

Tuesday – March 20, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; 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 Burlison

Absent: None

CONSENT:

Amendment to Sale Contract on Disposal Parcel 6C

Summary: The consideration of a resolution authorizing the Mayor to execute a second amendment to the sale contract with Neighborhood Housing Services of Asheville Inc. for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project.

On May 7, 1997, the City entered into a sale contract with Neighborhood Housing Services of Asheville, Inc. (NHS) for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project for the amount of \$248,900. That price was based on appraised values of \$179,500 for Disposal Parcel 6B and \$69,400 for Disposal Parcel 6C. The appraisals reflected a zoning classification of Commercial General on both parcels. On May 27, 1997, the Unified Development Ordinance was adopted and the zoning for Disposal Parcel 6C was changed to RM-8 Residential Multi-Family Medium Density District. NHS plans to construct affordable single family homes on the property.

On September 29, 1998, an amendment to the sale contract was executed to allow NHS to take title in two stages with one parcel being conveyed at each stage. Disposal Parcel 6B was conveyed on October 5, 1998, for the amount of \$179,500. Disposal Parcel 6C has not yet closed but, with the completion of the improvements on 6B, NHS has begun to prepare for closing on Disposal Parcel 6C. On February 2, 2001, NHS submitted an appraisal dated January 26, 2001, by Christian B. Donochod based on the RM-8 zoning classification in the amount of \$24, 500. NHS requested an amendment to the sale contract to adjust the price for Disposal Parcel 6C to the current appraised value. Community Development staff have obtained a review report of the Donochod appraisal by Mark L. Morris. The review by Mr. Morris incorporated an additional comparable sale and recommended a value for Disposal Parcel 6C of \$28,000.

NHS has further requested adjustment of the terms of sale from cash at closing to scheduled payment of the purchase price as the single family homes are completed and sold.

It is the opinion of Community Development staff that adjustment of the contract price for Disposal Parcel 6C to \$28,000 is appropriate considering the change in zoning and considering the intended use of the property for construction of affordable housing scheduled payment of the purchase price is also appropriate. The amendment will adjust the price and terms of sale and extend the date for deeding to September 1, 2001. This will enable NHS to complete the purchase and redevelop the property in accordance with the Redevelopment Plan.

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Community Development staff recommends adoption of the resolution.

Property Donation on or near South Charlotte Street

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on and near South Charlotte Street from Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco without restriction.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco have offered to donate property (approximately 0.11 acre) on and near South Charlotte Street (PIN Nos. 9649.19-50-6029, 8119 and 9649.19-60-0373) for the greenway system or any other purpose the City may choose without restriction.

The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on and near South Charlotte Street from Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco.

Budget Amendment re: Public Art Board Fund

Summary: The consideration of a budget amendment, in the amount of \$29,350, to transfer funds from the Parks and Recreation operating budget to a capital project for the development of gateways into the City of Asheville which will be completed in Fiscal Year 2001/02.

In 1999, City Council adopted an ordinance establishing the Public Art Board for the City of Asheville. Part of that ordinance established an annual appropriation for the Public Art Board which would be matched by other sources to complete specific projects in a fiscal year. Last year, \$50,000 was appropriated with approximately \$20,650 earmarked for projects in this year. The Parks and Recreation Department is requesting a budget amendment to transfer the remaining balance of funds (\$29,350) to a capital project specifically for the development of gateways into the City of Asheville.

City staff recommends City Council approve a budget amendment in the amount of \$29,350 to transfer funds from the Parks and Recreation operating budget to a capital project for the development of gateways.

Contract with Pinnacle Towers for Space at Spivey Mountain

Summary: The consideration of a resolution authorizing the City Manager to execute a antenna site lease agreement Pinnacle Towers, Inc. to house the antennae of the City's 800 MHz trunked radio system at the cost of \$1,635.15 per month for the initial year of the agreement.

During July of 1992, the City of Asheville began using its new 800MHz trunked radio system. The antennae of the new system were installed on a tower at Spivey Mountain. This specific tower site was chosen for the implementation of the new radio system because of its ability to provide a very wide area of radio coverage from a single location. The site continues to provide satisfactory radio service coverage.

The City initially contracted with Motorola, Inc. for lease of the necessary space on that tower. However, On August 31, 1999, Pinnacle Towers, Inc. acquired the tower from Motorola,

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Inc. Upon notification to the City by Pinnacle Towers, Inc. that the term of the original agreement was about to expire, they provided the City with an antenna site lease agreement to be effective February 1, 2001. The terms of the agreement include an initial term of 60 months, with an increase in lease payments of 4% effective on each anniversary. The lease rate for the first year is \$1,635.15 per month, whereas the rate of the expired agreement is \$1,486.50 per month.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-5004 C44108 to cover the monthly cost of the new agreement.

The Finance Department requests City Council approve the City Manager to execute Antenna Site Lease No. 090425003N0015 with Pinnacle Towers, Inc. such that they will continue to provide space on their tower at Spivey Mountain to house the necessary antennae for the City's 800 MHz trunked radio communication system at the cost of \$1,635.15 per month for the initial year.

Exemption of Survey Projects Less than \$30,000 from General Statutes

Summary: The consideration of a resolution exempting surveying projects with an estimated professional fee less than \$30,000 from the provisions of N. C. Gen. Stat. sec. 143-64.31.

In order to simplify and expedite the process for selection of surveyors for small surveying projects, the City has and desires to use a Multi-Party Agreement for Land Surveying Services (MPA). It is a simple, cost efficient method of handling many small projects under one umbrella. There is a Scope of Services that describes the work which may be assigned under the contract. The MPA does not guarantee any work will be assigned under the contract and, the participants only get paid if they actually perform work. Those who participate have been pre-qualified to perform the work set out in the Scope of Services. When any work of the type covered by the Scope of Services is needed a simple Request For Proposals is faxed to the participants and they fax back within 5 days or less a proposal for that particular project including fee and time. A proposal is selected from those received considering the difficulty of the work, the experience and qualifications of the participant, the time and the fee. In some cases only one firm may be asked for a fee and time proposal based on the requirements of the project.

The advantages of the Multi-Party Agreement are: (1) one contract can cover many projects; (2) selection from several participants; (3) it is more efficient and quicker; (4) it allows more qualified people the opportunity to participate; and (5) it is always open for a qualified person to sign on and participate.

Recently, concerns were expressed by several surveyors as to whether the MPA is in compliance with N. C. Gen. Stat. sec. 143-64.31. That statute requires cities to base selection of architects, engineers and surveyors on qualifications and not the lowest fee. N. C. Gen. Stat. sec. 143-64.31 provides that contracts where the fee is less than \$30,000 may be exempted in writing by a local governmental unit. Consistent with the statute, a resolution from City Council exempting projects under \$30,000 would be consistent with what other cities in North Carolina have done relative to small projects less than \$30,000. The MPA has an upset figure of \$25,000 so all projects covered by the MPA would qualify for the below \$30,000 exemption.

Community Development staff recommends adoption of the resolution.

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.

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REGIONAL WATER AUTHORITY

As a result of the City being served with a lawsuit earlier in the day from Henderson County regarding a provision in the water agreement, Councilman Worley moved to table discussion with their City representatives on the Regional Water Authority of Asheville, Buncombe and Henderson. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION NO. 01-34 – RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A GRANT FROM AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM

Ms. Cathy Ball, City Engineer, said that this is the consideration of a resolution authorizing the Mayor to execute a contract with the N. C. Dept. of Transportation (NC DOT) for the purpose of receiving funding for transit planning.

The Metropolitan Planning Organization (MPO) planning grant is a grant renewable annually to be used by the MPO for transit planning. This funding is in the amount of \$33,140 of which the City is obligated to provide \$3,314 (10%). The money will be used to partially fund the Transit Planner position in the Transportation Services Division of the Engineering Department and training of staff.

Given that the City of Asheville is the lead planning agency for the MPO, the City must approve this grant.

The match of \$3,314 is currently budgeted in the Transportation Services Division Budget.

City staff requests that the Mayor be authorized to execute a contract with the NC DOT for the purpose of receiving funding for transit planning and that formal action be taken on this matter at the March 20, 2001, worksession because the contract is due on March 23, 2001.

Councilwoman Field moved to suspend 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 will not be read.

Councilwoman Field moved to adopt Resolution No. 01-34. This motion was seconded by Councilman Worley and carried unanimously.

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EXTRATERRITORIAL JURISDICTION EXTENSION

Planning & Development Director Scott Shuford said that this is the consideration of a motion authorizing staff to pursue extension of the City's extraterritorial jurisdiction (ETJ) in the following three areas: the Fairview gateway area, the Long Shoals Road gateway area, and an area around Sardis Road having industrial potential.

City Council received a report on ETJ boundary extension at its January retreat. Since that time, City staff has developed a refined ETJ expansion area for your consideration that includes only the areas we consider to be of the highest priority for protection under City

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development regulations. These areas include: the Fairview gateway area, the Long Shoals Road gateway area, and an area around Sardis Road having industrial potential.

Staff is proposing the following schedule:

- **April 6** - Property owner notification (approximately 2,500 letters will be mailed out)
- **April 10** - City Council sets public hearing date of May 8 for ETJ expansion
- **May 8** - Public hearing and Council action expanding the ETJ
- **June 6** - Planning and Zoning Commission public hearing on zoning for ETJ areas
- **June 12** - City Council sets public hearing date of June 26 for zoning for ETJ areas
- **June 26** - City Council holds public hearing on zoning for ETJ areas

Please note that these hearings only involve the extension of ETJ boundaries and not the services provided within the boundaries. We will bring forward the services component of this issue early in your budget discussions.

Discussion surrounded the Buncombe County's upcoming public hearing on March 27 regarding their zoning one mile out from the City's corporate limits. If that happens, the City will not be able to incorporate those areas into the ETJ, however, they can be annexed in the future.

Council also discussed the need for the City and County to work together to preserve the land and development standards that the entire community cares about.

Councilman Peterson suggested City staff hold community meetings in the three areas proposed for the ETJ extension.

It was the consensus of City Council to have City staff proceed with the above schedule for extending the City ETJ.

LITTER CONTROL ALTERNATIVES

Public Works Director Mark Combs said that staff seeks Council direction regarding proposed alternative methods of addressing the litter issue.

City Council has directed staff to develop alternatives for Council consideration that will more effectively address the City-wide litter problem. Staff has already suggested a partnership with the N. C. Dept. of Transportation (NCDOT) regarding street sweeping enhancements. The existing Sanitation Division program of addressing litter on private properties and in the public right-of-way appears to be effective at addressing of those specific types of litter and no enhancements are recommended.

Consequently, this report primarily deals with a specific kind of litter - so called "snipe" signs that are attached to trees, telephone poles, benches and other street furniture, walls, buildings, etc. Research by the City Attorney's office indicates that N. C. Gen. Stat. sec. 160A-303.1 provides cities with broad authority to address litter issues. Given this authority, there are two methods of more effectively addressing snipe sign litter in Asheville:

- The ***enforcement approach*** in which the previously mentioned statute would be used to develop local

regulations that would define snipe sign as litter and provide for civil penalties for those responsible for such litter.

- The **removal approach** in which the snipe signs would be quickly removed from public places, thereby discouraging such signs.

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Each approach has its advantages. The enforcement approach would allow us to issue a ticket for each snipe sign violation; the maximum civil penalty in this case is \$50 per occurrence (i.e., up to \$50 for each sign). Notice is not required, although staff will attempt to issue warning notices before issuing citations whenever practical. The enforcement approach could therefore result in a revenue stream that could be used to offset the personnel and operational costs of the program.

The removal approach is more direct. It simply involves assigning an employee to remove snipe signs as his/her primary function. If snipe signs are promptly removed, their effectiveness in reaching potential customers is greatly reduced. Removal under the enforcement option above could still occur but would not be the primary focus of the program.

The third alternative would be to combine both the enforcement and removal approaches. This would be the most effective method of addressing the issue, but also the most costly.

Staff also recommends making special educational efforts that would be directed toward businesses which seem to utilize this form of advertising (e.g., bars and nightclubs, etc.). Additionally, this educational effort could be used to promote the increased use of the signage kiosks which are placed Downtown.

In terms of costs, the following information is provided:

- For the enforcement approach, a Zoning Enforcement Officer would be the most appropriate staff position to handle this program. Existing staff capacity in Code Enforcement Division of the Planning and Development Department does not allow the assumption of any additional workload; consequently, an added Zoning Enforcement Officer position would be needed at a cost of approximately \$38,000 including benefits. This employee would also need office space (there is sufficient space currently available), a personal computer (\$2250) and a vehicle (a small pick up truck would cost approximately \$15,000).
- The removal approach would involve the hire of a new Laborer position in the Sanitation Division of the Public Works Department. Wage and benefit cost for this employee would be about \$23,000 including benefits. No computer or office space would be needed, but a vehicle would be required (\$15,000).
- As noted above, it is possible to combine these approaches at additional cost; unquestionably, this would be the most effective (as well as the most costly) method of addressing snipe sign litter.

A final enhancement item to either of the above approaches would be to contract with a local non-profit or non-profits to assist in the removal of snipe signs. For example, it might be possible to agree upon a "bounty" of \$.50 a sign and reimburse the non-profit at that rate. It is unlikely that this method would have the same level of effectiveness as the staff-based options listed above simply due to the amount of time the non-profit may be able to spend on the effort.

Any of the above methods of addressing the snipe sign litter problem would be more effective than our current largely complaint-based program. Having specific staff available to address the issue as their primary work duty would drastically enhance our current efforts. However, any of these approaches will result in budgetary impact as there is no available staff capacity to assume this program without additional personnel and other resources. If Council's intent is to create a regulatory program that would result in consequences for the violators, we would recommend that you take the enforcement approach. If your concern is to simply

enhance current removal efforts, the removal approach would be a better fit and cost less money.

Mr. Combs noted that the City is currently working with Buncombe County, the NCDOT and Quality Forward on a spring clean-up program.

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Mayor Sitnick explained that the City is currently working on neighborhood kiosks which will alleviate some of the lost dogs, bake sale and yard sale signs.

Mr. Combs said that the kiosks program in downtown is great, however, maintenance of those kiosks is very important.

All of Council felt that the public needs to be educated about what the law is with regard to signs and keeping your property clean.

Upon inquiry of Councilman Hay, City Attorney Oast said that they are in the process of drafting an ordinance regarding chronic offenders.

Vice-Mayor Cloninger explained why he felt the City should concentrate on the removal approach.

Mayor Sitnick stressed that until the City starts getting serious about people keeping property clean, we will not get ahead of the game. She supported education through the government channel, City's webpage and press releases. She urged all of Council to keep litter as a focus point when speaking to various groups. She was highly in favor of the neighborhood kiosks program. She also suggested City staff meet with Carolina Power & Light Company and BellSouth to see if, and how, they would like to participate in the sign removal/enforcement and education efforts since their workers have the potential of being injured when climbing utility poles.

City Manager Westbrook said that efforts were made to reach an agreement with NCDOT to address litter issues on state roads. However, after discussions, they stated they are not able to participate at the current time due to current budget concerns.

Council then discussed the enforcement approach and if there would be a distinction between commercial and neighborhood signs. City Attorney Oast recommended against that distinction.

When Councilwoman Field asked if there would be any free speech issues concerning the removal of signs, City Attorney Oast said that the City has the right to regulate the use of signs in our rights-of-way.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook said that the \$15,000 for the small pick-up truck would have to come out of contingency.

Mayor Sitnick stressed that there is no good solution to this problem, except that people be respectful and not litter.

Councilwoman Field suggested a more aggressive clean-up program for companies that have larger parking lots, like the malls, strip malls, Wal-Mart and K-Mart.

It was the consensus of City Council to have City staff meet with CP&L Bellsouth, and other organizations to put together an effort do so something with regard to sign and litter removal on a broader base. If the NC DOT realizes that the City has other organizations willing to help with this issue, then they may be willing to do something on a smaller basis.

MISCELLANEOUS MATTERS

Vice-Mayor Cloninger reported on his recent trip to Raleigh, N.C., regarding the passenger rail service to Asheville. He stated that the overall reception was very good.

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Upon inquiry of Councilman Peterson, it was the consensus of City Council to not reschedule their Tuesday, April 24, 2001, formal meeting to another date. The suggestion was made because there is a N.C. League of Municipalities Regional Meeting in Waynesville, N.C., on that same date. City Manager Westbrook said that he would have City staff attend the meeting.

Upon inquiry of Vice-Mayor Cloninger, City Attorney Oast updated City Council on the legislative package City Council submitted to their local delegation. It was the consensus of City Council to instruct the City Attorney to investigate, and report back, what the process would be, and costs involved, to have an item added to the November ballot regarding a tax on prepared meals and beverages to be used for the renovation of the Civic Center. In addition, City Attorney Oast was instructed to provide our local delegation with enough background information on our legislative requests to justify Council's request for them to introduce a bill and enable them to answer questions that may come up. City Manager Westbrook said that next year, as part of the legislative package discussion, he will set up a date for Council to visit their local delegation in Raleigh to discuss their requests and leave information for them.

CLOSED SESSION

At 4:46 p.m., Councilman Hay moved to go into closed session (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 – the 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 - the 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: Henderson County, Cane Creek Water and Sewer District, Asheville-Buncombe-Henderson Water Authority, Buncombe County, and City of Asheville - the statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 5:40 p.m., Councilman Peterson moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:40 p.m.

CITY CLERK MAYOR
