

Tuesday – March 27, 2001 - 5:00 p.m.

Regular Meeting

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 Burleson

Absent: None

### **INVOCATION**

Mayor Sitnick gave the invocation.

### **I. PROCLAMATIONS:**

Mayor Sitnick welcomed Boy Scout Troop 72 from South Asheville.

#### **A. PROCLAMATION PROCLAIMING APRIL 2001 AS "CHILD ABUSE PREVENTION MONTH"**

Mayor Sitnick read the proclamation proclaiming the month of April, 2001, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Derrick Evans, who briefed City Council on some activities taking place during the month.

#### **B. PROCLAMATION PROCLAIMING THE MONTH OF APRIL, 2001, AS "PARKINSON'S DISEASE AWARENESS MONTH"**

Mayor Sitnick read the proclamation proclaiming the month of April, 2001, as "Parkinson's Disease Awareness Month," in the City of Asheville. She presented the proclamation to Ms. Jane Bingham 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 MARCH 13, 2001, AND THE WORKSESSION HELD ON MARCH 20, 2001**

#### **B. MOTION SETTING A PUBLIC HEARING ON APRIL 10, 2001, TO CONSIDER THE INITIAL ZONING OF THE AREA KNOWN AS OAKBROOK, PHASE 2, OF BILTMORE PARK LOCATED AT WHITE ASHE DRIVE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

#### **C. MOTION SETTING A PUBLIC HEARING ON APRIL 10, 2001, TO CONSIDER THE INITIAL ZONING OF THE AREA KNOWN AS BURNSIDE, PHASE 4, OF BILTMORE PARK LOCATED AT WHITE ASHE DRIVE TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

#### **D. RESOLUTION NO. 01-35 - RESOLUTION AMENDING THE SALE CONTRACT ON DISPOSAL PARCEL 6C OF THE HEAD OF MONTFORD PROJECT FOR NEIGHBORHOOD HOUSING SERVICES OF ASHEVILLE**

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.

Community Development staff recommends adoption of the resolution.

## **RESOLUTION BOOK NO. 26 – PAGE 312**

### **E. RESOLUTION NO. 01-36 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT DONATION AND CONVEYANCE OF REAL PROPERTY ON AND NEAR SOUTH CHARLOTTE STREET FROM MR. AND MRS. SIDNEY M. SHOCHET AND DR. AND MRS. IRWIN PLISCO**

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.

**RESOLUTION BOOK NO. 26 – PAGE 313**

**F. ORDINANCE NO. 2796 - BUDGET AMENDMENT REGARDING THE PUBLIC ART BOARD FUND**

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**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.**

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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.

**ORDINANCE BOOK NO. 19 – PAGE 112**

**G. RESOLUTION NO. 01-37 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN ANTENNA SITE LEASE AGREEMENT WITH PINNACLE TOWERS INC.**

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, 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

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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.

#### **RESOLUTION BOOK NO. 19 – PAGE 314**

#### **H. RESOLUTION NO. 01-38 - 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**

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.

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

### **III. PUBLIC HEARINGS:**

#### **A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT THE CORNER OF CHARLOTTE STREET AND EDWIN PLACE**

Planning & Development Director Scott Shuford said that the Planning & Zoning Commission ("Commission") is interested in seeing these kinds of ancillary types of uses come to them as a recommendation type of role in the same manner in which they would consider Level III projects. This was discussed at the last Commission meeting. If Council chooses, they can refer this to the Commission for a recommendation. It does not require a public hearing and the review of it would be in the form of a recommendation only to City Council. If that was pursued, the Commission could review that at their April 4, 2001, meeting and then it could come back to City Council for public hearing on April 10, 2001, for consideration.

Vice-Mayor Cloninger asked about what kind of opportunity would there be for public input at the Commission meeting. Mr. Shuford said that while the issue before the Commission would not be a public hearing, they would set it up as an informational meeting in which there would be public input.

Councilman Peterson said that there has already been meetings between the developer and neighborhood groups. Generally when items are remanded to the Commission, compromises can be made, however, it looks like that approach has already been tried. Therefore, given the number of people that are in the audience to address this issue and since extension discussions have already occurred, he felt it would be too much to ask the audience to go to the Commission meeting next week and then back to the City Council meeting again in two weeks. He felt City Council should continue with the public hearing now.

Councilman Hay said that in all conditional use permit issues, there is no opportunity for changes and recommendations to be made prior to coming before City Council. He felt that there is room in this proposal to address at least some of the concerns expressed to him via e-mail and letters. There is an inherent flaw in the conditional use process because it is not allowing City Council to get the best product in front of them. Sending this to the Commission will allow them to address each of the concerns and report back to Council with more focus and perhaps a list of possible outcomes that will give Council something to work from. He wants to make the best decision he can and he thinks sending this to the Commission will help in that decision-making process.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that City Council can refer this matter to the Commission at anytime, even if Council chooses to hear public comment tonight. However, if public comment is taken, the hearing should be continued because the public should have an opportunity to address the Commission's recommendations when the issue comes back to Council. He also noted that the public comment, after it comes back to Council, can be limited to specific items addressed by the Commission.

Vice-Mayor Cloninger said that if Council remands this to the Commission, then City Council should withhold public comment at this meeting. He too felt this matter should be sent to the Commission for a

recommendation. He was sensitive, as was all of Council, that a large

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crowd was present at the meeting, however, he felt that if consensus could be developed, Council should support that process.

Mayor Sitnick supported holding the public hearing now. She said that if the issue is ultimately sent to the Commission asking them to review a specific item, then Council can take additional public comment on the scope of what was referred to the Commission when it comes back to City Council.

Upon inquiry of Councilwoman Field, Mr. Shuford said by sending this to the Commission, it does lay issues out on the table in a way that gets Council more information prior to the public hearing that Council does not normally receive in a conditional use permit process. In addition, City Council would have the draft minutes of the Commission meeting, as well as anything staff would prepare and summarize as a result of that meeting.

Councilwoman Field felt that any additional factual information City Council can obtain will help her make a more informed decision. She supported sending this to the Commission for their recommendation.

Councilwoman Bellamy said it was difficult for her to make a good decision based on the limited information City Council has before it now. She felt it was imperative that Council receive information on the traffic since that seems to be one of the biggest concerns.

Mr. Michael Moule, City Traffic Engineer, said that this isn't a project that would trigger a full traffic impact analysis given the level of traffic that is potentially generated by the proposal. He would provide Council with a rough estimate of the amount of traffic that would be generated by that development based on what is in there. Not all of that would be using the parking lot because there is also some on-street parking that is available for that site. That is all the information that could be developed given the size of this project.

Vice-Mayor Cloninger moved to (1) send this matter to the Planning & Zoning Commission for them to review and solicit public input at their April 4, 2001, meeting and make a recommendation to City Council; and (2) to continue this public hearing until April 10, 2001. This motion was seconded by Councilman Hay.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the Planning & Zoning Commission is not bound by the same quasi-judicial process as is City Council and their kind of information gathering is broader. He did recommend, however, that City Council not attend the Planning & Zoning Commission meeting.

Mr. Roger James, spokesperson for the neighborhood, felt that there needs to clarification on the process for a quasi-judicial hearing for both the residents and City Council. The residents are uncertain on how to adhere to the process.

Mayor Sitnick stated that we will be putting information on the Government Channel regarding the City's conditional use process.

Mr. Clay Mooney, landscape architect representing the developer on this project, said that if Council sends this to the Planning & Zoning Commission, they would prefer not to hold the public hearing tonight. They would like to address all the issues after the Commission makes their recommendation.

Councilman Peterson offered an amendment to the motion to send to the Planning & Zoning Commission the other item before City Council at this meeting regarding the issuance of a

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conditional use permit for a parking lot in a residential district at 2 Grandview Place. He felt that if Council wants to be consistent, then they should treat similar proposals alike.

City Attorney Oast said that since two separate public hearings have been advertised, he would recommend that City Council vote on the original motion first and if Councilman Peterson wishes to make another motion regarding the conditional use permit for 2 Grandview Place, then that would be appropriate.

With regard to the amendment to the motion, Councilman Peterson said that he would yield to the City Attorney's recommendation and withdraw his amendment.

The motion made by Vice-Mayor Cloninger and seconded by Councilman Hay carried on a 4-3 vote, with Vice-Mayor Cloninger, Councilwoman Bellamy, Councilwoman Field and Councilman Hay voting "yes" and Mayor Sitnick, Councilman Peterson and Councilman Worley voting "no".

## **B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT 2 GRANDVIEW PLACE**

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

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 6:06 p.m.

Chief Planner Gerald Green submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on March 16 and 23, 2001.

Mr. Green then said that this is the consideration of a motion to issue a conditional use permit for a parking lot to be located on property zoned RS-8 Residential Single Family High Density District at 2 Grandview Place off Tunnel Road.

The Technical Review Committee (TRC) reviewed this project for compliance with the technical requirements of the Unified Development Ordinance (UDO) and took action to approve with conditions. The project site is located behind the commercial strip along Tunnel Road, between the commercial uses and the residential development on Grandview Place. The parking lot would be associated with an adjacent restaurant (East Village Grill). The property size is approximately 0.30 acre. The site meets all the location requirements for ancillary uses in residential districts. The parking lot was constructed in violation of the regulations and standards of the City of Asheville. The owner is seeking a conditional use permit to correct the violation. A home and garage that were located on the property have been removed, as has some vegetation. The parking lot will provide 17 parking spaces for customers of the adjacent restaurant. A number of trees will be planted to serve as street trees and buffer trees for the parking area. More than 10,000 square feet of the site has been graded for the construction of the parking area. Measures will be taken to minimize stormwater impact onto adjacent property.

The site location serves as the point of transition, and buffer, from the commercial strip along Tunnel Road to the residential uses on Grandview Place. Single family residential

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development on this lot would be heavily impacted by the commercial uses on Tunnel Road. Construction of

the parking lot in accordance with the site plans submitted will eliminate the parking problems and truck access problems experienced by the restaurant that will use the parking lot. Under this proposal, and as stipulated by the ancillary use standards, the zoning of the property will not change from its current RS-8 designation. Until such time as residential or other appropriate development of the lot is proposed, it is appropriate to allow this small parking lot. The site plan submitted and the conditions identified by City staff assure that the impacts of the development on the surrounding uses are mitigated. In order to minimize the traffic flow onto Grandview Place, the driveway onto Grandview Place will be exit only with only right turns permitted.

The approval of this ancillary use in this residential district holds the line on commercial intrusion into the residential zone. Under the ancillary uses ordinance, no further expansion is possible. The zoning of this parcel still reserves the parcel for single family use at some point in the future. Permitting the parking area on this property relieves congestion and access problems experienced by the business requesting this permit. Planning staff is recommending conditions for the approval to ensure that the project mitigates impacts on surrounding property owners.

Planning and Development staff recommends approval of a motion to issue a conditional use permit for this location with the following conditions: 1) The site plan shall meet all the conditions identified by TRC in their approval of the proposal ; and 2 ) The site must be brought into compliance with the approved site plan within 60 days of approval. If it is not, no use of the site for parking or other non-residential use will be permitted.

The site plan presented does meet most of those conditions identified by TRC. However, the remaining conditions that need to be met are as follows: (1) indicating the hours of operation - 7:00 a.m. to 9:00 p.m.; (2) parking lot lighting to be shielded from adjacent residential uses; (3) remove excess asphalt to provide required landscaping; (4) provide appropriate signage at exit driveway; and (5) site must comply with the approved site plan. He noted that the project will be subject to the City's stormwater management ordinance.

Mr. Green stated that City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]: (1) That the proposed use or development of the land will not materially endanger the public health or safety; (2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region; (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property; (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is locate; (5) That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City; (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Mr. Green said that adjoining property owners have expressed concerns about the traffic impacts of this parking lot, the impact on property values, and about the location of the dumpster. A condition in the conditional use permit is that the dumpster be screened by a fence. The City Traffic Engineer has reviewed the plan and in order to minimize the traffic flow onto Grandview Place, the driveway onto Grandview Place will be exit only with only right turns permitted.

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Councilman Peterson asked when the house and garage were demolished. Mr. Green said that he didn't know but this issue came to the Planning Department's attention in September when concerns were

expressed by the neighbors about the grading activity on the site. At that time the grading on the site was completed and the parking lot was constructed without any permits and in violation of City standards and requirements.

Upon inquiry of Councilman Peterson, Mr. Green said that a demolition permit is required by the Building Safety Department to demolish a house in addition to approval from the WNC Regional Air Quality Agency. He was not sure whether the permit or approval was received by the owner prior to demolition.

With regard to grading, Mr. Green said that submittal of an erosion control plan, approval of that plan, and issuance of a grading permit was not done prior to the grading activity on the site. In addition, paving requires a conditional use permit and that was not applied for prior to the initiation of the paving.

Councilman Peterson asked if there have been any penalties assessed for the demolition, grading and paving. Mr. Green was not aware of any, however, he did note that this project was on the agenda for the Erosion Control Review Committee. That Committee reviews penalties or assessments for violation of the erosion control ordinance. Unfortunately he was not aware of the action taken by that Committee with regard to this. There have been no penalties from the Planning Department for doing the work without the conditional use permit. Planning staff is trying to bring this through the process and have the project brought into compliance with the City's standards.

In response to Councilman Peterson, Mr. Green said that if the owner had come to the City and said he wanted to tear down a house and put in parking, that the project would not have met one of the standards for ancillary uses, because the lot is supposed to be vacant. City Attorney Oast read out of the Code that "ancillary uses ... may not be located on lots that within 18 months prior to the date of application had more than one residential structure that was demolished except pursuant to the determination by the City Building Inspector that the structures were dilapidated."

Councilman Worley wondered if the hours of operation of restaurant will correspond with the condition that the parking lot only be used from 7:00 a.m. to 9:00 p.m.

Upon inquiry of Councilman Hay, Mr. Green said that had the lot been vacant and not prepared for parking, City staff's recommendation would have been the same as it is now – approval with conditions.

Mr. Nicholas Papanastasiou, owner of the parking lot, said that he did get a permit to demolish the vacant, non-livable house in advance. He said he did apply for a grading permit and he thought it passed, but it had not been issued. He said he didn't know he needed a paving permit. He said he was concerned about safety because one of his delivery trucks has to park on US 70. He very much wanted the exit onto Grandview Place for safety. He said his hastiness was a scramble to save his business because his delivery trucks drove across his neighbor's property and his neighbor built a barrier. In response to an earlier question by Councilman Worley, he said that his restaurant stays open until 10:00 p.m. Monday-Thursday and 11:00 p.m. on Friday-Saturday.

Upon inquiry of Vice-Mayor Cloninger about parking lot lighting, Mr. Green said that there are types of lighting fixtures and shields that can be placed on them to direct the light down onto the parking lot and make sure there is no filtration out to the residential areas.

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Upon inquiry of Councilwoman Field, City Traffic Engineer Michael Moule said that based on site distance it is safer for people to exit onto Grandview Place and then onto Tunnel Road than to exit directly onto Tunnel Road.

Upon inquiry of Vice-Mayor Cloninger, Mr. Green said that it appears from the information he has that the

application for the grading permit, the grading and the paving activities occurred approximately at the same time and those construction activities took place prior to issuance of any permits. As to why the owner went ahead without waiting on approval, Mr. Green said the owner stated that he (1) needed the parking area; and (2) that the contractor was there on site doing the demolition of the home and it was good to do it all at one time.

Mr. Phil Henderson, adjoining property owner, said that his concern is that he has rental property that adjoins the parking lot. He said that he did have the corner of his property repaved and installed a curb so that the delivery trucks would stop destroying that corner. He had never had a problem with the restaurant's customers parking in the florist shop's lot and he is also the owner of that building. He was also concerned that there is a building right across the property line where the dumpster is located and asked that the dumpster be moved closer to the business. He asked that a 6-8 foot privacy fence be installed on the east side of the property to keep people from cutting across going up to Oteen Church Road. He didn't have a problem with the parking lot, just the location of the dumpster and the need for a privacy fence on the east side of the property.

Mr. Steven Henderson said that an appraiser he talked to said there would be a negative impact to the adjoining properties without some sort of a privacy screen.

Mr. Roger Lyda, engineer for the owner of the parking lot, responded to questions from Councilwoman Field about the possibility of moving the dumpster to a different location. In addition, he said that although it is feasible to build a fence on the east side of the property, trees would have to be cut down.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:56 p.m.

Upon inquiry of Councilwoman Field, City Attorney Oast said that if what Council is interested in doing is addressing the issues raised about a fence on the east side of the new parking lot and relocating the dumpster off of the eastern property line, that may be something that could be worked out at the staff level. Suggested findings of fact and conclusions, that would incorporate those conditions, could be brought back to Council on April 10, 2001. If something could not be worked out, then staff would report that as well.

Mayor Sitnick was concerned with the possibility of setting a precedent. Her problem is that even though it seems there may not have been a blatant disregard for the permitting process, activities still took place on this land prior to permits being issued for any of those activities. Now after the parking lot is completed, City Council is being asked to circumvent the process in order to grant a conditional use permit so the developer can do what he wants on that property.

Councilwoman Bellamy asked if the owner would still be able to use his parking lot if Council denies the conditional use permit or remands the matter to the Planning & Zoning Commission. City Attorney Oast said that the parking lot is an illegal use.

Councilman Peterson said that the property owner did contact City staff and he believed that staff would have informed him of the process involved but the owner did not follow that process. He feels that Council will be rewarding someone for violating several City ordinances

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and encouraging everyone else to do what they want to do and then once it's done, City Council is going to have to accept it.

Councilman Hay did note that Mr. Green said that had this come to City staff before any work had been done (after the house was demolished), staff's recommendation would be the same – approval with conditions.

After hearing the comments made, he feels that what it boils down to is the property owner went forward with the parking lot without permission.

Councilwoman Field moved to remand this issue to City staff so they can work with the applicant and the neighbors to resolve the issues with regard to the privacy fence on the east side of the property, the re-location of the dumpster off of the east side of the property, and the hours of operation with regard to the parking lot. Staff was instructed to bring the matter back for Council consideration on April 10, 2001. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Mayor Sitnick also asked that staff make sure the parking lot light that shines into the residential neighborhood be addressed.

Councilman Peterson also asked staff to consider, partly as consequence for proceeding on this without the proper permits, allowing the parking on the north side, requiring additional buffering without parking spaces on the south side, and also not allowing the exit onto Grandview Place. He felt that if there are half the number of parking spaces on the new lot, there should be plenty of room for people to turn around and drive back down into the existing lot. Councilwoman Bellamy did not agree with taking out the exit on Grandview Place because that is the safest exit and it's only one way out.

City Attorney Oast said that he would bring back a proposed ordinance addressing the issues for City Council consideration at their next formal meeting on April 10, 2001.

Mayor Sitnick asked that City staff come back to City Council with some recommendations about what the City can do when someone does not adhere to the rules that everyone else is required to adhere to. She felt the City must send a message to the community that they are going to be consistent in their treatment to all the citizens. Mr. Green responded that some City departments have monetary penalties for starting work without a permit. They will work with the City Attorney's Office to see what can be done and come back with some recommendations for City Council to review.

## **B. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED AT 240 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS TO COMMERCIAL INDUSTRIAL DISTRICT**

### **ORDINANCE NO. 2797 - ORDINANCE TO REZONE 240 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS TO COMMERCIAL INDUSTRIAL DISTRICT**

Mayor Sitnick opened the public hearing at 7:14 p.m.

Chief Planner Gerald Green said that this is the consideration of a request to rezone property located at 240 Smoky Park Highway from HB Highway Business District to CI Commercial Industrial District. This public hearing was advertised on March 16 and 23, 2001.

The City has received a rezoning petition requesting the rezoning of property (PIN No. 9617.08-98-6299) located at 240 Smoky Park Highway from Highway Business District to Commercial Industrial District. The 5.5 acre tract is located just off Smoky Park Highway at the

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intersection of Smoky Park Highway and Montgomery Street. It is the site of the Moore's building supply business. Access to the property is via Montgomery Street, with an at-grade railroad crossing required. Montgomery Street, I-40, and the Norfolk-Southern Railroad right-of-way bound the property. Surrounding land uses include primarily commercial uses, with some undeveloped property adjacent to the site. Rezoning is requested to permit light industrial use of the property. The property has several attributes that make it appropriate for light industrial use, including:

- Adequately served by water and sewer;
- Adjacent to a railroad line and served by a railroad spur;
- Easy access to a primary arterial highway and to an interstate highway;
- Physically separated from residential development; and
- Gentle topography (site previously developed).

Staff has received no comments in opposition to the requested rezoning.

The Planning and Zoning Commission voted 5 to 0 to recommend approval of the rezoning of the property located at 240 Smoky Park Highway from Highway Business District to Commercial Industrial District. The Planning and Development staff recommends approval of the requested rezoning.

Mayor Sitnick closed the public hearing at 7:17 p.m.

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

Councilman Worley moved for the adoption of Ordinance No. 2797. This motion was seconded by Councilwoman Field and carried unanimously.

#### **ORDINANCE BOOK NO. 19 – PAGE 114**

#### **C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONVERSION OF KENILWORTH INN, LOCATED AT 60 CALEDONIA ROAD, TO APARTMENTS**

#### **ORDINANCE NO. 2798 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE CONVERSION OF KENILWORTH INN, LOCATED AT 60 CALEDONIA ROAD, TO APARTMENTS**

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

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 7:18 p.m.

Urban Planner Stacy Merten submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report) and City Exhibit 4 (copy of landscape plan). This public hearing was advertised on March 16 and 23, 2001.

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Ms. Merten then said that this is the consideration of a conditional use permit for the conversion of the Kenilworth Inn, located at 60 Caledonia Road, to apartments.

Mr. Frank Howington has submitted development plans for Level III site plan review to convert the Kenilworth Inn to an 84 unit apartment building. The Inn is located on approximately 6 acres atop Kenilworth Knoll. The property is zoned Institutional. There are currently four buildings on the site. They consist of the main building, which is 200,000 square feet, a one story mechanical room of 2,763 square feet, a one story garage with 1,940 square feet, and a 70 square foot storage room. The main building, mechanical room and garage will be converted to apartments. The storage room and existing basketball and tennis courts will be removed. The existing parking area will be utilized with minor reconfigurations that will reduce the parking from 116 to

108 spaces. Most of the existing landscaping will be retained with some additional landscaping done at the entrance and some renovations to the landscaping adjacent to the north side parking lot. New sidewalks will be constructed and bicycle parking provided. The property has been subdivided in conjunction with the site plan review.

The Technical Review Committee (TRC) reviewed the plans at their meeting on October 16, 2000, and took action to approve with the conditions outlined as follows: (1) Indicate loading zones and bicycle racks; (2) Relocate handicapped parking spaces to provide accessible paths to building; (3) Provide detailed drawing of handicapped ramps; (4) Provide detailed drawing of screened dumpster area; (5) Provide parking lot lighting plan; (6) Indicate bus stop location (transit services requests developer provide shelter); (7) Label uses for all structures; (8) Indicate rear residence entrance to building; (9) Indicate correct zoning of adjacent properties (RS-8); (10) Indicate sight triangles at driveway entrances; (11) Indicate location of traffic control devices (signs and flow of traffic); (12) Existing 36" oak in parking lot must have large island to survive (150 sq. ft. / 4" tree); (13) Provide detailed drawing of parking lot buffer fence and landscaping; (14) Provide detailed landscaping plan in requesting "alternative landscaping" (indicate species); (15) Provide detailed drawing of tree protection barriers; (16) Label parking lots in table to coincide with site plan; (17) Provide needed information to complete stormwater and erosion control review (items missing); (18) Submit for review any changes in the water system plans; (19) Sidewalks need to be extended to and along Caledonia Road (remove section of old driveway); (20) Parallel parking spaces on Caledonia Road must be removed; (21) Existing parking lot aisle width of 20 feet is substandard; a redesign to 45 degree parking with one-way aisles would result in equal number of spaces; (22) Consider the relocation of the six parking spaces that are parallel to Caledonia Road; (23) Redesign the driveway access from parking lot #4 to permit two-way traffic flow; (24) Make sure pedestrian access to all parking lots is well defined; (25) Provide needed information on sprinkler system and water supply for fire flow; (26) Application must be submitted for water availability; and (27) Application must be submitted for wastewater allocation.

Ms. Merten said that all of the conditions have been met except the provision of a covered bus shelter. The applicant is proposing a transit stop, but they did not want to provide a covered stop.

The Planning and Development staff and the TRC find that the project will meet all the technical standards for development in the Institutional zoning district if the covered bus shelter condition is addressed.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]: (1) That the proposed use or development of the land will not materially endanger the public health or safety; (2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its

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basic community functions or by providing an essential service to the community or region; (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property; (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is locate; (5) That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City; (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Mr. Jeff McGahee, landscape architect for developer, said that they have provided a concrete pad with benches but didn't feel a covered transit stop would be needed because (1) they didn't think the

neighborhood would use the bus stop; (2) in the event of rain, there is adequate cover under a nearby building; (3) from an aesthetic point of view, a house would be looking directly at the bus stop; and (4) the additional cost to the developer.

Councilwoman Field felt that a good architect could design a covered bus shelter that would be aesthetically pleasing and given the total cost of the project, a covered bus shelter doesn't seem quite that expensive to build.

Councilwoman Bellamy asked Ms. Merten to ask the developer if he could put in a couple of affordable units in this project.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 7:35 p.m.

Vice-Mayor Cloninger moved to (1) grant the conditional use permit for the conversion of the Kenilworth Inn, located at 60 Caledonia Road, to apartments, with the condition that a covered bus shelter be provided and screened from adjacent properties as necessary; and (2) instruct the City Attorney to prepare the Order for the Mayor's signature: This motion was seconded by Councilwoman Bellamy and carried unanimously.

#### **ORDINANCE BOOK NO. 19 – PAGE 116**

#### **D. PUBLIC HEARING REGARDING INSTALLMENT CONTRACTS FOR THE PURCHASE OF PROPERTY ON AZALEA ROAD**

##### **RESOLUTION NO. 01-39 - RESOLUTION APPROVING CONTRACT FOR THE PURCHASE OF 69.43 ACRES OF REAL PROPERTY ON AZALEA ROAD (WELLS)**

##### **RESOLUTION NO. 01-40 - RESOLUTION APPROVING CONTRACT FOR THE PURCHASE OF 35 ACRES OF REAL PROPERTY ON AZALEA ROAD (MOYER)**

##### **RESOLUTION NO. 01-41 - RESOLUTION APPROVING CONTRACT FOR THE PURCHASE OF 43 ACRES OF REAL PROPERTY ON AZALEA ROAD (MOYER)**

Mayor Sitnick opened the public hearing at 7:38 p.m.

City Attorney Oast said that this is the consideration of resolutions authorizing the City to enter into contracts for the purchase of three properties on Azalea Road This public hearing was advertised on March 16 and 23, 2001.

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In 1998 Council authorized the City to enter into options for the purchase of approximately 155 acres of property on Azalea Road. Since then the City has undertaken various investigations and studies of the property, survey work, and title work, and determined that acquisition of the property and its use potential for several important public purposes is feasible. In January, following extensive public input, Council directed staff to proceed to acquire the property.

Because the City is purchasing the property over several years rather than all at once, the law requires that a public hearing be held on the purchase contracts. The City proposes to acquire the property in three separate tracts, and there are three contracts that require approval.

The essential terms of each contract are set forth as follows, and in the sample promissory note and deed of trust:

Michael and Sandra Wells, and Eric and Sharon Wells (69.43 acres)

Price: \$9,500 per acre; not to exceed \$659,585

Term: 59 months

Payments: \$100,000 at closing

\$132,979 annually for the years 2002-2005; fifth (2006) payment of

\$122,165 to be made 11 months after fourth (2005) payment

Interest: 5% per year on unpaid balance

John Moyer (35 acres)

Price: \$10,428.57 per acre; not to exceed \$365,000

Term: 59 months

Payments: \$50,000 at closing

\$62,800 annually for the years 2002-2005; fifth (2006) payment of

\$22,800 to be made 11 months after fourth (2005) payment

Interest: 0% (legal rate on overdue amounts)

John Moyer (43 acres)

Price: \$12,000 per acre; not to exceed \$625,000

Term: 59 months

Payments: \$55,000 at closing

\$112,900 annually for the years 2002-2005; fifth (2006) payment and

last payment to be made 11 months after fourth (2005) payment

Interest: 0% (legal rate on overdue amounts)

The purpose of the hearing is to review the terms of the contracts, not to revisit Council's decision to purchase the property, nor to decide upon particular uses (which Council has said will be done later).

The City's staff has obtained appraisals supporting the price that we have agreed to pay, and the Finance Department advises that the terms are very favorable, not likely to be duplicated in the commercial market.

Mayor Sitnick stressed that adoption of these resolutions do not in any way have anything to do with the uses of the property. When City Council does come to those discussions, there will be ample opportunity for public input.

City Clerk Burleson said that Ms. Gail Moody, President of the Beverly Hills Homeowners Association" asked that her letter dated March 27, 2001, be entered into the record. In part the letter reads "In a memorandum, dated March 7, 2001, Mr. James L. Westbrook, Jr., City Manager, stated 'We will be coming to City Council

to request permission to use the Azalea Road

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inert landfill site prior to having completed the Parks Master Plan for the overall site.' He stated further that 'Since the inert debris site operation plan is logistical in nature, there are no plans to solicit public input.' ... (portion of verbatim transcript of January 23, 2001, City Council meeting) .... As residents of East Asheville, we believe it would be premature to begin using this site as an inert landfill. That action would not be consistent with your vote to purchase the property. We also believe that public input should not be squelched at any point during the process to determine the best use of this City asset. Finally, Mr. Westbrook's memorandum did not mention any efforts toward recycling inert materials until the Azalea Road property can be thoroughly evaluated. We see recycling, not as an option, rather as an essential in the near future. We, respectfully, ask that you prohibit any specified use of this property until all phases of the feasibility study and Parks Master Plan have been completed."

City Manager Westbrook responded to Council that the letter refers to no public process. He explained that is from the staff's standpoint before it is even brought to City Council. Again, this is not Council's process but strictly speaking from staff's point of view.

Upon inquiry of Councilwoman Bellamy about where the money is coming from, City Manager Westbrook said that this money was in last year's budget and that a project is set up in the general capital project fund. He said he would provide information regarding that to all of Council, in addition to a copy of the closing statement when available.

Mayor Sitnick closed the public hearing at 7:48 p.m.

Mayor Sitnick said that members of Council have previously received a copies of the resolutions and they would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-39. This motion was seconded by Councilwoman Field and carried unanimously.

#### **RESOLUTION BOOK NO. 26 – PAGE 316**

Councilman Worley moved for the adoption of Resolution No. 01-40. This motion was seconded by Councilwoman Field and carried unanimously.

#### **RESOLUTION BOOK NO. 26 – PAGE 318**

Councilwoman Field moved for the adoption of Resolution No. 01-41. This motion was seconded by Councilman Worley and carried unanimously.

#### **RESOLUTION BOOK NO. 26 – PAGE 320**

Mayor Sitnick suggested a unique opportunity in our community would be the development of a kind of family recreational sports facility, consisting of all kinds of family fun activities located in one place, like a bowling alley, skating rink, ice skating rink, tot land, dance hall, restaurants, etc. She felt this would be a wonderful venture all residents and tourists alike could enjoy.

At 7:50 p.m., Mayor Sitnick announced a 15 minute break.

#### **IV. UNFINISHED BUSINESS:**

## **V. NEW BUSINESS:**

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### **A. REPORT OF PLANS TO PROVIDE SERVICES TO AREAS PROPOSED FOR ANNEXATION**

Urban Planner Paul Benson said that the Annexation Services Plan is being submitted for Council's approval for the following areas: Lowes, Upper Sondley, Best Inns, Old Dominion Freight and Arden area. He said that his comments will apply to all five proposed annexation areas.

City Council approval of this document is the second step in the annexation process that began on March 13, 2001, when Council adopted the resolutions of intent to annex these five areas.

The N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1. Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major trunk water mains and sewer interceptors and outfalls, and the proposed extension of such water mains and sewer outfalls; and (c) The general land use pattern in the area to be annexed.
2. A statement that the area to be annexed meets the standards of the statutes as to the character of the area.
3. A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation including: (a) Police protection, fire protection, solid waste collection and street maintenance on the date of annexation; (b) Extension of water and sewer lines in accordance with City policies; (c) A proposed timetable for construction of water mains and sewer outfalls, (in any event to completed within 2 years of the effective date); and (d) The method under which the municipality plans to finance extension of services into the area to be annexed.
4. A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed.
5. A statement showing how the proposed annexation will affect the City's finances and services, including revenue change estimates.

He then reviewed with Council a summary of the Annexation Services Plan as follows:

**Qualifications:** All areas qualify under at least 1 of the 5 urban development tests set forth in the statutes, either being 100% developed, (Best Inns and Old Dominion), or having at least 60% of the lots developed, along with 60% of the total acreage of the vacant and residential properties being subdivided into lots of 3 acres or less, (Lowes, Upper Sondley, Arden), or having an estimate population density of a least 2.3 persons per acre, (Lowes).

**Service Extensions:** The plan provides information on the level of service currently being provided in the City that will be extended to the annexation areas; basically:

**Police protection** is to be extended on effective date of annexation with no increase in personnel or equipment.

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**Fire protection** to be contracted from rural fire departments currently serving the areas to be annexed, with

contracts based on the compensation specified in the statutes.

**Solid waste collection** is to be extended on the effective date of annexation with no increase in personnel, or equipment. New customers would receive the automated collection service. Compensation would be offer to private solid waste hauler to offset economic loss as required by the statutes.

**Street maintenance services** are be extended in the Upper Sondley Area to Upper Sondley Drive, and in the Arden Area to Linden Street, Sycamore Drive, Blake Drive, Royal Pines Drive, Peach Tree Street, Cedar Lane and Sycamore Terrace. Existing personnel and equipment will be sufficient to handle this additional street maintenance. (approximately 2 miles total).

**Water distribution** with the exception of the Lowes Area, water distribution is currently at City standards, or is already programmed for improvement. This plan has been revised since being originally distributed to Council. Two hydrants indicated as being installed subsequent to annexation in the Arden area, are programmed to be installed independent of annexation. In the Lowes Area 2,000 linear feet of 6" and 4" water line are planned, along with three new fire hydrants. Construction is scheduled to be complete by June 30, 2004.

**Sewer collection** with the exception of the Lowes Area, the sewer collection is currently at City standards. In the Lowes Area 1,250 linear feet of 8" sewer line is planned to be constructed by June 30, 2004.

#### **Financial Impact:**

**Total revenue** (property tax, state utility franchise tax, sales tax, Powell Bill revenue, fees & charges) = **\$300,905**

**Annual expenditures** (rural fire department contracts, street lighting) = **\$33,744**

**Capital expenditures** (water & sewer, compensation for solid waste haulers, rollout garbage containers, street signs & marking), (mostly water & sewer) = **\$439, 336**

Councilman Hay asked City staff to check if the wording is correct with regard to the City's share of sales tax reimbursement on Page 4-2 of the Plan.

Councilman Peterson said that he would speak to Budget Director Ben Durant about the formula used with regard to sales tax.

Councilman Peterson noted that of the revenue that we would be gaining from the additional annexed areas, about one-half is from the property tax. The other half is from the additional sales tax, state utility franchise tax, Powell Bill revenue, etc. When the City looks at annexation, we need to think of more than just the additional ad valorem taxes.

Mr. Bob Mayhew questioned how Upper Sondley Drive meets the urban development tests to qualify for annexation.

Mr. Mayhew asked what the City's plans are for the Haw Creek Fire Department. Mr. Benson said that the Statutes require that the City offer to contract for a period of five years unless some other arrangements are made that is acceptable to both parties.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that the City is not required to continue to pay the rural fire department after five years. The five year period of time was because the rural fire departments

obligate themselves to buy equipment. This gives them a chance to pay that equipment off over that five year period of time. At the end of the five year period, the City will assess their ability to provide service and if they can provide the same, or better service, then the contract would not be renewed.

Upon inquiry of Councilman Peterson, City Attorney Oast said that if any non-conforming uses are annexed, then they would remain non-conforming and be allowed to continue in existence, but not to expand.

Mr. Bill Dickerson, Upper Sondley area property owner, wanted to make sure that the City will add Upper Sondley Drive to the list of City-maintained streets. Also, he was concerned about having trash roll-out containers due to the topography of the homes in the area.

Upon inquiry of Mr. Jim Kaslik, Upper Sondley area homeowner, Assistant Fire Chief Robert Griffin said that Tunnel Road Station 8 is staffed with 4 persons and Haw Creek has one person Monday-Friday during the business hours. The Asheville Fire Department's response is immediate 24-hours a day. He explained that the average response time presently is four minutes throughout the City. At the present time we do not have a contract with Haw Creek, but we have an arrangement with them where they do respond with us into the existing corporate limits and we respond with them into their areas on a mutual aid, automatic basis.

Councilman Hay stated that when the City annexes, they make sure that it is done by providing full service across the board to everyone in the annexed areas, not like some areas in the past. Each one of these annexations provides as comprehensive service as any place in the City.

Councilman Peterson explained how annexation benefits not only Asheville citizens, but the people who get annexed.

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

**RESOLUTION NO. 01-42 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE LOWES AREA**

Councilman Worley moved for the adoption of Resolution No. 01-42. This motion was seconded by Councilwoman Field and carried unanimously.

**RESOLUTION BOOK NO. 26 – PAGE 322**

**RESOLUTION NO. 01-43 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE UPPER SONDDLEY AREA**

Councilwoman Field moved for the adoption of Resolution No. 01-43. This motion was seconded by Councilman Hay and carried unanimously.

**RESOLUTION BOOK NO. 26 – PAGE 323**

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**RESOLUTION NO. 01-44 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE BEST INNS**

Councilman Worley moved for the adoption of Resolution No. 01-44. This motion was seconded by Vice-

Mayor Cloninger and carried unanimously.

**RESOLUTION BOOK NO. 26 – PAGE 324**

**RESOLUTION NO. 01-45 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE OLD DOMINION FREIGHT AREA**

Councilman Peterson moved for the adoption of Resolution No. 01-45. This motion was seconded by Councilman Hay and carried unanimously.

**RESOLUTION BOOK NO. 26 – PAGE 325**

**RESOLUTION NO. 01-46 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE ARDEN AREA**

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-46. This motion was seconded by Councilman Hay and carried unanimously.

**RESOLUTION BOOK NO. 26 – PAGE 326**

**VI. OTHER BUSINESS:**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

**A. COMMENTS BY FRED ENGLISH**

Mr. Fred English, Haw Creek resident, felt that Asheville did not need passenger rail service. In addition, he felt that the City needed to build a new Civic Center.

**B. CLAIMS**

The following claims were received by the City of Asheville during the period of March 9-15, 2001: BellSouth (Water), BellSouth (Water), Wade Watkins (Water), Jayda Hayden (Police) and City Information Services (Streets).

The following claims were received by the City during the period of March 16-22, 2001: Elizabeth Laisy (Water), Sean Carey (Police), David Kriegsman (Streets), Dorothy Hobein (Water), Russell Thomas (Streets) and Lyle Lance (Fire).

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

**C. LAWSUITS**

The City was served with the following Complaint on March 20, 2001: Henderson County & Cane Creek Water & Sewer District v. Asheville, Buncombe & Henderson County Water Authority, City of Asheville and Buncombe County. The nature of the proceeding is the defendant City is charged with failure to comply with Section XXII of the Regional Water Agreement that the

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City convey to Henderson County title to property on Brevard Road in fee simple absolute. This matter will be handled in-house.

The City was served with the following Complaint on March 26, 2001: Byron Case Dame Jr. v. City of Asheville. The nature of the proceeding is a complaint for money owed for damages allegedly occurring on December 4, 2000, at the Rankin Avenue Parking Garage. This matter will be handled in-house.

#### **D. CLOSED SESSION**

At 8:44 p.m., Vice-Mayor Cloninger moved to go into closed session to discuss matters relation 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 – G.S. 143-318.11 (a) (4). This motion was seconded by Councilman Worley and carried unanimously.

At 9:05 p.m. Councilman Worley moved to come out of closed session. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

#### **VIII. ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 9:05 p.m.

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CITY CLERK MAYOR

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