executive Director Jay Lambeth. They also visited the Community Television of Knoxville (CTV) station and met with Director Dave Vogel.

Commission members met for an all-day planning session on May 31 to develop the following mission statement and identify major tasks needed to get the public access channel up and running. "The mission of the Public Access Channel is to empower every voice in our community by providing equal means and opportunity to create and present programming in keeping with First Amendment principles of free speech."

The Commission set up an electronic distribution list containing the e-mail addresses of all local residents who have expressed an interest in public access. They distribute commission meeting minutes and communicate relevant information on a regular basis. The Commission is working with City of Asheville staff to establish its own web site on the city's server.

Several articles about public access have appeared in the local media as a result of outreach efforts by Commission members. Mountain Xpress published Mark Goldstein's commentary about his attendance at the Alliance for Community Media's (ACM) annual conference this summer. Both Mountain Xpress and Asheville Citizen-Times reporters have published information about public access after interviews with Beth Lazer.

Commission members have met individually with each County Commissioner and with County Manager Wanda Greene to promote public access. The Commission Chair appeared at the County Commissioners meeting on October 3 to encourage the County Commissioners to partner with the city in establishing a single public access channel for the city and the county. Additionally, Commission members held meetings with Tim Amos, Asheville Education TV (AET) Chair; Wally Bowen, citizen activist; Mary Leonard White, Black Mountain Alderman; and Diane Gilkeson, Charter Communications' Group Director of Operations.

Mark Goldstein attended the Alliance for Community Media (ACM) annual conference in Tuscon, Arizona, in August. The Commission has agreed to host the ACM South East regional meeting in the spring of 2001. Representatives of the Education Channel Commission, Asheville's Government channel and Buncombe County's Government channel will be part of the planning team.

Commission members agree unanimously that the following steps should be taken to establish a top quality public access channel in Asheville:

1. ESTABLISH A NON-PROFIT CORPORATION TO MANAGE THE OPERATION OF THE PUBLIC ACCESS CHANNEL

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The creation of a non-profit corporation is generally recognized as an advantageous approach to developing and facilitating public access in a community. Non-profit access management corporations are created specifically to manage access channels, facilities and equipment and to provide access services. They are tax-exempt and are identified as 501(c)(3) organizations. Hundreds of communities have such corporations. The Board of Directors of the non-profit should be broad-based and representative of the community.

There are many advantages to the non-profit corporation model for access management, including: (1) Demonstrated record of achievement in many communities; (2) Community-based approach to decision making; (3) Operations and programming efforts responsive to community needs; (4) Maximum insulation for local government and the cable company from program content and the liability for program content. Program producers will be accountable for program content. Oversight of this policy will be the responsibility of the non-profit board; and (5) A wider range of potential funding for special activities and projects.

Commission members believe that a new non-profit must be established to manage Asheville's public access channel. It is important that this organization be dedicated to offering public access services in our community. It is not realistic to expect that an existing non-profit will expand its mission to include managing the public access channel.

Commission members recommend that the initial board of the non-profit be comprised of current commission members. Once the non-profit has been established and bylaws approved, board membership will be open to additional community members.

The legal costs for establishing the non-profit is estimated to be \$1000-\$1200.

## 2. HIRE A CONSULTANT TO DEVELOP AN ACCESS IMPLEMENTATION PLAN

There are many cable/access consultants who are skilled at assisting communities with developing public access implementation plans. We have asked two, the Buske Group and Copen and Lind, to submit ideas for how they would assist us in activating a public access channel here in Asheville. Both consultants have offered ideas on how their services can assist in developing an access implementation plan.

An Access Implementation Plan will provide a guideline for public access governance, structure and development. It would include such items as: (1) Non-profit governance and management structure; (2) General operating rules and procedures; (3) Projected operating and capital budgets for first 3 years; (4) General facility needs (square footage, capabilities, etc.); (5) General equipment needs; and (6) Staffing needs and job descriptions.

The benefits of hiring a consultant include: (1) avoid "reinventing the wheel" thus allowing the channel to be up and running more quickly and efficiently; and (2) minimize the risk of liability by helping to establish effective operating procedures.

The cost of hiring a consultant is estimated to be between \$8,000 and \$10,000 plus expenses.

## 3. TIME LINE

Commission members agree that if City Council approves this plan by January 15, 2001, the following dates can be met:

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Begin NC and federal application process to establish non-profit January, 2001

Prepare access consultant bid request January, 2001

Hire access consultant by March, 2001

Begin implementing consultant's recommendations May, 2001

With regard to a facility, public access television facilities run the gamut from a former movie studio in

Manhattan to a camcorder and playback deck in the office of a local cable company in a rural town. Typically though, each access center has office space, facilities for teaching community members video production skills, a studio for producing taped and/or live shows, storage space for field equipment which can be checked out by producers, one or more editing stations where producers can edit their shows, and a room for the playback system and equipment which transfers the video and audio signal to the cable company.

Most facilities are open to the public at least 8-12 hours a day, six days a week. The busiest times are late afternoons and weekends.

In most cases, the municipality provides the access facility at a nominal rental charge (\$1.00/year). She presented a sample budget showing that they estimate that renting a 2000 square foot space in Asheville would cost approximately \$20,000 per year.

With regard to operational funding, Commission members anticipate that the \$340,000 set aside in the franchise agreement for public access equipment and facilities will be sufficient to fund initial video equipment, furniture and fixtures, phones, computers, space renovations, etc. A detailed capital budget for our needs will be prepared as part of the Access Implementation Plan.

On the other hand, Commission members are concerned about finding sources for the channel's operational funds. Across the country, the primary funding sources for public access services are grants from the cable company and grants from the city (usually a portion of cable franchise fees received by the city). For example, Greensboro Community Television, Inc. receives 51.5% (\$125,000) annually from the city as part of the city's franchise agreement. Private donations from individuals, foundations and corporations almost always contribute a very small part of the income.

She reviewed a sample operating budget which included the types of income sources and expenditures we anticipate in the proposed budget to be developed by the consultant. These numbers do not represent the proposed budget of the channel. That information will become available after the consultant completes the Implementation Plan. The sample budget merely shows the types of income sources and operating expenses that we anticipate at this time.

In the sample budget, even after the city makes available the funding from the pass-through fees as indicated in the franchise agreement, the public access channel cannot meet expenses. Additional monies must be found to support the operation of the public access channel. The exact amount will not be known until after the consultant's report has been completed.

Commission members are committed to help find funding for operating expenses from within the community. We believe that we can form an Advisory Board comprised of community leaders who can assist with obtaining grants which can be used to pay for some operating the channel. Work on forming the Advisory Board has already begun. Once the non-profit has been established and the channel operational, it is hoped that income sources such as grants, donations, usage fees and member dues will be forthcoming.

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To help with operating funding, the Commission recommends that the City form a partnership with Buncombe County and Black Mountain to establish a single public access channel to serve city and county subscribers. Since the county and Black Mountain have separate franchise agreements with Charter Communications and separate public access channel funding sources, a partnership would have many advantages and would best serve the residents of the city and county in the following ways: (1) the combined funding would ensure that the management of a single station will have sufficient funds for equipment, facilities and operational expenses; (2) the program offerings would be richer because program sponsors would be drawn from a wider geographic area; and (3) cost to the city will be less.

Commission members encourage City Council to explore a public access partnership arrangement with the County and it's other municipalities but hopes that such negotiations do not delay implementation of a public access channel in the city.

In summary, the Commission members ask that City Council take action on the following items no later than January 15, 2001:

- 1 Provide \$1,000-\$1,200 in funding so that the Commission can establish a non-profit corporation to manage the Public Access Channel.
2. Provide a grant of \$8,000-\$10,000 to the newly formed non-profit for hiring a consultant to advise on organizational and budget matters.
3. Assist commission members with identifying city owned space for the facility.
4. Include sufficient operational funds in the city's budget over and above the pass-through fees to support the expenses of a Public Access Channel while working with the County Commissioners and the Black Mountain Aldermen to establish a single Public Access Channel for the city and county.

Ms. Lazer expressed her appreciation to the members of Asheville City Council and to Robin Nix and Jeff Reble for their extraordinary support of this endeavor and to the members of the Commission for their energy, dedication and tireless commitment to our goal.

Vice-Mayor Cloninger thanked the Commission for taking on this challenge and bringing back their recommendations.

Ms. Lazer answered several questions from Council noting that Buncombe County has offered their Assistant County Attorney to help the Commission to become a non-profit. With regard to the possibility of forming a partnership with Buncombe County, Ms. Lazer said that the City's funding could be used for equipment and the facility and County funds could be used for operational purposes.

City Council members gave Ms. Lazer ideas about foundations and possible facility space.

City Manager Westbrook said that he has met with the Buncombe County Manager and she indicated that she would recommend to the County Commissions that they pay something in operational costs for the channel, however, they want to finish their negotiations with the cable company first, which may be the spring of 2001.

Mayor Sitnick wanted to make sure that recognizing that Buncombe County wants the City of Asheville to take a lead in this partnership, she wanted to make sure that the process remains fair and equitable to the Asheville taxpayers.

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It was the consensus of City Council to direct the City Manger to work with the County Manager on the details of providing public access channel operations for the City and County and to recommend the plan of governance which would best facilitate the public purpose of the activity.

Mayor Sitnick asked that the record show that City Council has received this information and instructed the City Manager to place a budget amendment for the consultant on the next formal City Council agenda.

At the request of Mayor Sitnick, Councilman Worley moved to amend the order of the agenda and proceed with an item regarding relocation assistance for the Merrimon House tenants. This motion was seconded by

Councilwoman Field and carried unanimously.

**RESOLUTION NO. 00-224 - RESOLUTION APPROVING AN AMENDMENT TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM IN THE 2000 CONSOLIDATED ACTION PLAN**

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Councilman Worley moved to excuse Councilwoman Bellamy from this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of a motion to amend the 2000 Action Plan to provide Community Development Block Grant (CDBG) funding for the relocation expenses of tenants of Merrimon House.

City Council is familiar with the issues surrounding the eviction of tenants at 135 Merrimon Avenue because of necessary code enforcement action. Among the many problems facing the tenants in their search for new homes, there is one that the City can directly help with. Those tenants that find new accommodation are faced with immediate cash payments for rent deposits, utility pre-payments, and the like. Staff recommend meeting these costs with CDBG funds.

The 2000 Action Plan included a \$25,000 allocation for "voluntary relocation assistance to low/moderate income persons being displaced by code enforcement or temporarily displaced by a rehabilitation project." However, this program, like several others, was contingent on receiving program income from the sale of the Biltmore Avenue property and has not yet been implemented.

If this allocation is increased to \$36,000 and implemented immediately, it could provide up to \$1,000 per tenant relocated plus \$200 in counseling and case management expenses for the agency or agencies assisting the tenant (estimating a maximum of 30 people to be relocated). The funds would be routed through the agencies and would be paid to landlords, utility companies, etc., not to the tenants themselves.

In the event that the Biltmore Avenue properties are not sold in this fiscal year, there are sufficient contingency funds to cover this expenditure. A public hearing is not required.

She noted that the resolution also adopts the Optional Relocation Assistance Policy for emergency relocation assistance.

City staff recommends (1) increasing the CDBG allocation for relocation assistance from \$25,000 to \$36,000 (2) entering immediately into an agreement with the appropriate non-profit agencies to direct assistance to the displaced tenants of 135 Merrimon Avenue; and (3) adoption of the resolution including the Optional Relocation Assistance Policy.

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Councilwoman Field said it was her understanding that TM Equities Inc. (current owners) had sent eviction notices on November 7, 2000, by certified mail to the tenants of 135 Merrimon Avenue, however, they were intercepted by the previous owner Mr. Janney and the tenants did not receive those notices.

Ms. Karen Keenan, Executive Director of the Affordable Housing Coalition, said that the tenants received a second notice the first week in December from TM Equity Inc. asking them to vacate the property immediately. The team set up to identify needs for the tenants is moving quickly to matching the needs of the residents with housing. It was her understanding the Mr. Janney is still collecting rent from the tenants (even though he does not own the property) and it is also her understanding that people have been moving in since November 8, 2000.

All of Council expressed concern about the activities of Mr. Janney regarding his collecting of rent and the interception of the certified mail to the tenants.

Ms. Margie Mann, representative of TM Equity Inc., stressed that this is a condemned piece of property and they are trying to allow time for the current tenants to find other housing. They do not want to put these people out of the house with no place to go. They acquired this property after a lengthy bankruptcy proceeding. It was her understanding that Mr. Janney is on the property to feed the people in the house. He also said that he would help them move. She said that if they find Mr. Janney is on the property for any other reason than to feed the people, they would have him arrested for trespassing.

City Attorney Oast said that he is aware of the allegations and they are investigating them. He said that, if appropriate, the City will pursue appropriate action when they get a clear idea of what is actually taking place.

Councilman Peterson asked about what assistance the City could give to the tenants who have moved into the building after November 28, 2000. Ms. Caplan suggested that since the Affordable Housing Coalition has clear knowledge of who is currently living in the house, that a line be drawn to assist only those who reside at 135 Merrimon Avenue today.

Councilwoman Field moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Worley and carried unanimously.

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

Councilwoman Field moved for the adoption of Resolution No. 00-224. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Hay stressed that food and clothing are other necessities the tenants of 135 Merrimon Avenue need and he urged the citizens to remember that as well.

## **RESOLUTION BOOK NO. 26 – PAGE 232**

### **WEST END/CLINGMAN AVENUE DESIGN PRESENTATION**

Vice-Mayor Clonger moved to excuse Councilwoman Bellamy from this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

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Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that

recently, consultants retained to develop an urban infill redevelopment plan for the West End/Clingman Avenue Neighborhood Association (WECAN) completed a week-long design workshop. These consultants, led by the Florida design firm Correa Valle Valle, met with residents, local design professionals, local real estate professionals, developers, City staff, other agency officials, and other interested parties and have developed an extensive design concept/redevelopment plan for the WECAN area.

Ms. Tamara Calabria, WECAN Community Design Coordinator, said that the WECAN Community Design Workshop took place on November 10, 2000. Mountain Housing Opportunities lead this effort in partnership with the West End/Clingman Avenue Neighborhood Association, the City of Asheville, RiverLink, Pullarium Redevelopment, and other neighborhood businesses and property owners. This plan builds upon the recommendations of the City's 2010 Plan. This effort was funded with Community Development Block Grant

funds in addition to contributions from private foundations. Correa Valle Valle Inc. lead an interdisciplinary design team of local and out of town consultants. In the first days of the community design workshop, the core interest group neighborhood residents, business and property owners participated in a visioning session to clarify goals for the neighborhood's future. The visioning session identified several key projects within the neighborhood. Initial concept designs were developed and presented in "focused discussions" to representatives of utility and transportation entities, private developers, bankers, community service organizations and arts organizations for feedback.

One key area is I-240 and Patton Avenue. I-240 and Patton Avenue are critically important edges in the neighborhood. The plan calls for a new Patton Square to serve as a gateway to the City from west Asheville, building on John Nolen's 1922 Asheville City Plan. The WECAN Community Design also builds on the idea that Patton Avenue become a boulevard.

Another key area is Clingman Avenue. Clingman Avenue is the main spine of the neighborhood and an important corridor linking downtown to the river/warehouse district. The plan calls for new infill development of a neighborhood commercial center on the vacant land on the north end of Clingman Avenue, between Patton and Hilliard, as well as a traffic circle at the intersection of Hilliard and Clingman. The plan proposes new streetscaping, pocket parks, and infill housing on the east side of Clingman Avenue, as well as improved service drives for homes on the west side of Clingman, and the development of a passive recreation park and greenway corridor in the urban forest west of Clingman Avenue.

Another key area is the "Top of the Hill". This area is prime property in the neighborhood because it is a broad, level area with panoramic views of downtown and the surrounding mountains. Pioneer Welding and the Asheville Bus Transit Facility currently occupy this site. The plan proposes new infill housing, streets, neighborhood parks, and civic buildings such as schools or churches.

Another key project is an arts district. The plan recommends expanding the current river/warehouse district into an arts district to include future greenway and park development fronted by commercial development, entertainment venues, a cotton mill museum, and housing.

The plan (1) recommends new housing and commercial development on Roberts Street; (2) suggests adding pedestrian and bike lanes to Haywood Street Bridge; and (3) suggests that a new passenger rail terminal be located off Riverside Drive, within this arts district.

An important component of the plan proposes an overlay of innovative "green infrastructure" be incorporated into open spaces and parks to treat stormwater runoff before it reaches the French Broad River.

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By planning stormwater management on a watershed scale, treatment facilities can be turned into public amenities and opportunities for environmental restoration and education.

The following summarizes recommendations for the implementation of the plan: (1) begin Clingman Avenue Streetscape Improvements; (2) Begin Haywood Road improvements; (3) plan for a regional stormwater management infrastructure; (4) complete the historic district nomination; (5) relocate the transit authority; (6) support the infill of the urban fabric; (7) rebuild the cotton mill as a museum; (8) locate the passenger rail terminal within the arts district; (9) support converting part of I-240 into a boulevard; (10) support the creation of an arts district; and (10) build a network of greenways, bike paths, and walkways throughout the neighborhood.

The WECAN Citizen's Master Plan demonstrates that there is great potential to build on the neighborhood's existing resources and support sustainable future development that will be a tremendous resource both for

the neighborhood and the broader Asheville community.

On behalf of City Council, Mayor Sitnick thanked the Design Steering Committee for their hard work in developing this plan.

### **ANNUAL AUDIT REPORT**

Finance Director Bill Schaefer said that this is a presentation of the City of Asheville Annual Audit Report for the Fiscal Year ended June 30, 2000.

City Council retained an independent audit firm, Crisp Hughes Evans LLP of Asheville, North Carolina, to perform an audit of the City of Asheville for the Fiscal Year ended June 30, 2000, as required by North Carolina General Statute sec. 159-34. He said the auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion that the financial statements present fairly the financial position of the City is not modified by reservations or restrictions.)

Mr. Brian Broom, Senior Manager of Crisp, Hughes Evans LLP, gave a brief presentation of their findings. He said their report for the 2000 audit expresses an unqualified opinion (clean) on the fair representation of the general purpose financial statements in all material respects, in conformity with generally accepted accounting principles. The Local Government Commission recommends governmental entities maintain, at a minimum fund balance equal to 8% of expenditures. The City's fund balance for 2000 is 14%.

Mr. Schaefer answered various questions from Council regarding the financial report.

### **PRESENTATION ON MORATORIUM ON DEATH PENALTY**

Ms. Noel Nickle, Chair of the Western North Carolina Chapter of People of Faith Against the Death Penalty, stated that the city and county government across North Carolina (Carrboro, Chapel Hill, Charlotte, Davidson, Durham, Greensboro, Hillsborough, Orange County and Winston-Salem) have passed moratorium resolutions and urged City Council to adopt a resolution for a moratorium on executions at least until this state and the nation implement policies and procedures which (1) ensure that death penalty cases are administered fairly and impartially, in accordance with basic due process; (2) minimize the risk that innocent persons may be executed; and (3) prevent the execution of mentally retarded persons and persons who were under the age of 18 at the time of their offenses. She stated that over 21,000 signatures supporting the moratorium have been collected and will be delivered to the United Nations later this week. In addition, 34 area religious leaders have asked for Council to support a moratorium as well.

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Mr. Frank Goldsmith stated that they are not asking that City Council support complete and final abolition of the death penalty, but to help create a 'breathing space' during which the citizens of North Carolina and the nation may review, debate, and improve the administration of justice. This is what a moratorium on executions would provide.

Reasons for supporting such a moratorium are numerous, compelling, and widely publicized. For over 25 years state and federal legislatures have tried to create death penalty statutes that would be fair and impartial. These efforts have failed. Numerous recent studies document that racial bias and discrimination against poor defendants remain wide-spread. Such defendants often cannot afford the level of legal assistance needed in capital cases; reports of inadequate counsel continue to rise. At the same time, at the federal level and in many state jurisdictions the right of appeal in death cases has been severely curtailed.

Even more widely publicized have been the many instances in which prisoners on Death Row have been found to be innocent – often after years of confinement, and in some cases only days away from their

scheduled executions. Thus far 87 people, including two North Carolinians, have been found innocent and released from Death Row; these numbers will no doubt continue to grow.

Some prosecutors, including our own, have suggested that such releases merely prove that our system of justice works. But many of these releases have been accomplished through investigations carried out by persons or groups outside the criminal justice system. More to the point, a system in which a significant number of innocent persons spend years in prison for crimes they did not commit cannot be considered fair or just. These 87 cases of mistaken conviction – 87 and counting – call out for a sober reassessment of our administration of justice.

He felt that it is appropriate for City Council to take a stand on this issue because Asheville maintains a police department and it is the police who conduct the initial investigations at the crime scenes. The citizens of Asheville had a right to ask their government to take a stand.

Mr. Scott Barber also urged City Council to enact a legal moratorium on executions at least until such time as our system of justice shall be rendered more fair, impartial and just.

Mayor Sitnick and Councilman Hay asked that any formal action on this issue be delayed until City Council has had an opportunity to hear input from other Asheville residents and to review additional information.

Councilwoman Bellamy and Councilman Peterson felt the current system is flawed and a moratorium on executions is appropriate.

It was the consensus of City Council to advise City Clerk Burlson of the date this matter is to be placed on a formal meeting. She in turn will notify Ms. Nickle, Mr. Barber and Mr. Goldstein of that date.

### **NEXT COMMUNITY MEETING**

It was the consensus of City Council to hold it's January 30, 2001, community meeting in the new Asheville Police Department's Community Room, located at 100 Court Plaza, beginning at 7:00 p.m.

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### **CITY COUNCIL RETREAT**

City Manager Westbrook advised City Council that their annual retreat will be on January 19 and 20, 2001, at the Pinecrest Inn in Tryon, North Carolina.

### **BOARDS AND COMMISSIONS**

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Diana Bilbrey to the Asheville Film Board to fill the unexpired term of Barbara Pasternack, term to expire November 1, 2001.

With regard to the appointment to fill Doug Spell's unexpired term on the Metropolitan Sewerage District Board of Directors, Councilwoman Field, current member on the Board, said the Board needs a person with strong government management skills, similar to Doug Spell's when he was Assistant City Manager. City Manager Jim Westbrook recommended City Council appoint City Engineer Cathy Ball in that her department works on water and sewer contracts for annexation projects that the City has undertaken. The new Transportation Division (located in her department) is charged with coordinating transportation issues including road improvements within the City; therefore, she has a working knowledge of the N.C. Dept. of Transportation projects that would be of value to the MSD Board. After discussion, it was the consensus of City Council to delay making an appointment to the Board until January 9, 2001.

## **WORKSESSIONS**

It was the consensus of City Council to invite their representatives on the Airport Authority, Housing Authority, Metropolitan Sewerage District Board of Directors, Regional Water Authority, School Board and Tourism Development Authority to a worksession once a year.

## **POSTING OF FLYERS AND NOTICES**

Councilman Peterson stated that he had received a letter from Mr. L. Barry Shields, Owner of Blimpie on Biltmore Avenue. Mr. Shields requested that an ordinance be enacted prohibiting any type of leaflets, placards, etc. from being posted anywhere on the outside of any building, power pole, traffic signal box, etc. except city authorized and provided spaces. He felt that there should be a progressive fine for each infraction and that the ordinance should be enforced. Councilman Peterson felt this issue should be addressed as an upcoming worksession item.

Councilwoman Field noted that the Asheville Downtown Commission and the Asheville Downtown Association has worked on this in the past and this issue should be remanded back to them.

## **CLOSED SESSION**

At 6:10 p.m., Councilwoman Bellamy moved to go into closed session 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). This motion was seconded by Councilman Hay and carried unanimously.

At 6:30 p.m., Councilman Hay moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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## **ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 6:30 p.m.

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CITY CLERK MAYOR

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