

Tuesday – July 24, 2001 - 5:00 p.m.

## Regular Meeting

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

Absent: Vice-Mayor M. Charles Cloninger and Councilman Edward C. Hay Jr.

## **INVOCATION**

Councilman Peterson gave the invocation.

## **I. PROCLAMATIONS:**

### **A. PROCLAMATION PROCLAIMING AUGUST 14, 2001, AS THE "WILLIAM F. WOLCOTT JR. SCHOLARSHIP FUND DAY"**

Mayor Sitnick read the proclamation proclaiming Tuesday, August 14, 2001, as "William F. Wolcott Jr. Scholarship Fund Day." She presented the proclamation to Mrs. Mary Ellen Wolcott and her son Billy and her daughter Debbie, who thanked City Council for their support. She also recognized Mr. John Miall, Mr. Ken Michalove and Mr. Tom Byers.

## **II. CONSENT:**

### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 10, 2001, AND THE WORKSESSION HELD ON JULY 17, 2001**

### **B. RESOLUTION NO. 01-117 - RESOLUTION APPOINTING MEMBERS TO THE MINORITY BUSINESS COMMISSION**

Summary: The consideration of a resolution confirming the appointment of three members and the reappointment of six members to the Minority Business Commission.

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

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

Mr. Iba Taye has been named by Eagle/Market Streets Development Corporation to represent them on the Minority Business Commission. Mr. Taye has been nominated to replace Stephanie Coleman who resigned on December 14, 2000. Mr. Taye's term will expire August, 2004.

Ms. Lisa Slechter has been named by the National Association of Women in Construction to represent them on the Minority Business Commission. Ms. Slechter has been nominated to replace Lynn Staton whose term will expire August, 2001. Ms. Slechter's term will expire August, 2004.

Mr. Alejandro 'Al' Cortés, owner of AC Interpreting Service, has been named by the Minority Business Commission to replace Ms. Gráinne Brophy, former owner of Altura

Environmental, Inc., who resigned on December 29, 2000, as a minority business owner representative. Mr. Cortés will complete the unexpired term of Ms. Brophy through August, 2002.

The following MB Commission members whose term expires August, 2001, have requested reappointment:

Ms. Jacquelyn Schauer American Institute of Architects

Ms. Vonna Cloninger Council of Independent Business Owners

Ms. Debra Weaver Minority Business Alliance

Ms. Carol Hensley Asheville Area Chamber of Commerce

Mr. Wendell Howard Associated General Contractors of America

Ms. Valerie Dennis Minority Business Owner (Val's Frame Shop)

City staff recommends City Council adopt the resolution confirming the appointments members of the Minority Business Commission.

#### **RESOLUTION BOOK NO. 26 – PAGE 421**

#### **C. RESOLUTION NO. 01-118 - RESOLUTION AUTHORIZING A TELECOMMUNICATION LEASE RENEWAL WITH MOTIENT COMMUNICATIONS INC. FOR AN ANTENNA AT 36 RESERVOIR ROAD**

Summary: The consideration of a resolution authorizing the City Manager to enter into a License Agreement with Motient Communications, Inc., for an antenna at 36 Reservoir Road.

The Notice of Intent to enter into a License Agreement with Motient Communications Inc. was published on Friday, July 13, 2001, in the Asheville Citizen-times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

The property at 36 Reservoir Road is the site of the former White Fawn Reservoir. In recent years the site was used as a beneficial fill site for the City of Asheville. Currently, three telecommunication towers are located on the property and the City of Asheville leases antenna space on two of the towers and ground space for related equipment to a total of eight tenants. One tower is not in use. The property is the proposed future site of the "Sister Cities Park."

Motient Communications, Inc. has operated an antenna and related equipment at the site since October, 1995. The antenna is located on the tower known as the "BellSouth Tower" which is immediately west of the proposed Sister Cities Park. The proposed License Agreement will enable Motient to continue operating an antenna at that site; however, there is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Motient will pay a License Fee of \$5,400 the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee Motient will pay a Utility Fee of \$150.00 per annum.

Planning Department staff recommends adoption of the resolution authorizing the City Manager to execute the License Agreement with Motient Communications Inc.

#### **RESOLUTION BOOK NO. 26 – PAGE 423**

**D. ORDINANCE NO. 2829 - BUDGET AMENDMENT FOR A DONATION FROM THE DOGWOOD FUND OF THE COMMUNITY FOUNDATION OF WNC FOR PRITCHARD PARK**

Summary: The consideration of a budget amendment, in the amount of \$3,000, for a donation from the Dogwood Fund of the Community Foundation of Western North Carolina.

The City of Asheville staff had several conversations with representatives of the Dogwood Fund of the Community Foundation of Western North Carolina about their interest in supporting the renovation of Pritchard Park. The fund is able to make a donation in the amount of \$3,000 towards the purchase of pedestrian lighting and tables in the park space.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for the Pritchard Park.

**ORDINANCE BOOK NO. 19 - PAGE**

**E. RESOLUTION NO. 01-119 - RESOLUTION ESTABLISHING MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR PROPERTY AT 5 – 7-1/2 BILTMORE AVENUE AND THE PARKING LOT ON SOUTH LEXINGTON AVENUE**

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase 5 - 7 1/2 Biltmore Avenue and the parking lot on South Lexington Avenue.

The property at 5 - 7 1/2 Biltmore Avenue is located about 75 feet south of Pack Square. It is improved with two store front buildings dating from the 1920s. The land area comprises 8,030 square feet and the total combined building area is approximately 5,535 square feet. The lot located on the east side of South Lexington Avenue, about 75 feet south of the intersection with Patton Avenue, is contiguous with the Biltmore Avenue lot and is improved with marked and metered parking spaces on an asphalt surface. Both lots are rectangular in shape and mostly flat with street level access. The combined appraised value of the property is \$461,000.

Robert Camille Jr., Peter Y. Alberice and Robert M. Todd have submitted a proposal to purchase the property in the amount of \$461,000. The bid from Camille, Alberice and Todd includes the proposal to renovate 5 Biltmore Avenue as well as to construct a new mixed use building containing parking, retail, offices and residential units on South Lexington Avenue. The new building would contain approximately 40,000 square feet and an estimated value after completion of about \$6.8 million.

Approval of the resolution will establish the appraised value as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

**RESOLUTION BOOK NO. 26 – PAGE 424**

**F. RESOLUTION NO. 01-120 - RESOLUTION AUTHORIZING THE RELEASE OF BIDDER AND RETURN OF BID DEPOSIT REGARDING AN OFFER TO PURCHASE 125 IRIS DRIVE**

Summary: The consideration of a resolution authorizing the release of the bidder and return of the bid deposit, less advertising expenses, in connection with an offer to purchase 125 Iris Drive.

Brian K. Perry was the successful bidder on the vacant lot at 125 Iris Drive in the amount of \$12,200. Mr. Perry submitted a bid deposit with his bid in the amount of \$610. After City Council approved the sale to Mr. Perry, he was notified by his employer, Square D Company, that he would be included in a permanent workforce reduction. As a result of this change in his financial capacity, Mr. Perry is unable to complete the purchase of the property and has requested that the City release him from his bid on 125 Iris Drive and return his bid deposit. Staff recommends return of the bid deposit, less the cost of advertising. Mr. Perry has indicated his acceptance of staff's recommendation. The cost of advertising for upset bids amounted to \$98.28. The amount of bid deposit recommended to be returned to Mr. Perry is \$511.72.

Approval of the resolution will authorize the release of Mr. Perry from the bid and return of his bid deposit less advertising cost.

Planning staff recommends adoption of the resolution.

## **RESOLUTION BOOK NO. 26 – PAGE 425**

### **G. RESOLUTION NO. 01-121 - RESOLUTION AUTHORIZING THE SALE OF LAND AND AWARD OF GRANT FOR DEVELOPMENT OF EAST END PLACE SUBDIVISION**

Summary: The consideration of the sale of land and award of subsidies for development of East End Place Subdivision.

On September 12, 2000, the City Council authorized a request for proposals (RFP) for development of a six-unit subdivision off Martin Luther King, Jr. Drive, called East End Place Subdivision. After amending the original site design from seven units to six, the RFP was advertised on April 24, 2001. Proposals had to include the developer's bid for purchase of the land and details of the design and cost of the homes. The City offered a Community Development Block Grant (CDBG) subsidy of \$78,000 towards infrastructure costs and \$42,000 in secondary financing for the homebuyers.

Responses were received from Asheville Area Habitat for Humanity, Inc. and Ron Moser Homes, Inc. A panel comprising the neighborhood association president, an architect, and staff evaluated the proposals using criteria set out in the RFP. The panel recommended the proposal from Habitat.

The Housing and Community Development Committee has reviewed and supported the panel's recommendation.

Staff recommends approval of the resolution authorizing the sale of the property to Asheville Area Habitat for Humanity, Inc. for \$77,000 and award of the CDBG subsidies.

## **RESOLUTION BOOK NO. 26 – PAGE 426**

-5-

**H. MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS BILTMORE PARK AREA (SOUTH OF BLUE RIDGE PARKWAY, WEST OF OVERLOOK ROAD, LONG SHOALS ROAD WEST TO CLAYTON ROAD)**

**I. MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS FAIRVIEW ROAD/US 74 (SOUTH AND EAST OF I-40 IN THE FAIRVIEW ROAD/US 74 CORRIDOR)**

**J. MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA (SOUTH AND WEST OF THE CITY FROM SOUTH OF I-40 TO WEST OF 1-26, INCLUDING ALL OF SARDIS ROAD)**

**K. MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE ANNEXED AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (KNOWN AS AREA 2001-B)**

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

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

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING RELATIVE TO CONSIDER CONDITIONAL USE REZONING FOR PROPERTIES ON OAK HILL DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE**

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 by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:10 p.m.

City Attorney Oast said that because there are two Council members absent, for any ordinance to be passed on its first reading will require a unanimous vote. If the vote is not unanimous, the ordinance will require a second reading at the next formal meeting.

-6-

Mayor Sitnick and Councilmen Peterson and Worley disclosed that they had all visited the site.

Mr. Gerald Green, Chief Planner, 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 dated 7/10/01) and City Exhibit 4 (Staff Report dated 7/24/01). This public hearing was advertised on July 13 and 20, 2001.

Mr. Green said that this is the consideration of rezoning properties on Oak Hill Drive from RM-16 Residential Multi-Family High Density District to Highway Business District, and issuance of a conditional use permit (conditional use zoning) for a vehicle repair/service facility and interior storage.

Mr. William Baldwin, applicant, is requesting the conditional use rezoning of property located on Oak Hill Road, off Leicester Highway, from RM-16 to Highway Business/Conditional Use and the issuance of a Conditional Use Permit (CUP) to allow the use of the property for a vehicle repair/service facility and interior

storage. The property is located behind the commercial development along Leicester Highway and is separated topographically from the residential development located on Oak Hill Drive (City Exhibit 4 – Location Map). The subject property contains 3.87 acres. Access to the property is from Oak Hill Drive, which is primarily a residential street. Although some uses permitted in the Highway Business District could have adverse impacts on the adjacent residential property, the restrictions placed on the use and site design of the property through the conditional use permit will assure that the impacts of the proposed use on surrounding properties are minimized. The requested use is a 10,000 square foot building that will house a vehicle repair/service facility and interior storage. The site plan calls for significant buffering of the use from adjacent residential properties, using existing vegetation and new plantings (City Exhibit 4 – Site Plan). The proposed building is set back from adjacent residential uses in order to minimize the visual and noise impacts of the proposed use. Lighting of the site will be kept to a minimum to prevent adverse impacts on the adjacent residences. The site plan and proposed use have been reviewed by the City's Traffic Engineer, who determined that no Traffic Impact Analysis would be required due to the small amount of traffic that would be generated by the use. As shown on the site plan and with the conditions recommended by the staff, the proposed use of the site will serve as a good transition between the commercial uses fronting on Leicester Highway and the residential uses on Oak Hill Drive.

The property for which the rezoning is requested was zoned Commercial Service prior to the adoption of new zoning that was done as part of the adoption of the Unified Development Ordinance (UDO). The owner undertook significant grading and related site preparation when the property was zoned for commercial development. The grading and site work has resulted in the site being physically separated from the adjacent residential properties. Staff feels that the proposed use is an appropriate use of the property and that the proposed design, with conditions recommended by staff, will minimize impacts on surrounding residential uses. The Technical Review Committee (TRC), who took action to approve it with conditions, reviewed this project for compliance with the technical requirements of the UDO. The following conditions are those identified by the TRC that have not been met:

- Provide a revised site plan that shows the following:
- Location and screening of dumpster, if one is proposed
- Extend landscaping strip and buffer strip along railroad right-of-way
- Note location of exterior lighting
- Indicate location of protective barriers for landscaping that will be preserved
- Indicate location, size, and species of existing plant material if using for landscape credit
- Provide calculations for determining the number of parking spaces

-7-

- The driveway must be paved for a distance of 10' from its intersection with Oak Hill Drive
- The encroachment of the vehicular use area onto the railroad right-of-way must be approved by Norfolk-Southern Railway
- No trees can be placed in the existing sewer easement.

The site plan submitted and the conditions identified by City staff assure that the impacts of the proposed project on the surrounding uses are mitigated.

The findings that must be made by City Council in the issuance of a CUP for the project are listed below with staff analysis for each standard.

1. The proposed use or development of the land will not materially endanger the public health and safety. The proposed development has been reviewed by the TRC to ensure that neither the use nor the design will endanger the public health and safety.
2. 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. The proposed vehicle repair/service facility will provide a place for residents of the surrounding area to take their vehicles for repair and service.
3. The proposed use or development of the land will not substantially injure the value of adjoining or abutting property. A vehicle repair/service facility at this location, designed as proposed and meeting the conditions recommended by staff and the Planning and Zoning Commission, will not adversely injure the value of adjoining or abutting property.
  4. 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 located. The proposed 10,000 square foot building is in harmony with the commercial structures located along Leicester Highway. Buffering and screening of the proposed building will ensure its compatibility with adjacent residential uses. The parking/vehicular use area will be graveled to maintain harmony with the surrounding neighborhood.
  5. The proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the City. The Asheville City Plan 2010 appears to indicate low density residential for this area. The conditions in the area have changed significantly since the adoption of the 2010 Plan in 1987, as evidenced by the prior zoning of Commercial Service for this property. The changing conditions warrant the requested rezoning of the property.
  6. The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. All services are available at this location, as confirmed during the review of the proposed development by the TRC.
  7. The proposed use will not cause undue traffic congestion or create a traffic hazard. The site plan for the proposed development has been reviewed by the City's Traffic Engineer, who has determined that the use will not cause undue traffic congestion or create a traffic hazard.

In summary, the proposed project is a 10,000 square foot building that will house a vehicle repair/service use with some interior storage. The 3.87-acre site has been graded so as to separate it topographically from adjacent residential uses. Extensive buffering using existing vegetation supplemented by new planting is proposed to screen the use from adjacent residential uses. As proposed, the use of the property will provide a good transition from the commercial uses along Leicester Highway to the residential uses on Oak Hill Drive. Conditions recommended for the approval of the CUP for this project will ensure that the impacts on surrounding property owners are mitigated.

The Asheville Planning and Zoning Commission reviewed the requested conditional use rezoning and the site plan for the proposed use at their June 21, 2001, meeting. No one spoke in

-8-

opposition to the requested rezoning or the proposed use during the public hearing held by the Planning and Zoning Commission. After reviewing the request and the site plans, the Planning and Zoning Commission voted unanimously to recommend approval of the conditional use rezoning, subject to the conditions identified by staff. In response to concerns regarding future building expansion, impacts of lights, and hours of operation, the Commission recommended that conditions be added to address these issues.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council approve the requested conditional use rezoning and issue the Conditional Use Permit with the following conditions:

1. Provide a revised site plan that shows the following:
  - Location and screening of dumpster, if one is proposed
  - Extend landscaping strip and buffer strip along railroad right-of-way
  - Note location of exterior lighting

- Indicate location of protective barriers for landscaping that will be preserved
  - Indicate location, size, and species of existing plant material if using for landscape credit
  - Provide calculations for determining the number of parking spaces
  - The driveway must be paved for a distance of 10' from its intersection with Oak Hill Drive
1. The encroachment of the vehicular use area onto the railroad right-of-way must be approved by Norfolk-Southern Railway
  2. No trees can be placed in the existing sewer easement.
  3. Exterior lighting shall be cut-off type and directed away from residential uses.
  4. Any enlargement of the building shall not encroach into the buffer areas as identified on the approved site plan.
  5. Hours of normal business operation shall be from 6 a.m. to 7 p.m.

When Councilwoman Field asked why the Planning & Zoning Commission recommended extending the buffer along the railroad right-of-way, Mr. Green explained that with regard to buffering, a railroad right-of-way is treated like a street.

Councilwoman Bellamy asked if one entrance from the street was acceptable. Mr. Green responded that the City's Traffic Engineer advised that the one driveway as being adequate.

Councilwoman Bellamy was concerned that there is not a lot of RM-16 land in the City and wondered if the Planning staff tried to persuade the applicant to build multi-family housing instead. Mr. Green said that Mr. Baldwin's initial application was received in September or October of 2000. Planning staff has been working with him since then to persuade him to develop the property for some type of residential use. Mr. Baldwin has owned the property for approximately 15 years and it was zoned for a more intense use prior to adoption of the UDO. Mr. Baldwin stated that he is not interested in considering other options to develop the property.

Mr. Green did state though, that the Planning staff routinely tries to discourage applicants from rezoning residential property.

Councilman Peterson was concerned about the several residential homes in the immediate area of the driveway. He felt a diesel repair shop, with tractor trailers going in between the residential area, will naturally have greater noise, possibly smoke from diesel engines and people who work later into the night on engines. This is sort of an industrial entrance in between residential areas. Mr. Green said that this concern was expressed at the Planning & Zoning Commission meeting but the applicant argued that his business would have far less traffic impacts than would an apartment development.

-9-

Councilman Peterson said that the site plan looks as though the applicant has tried to put the business as far back from Oak Hill Road as possible. He asked that if the repair show prospered, what would prevent them from expanding into the front part of the property. Mr. Green said that the project must be built according to the site plan which is approved as part of the conditional use permit issuance. If there is a violation of that site plan, it would be considered a violation of the zoning ordinance and would be treated accordingly.

Mr. Green then responded to Councilman Peterson about how wide the buffer is and where the existing sewer easement lies on the property.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the Conditional Use Permit Order drafted will be limited to only allowing a vehicle repair/service facility and interior storage on the property.

Councilman Worley questioned if the repairs would be limited to only the tractors and not the entire tractor-trailer. Mr. Green said that the applicant said that he might expand his business to include some repair to



trailers, However, City Council could place a condition on the issuance of the conditional use permit that the repair be limited to the tractors, which would eliminate the pulling of the trailers in there.

Mayor Sitnick stated several concerns as follows: the radius of the turn from Oak Hill Drive to the applicant's driveway; the storage of the units; if the trucks are running when they being repaired, then a noise and pollution factors need to be considered; hours of operations; and buffer density.

Councilwoman Field was concerned about the high cost of land in the city, especially along major thoroughfares, like Leicester Highway, in that a small businessman cannot afford to be in the areas that we have zoned commercial and highway. Has staff looked at any nodes of development or any second tier development. Mr. Green said that Planning staff has investigated nodes and tiers, but then run into the problem of trading residential property for commercial property. Our real problem is that within the city limits we are running out of land and development is maxing out. City staff is working with our smart growth principles, changes in our ordinance, and development in our new Comprehensive Plan to promote infill development and building up instead of out.

When Councilwoman Field asked if staff has received any comments from abutting property owners, Mr. Green said there were some neighboring property owners at the first Planning & Zoning Commission public hearing. At that meeting, the request was tabled and the applicant was told to re-think his project and meet with neighboring property owners. Six months later, the applicant came back with the same project, and to date they have not heard from any neighboring property owners. He did note, however, that the property owners were notified recently about this public hearing.

Councilwoman Field said that she believes in mixed use and she believes that any use can be appropriately designed and buffered from any other use. She hoped that there was some way within the City's smart growth policies to allow for this balance, so that we don't push this kind of business outside the city.

Because Councilwoman Field is very concerned about affordable housing, she would like to take a real hard look at the 2025 Comprehensive Plan to make sure that we do provide for an appropriate amount of multi-family in all districts.

Upon inquiry of Councilwoman Bellamy, Mr. Green said that because this property does not have any other street frontage, the recent ordinance amendment would permit them to have

-10-

the driveway access onto a residential street. They would have a wider entrance requirement to accommodate the types of vehicles that would be using this facility and to ensure there is an ability to turn safely in and out of the driveway.

Councilwoman Bellamy said that Pioneer Welding in the West End/Clingman Avenue neighborhood area is an example of something that looks good on paper, but when you put it in practice, it doesn't always work. She explained that the sidewalks and streets are just not wide enough to accommodate the vehicles going in and out of that business.

When Councilman Peterson asked how far back is the development from Oak Hill Drive, Councilwoman Field responded that it looks to be approximately 425-450 feet.

Upon inquiry of Mayor Sitnick, Mr. Green said that the City has not heard anything from Norfolk Southern about the encroachment of the vehicular use area onto the railroad right-of-way.

Mr. Green said that the City's typical policy is to require some type of agreement or acknowledgement from the Railway that the approve their easement being used for the purposes on the site plan.

Councilman Peterson said that if Mr. Baldwin was present he could respond to some of his concerns. In addition, he suggested Mr. Baldwin contact his neighboring property owners and ask them if they would be willing to attend the public hearing to give City Council their thoughts about this project. Therefore, he asked if City Council would be willing to continue the public hearing until their next formal meeting.

City Attorney Oast said that if City Council closes the public hearing, it is subject to be re-opened if the matter is continued. This would not require re-advertisement.

In response to a question from Mayor Sitnick, Mr. Green said that if City Council issues the conditional use zoning to highway business now, is it possible that the property owner could come and request a change of use in the future if the decision-making bodies at that time chose to grant that change.

Councilwoman Field pointed out that this property was purchased before the UDO and it was originally zoned commercial service. It seems that the property owner purchased the land with the idea that they were going to use it for a vehicle service garage and they held onto for this long in order to build on the site. But between the time he purchased the property and now, the City changed the zoning.

City Attorney Oast said that as far as participation by the two absent members of City Council, he felt that what the law requires is that they acquaint themselves with the information presented. They can do that by reading the staff report, reading the minutes of the Council meeting and/or reviewing the video tape. He said that those members will need to be asked if they have acquainted themselves with this matter when the public hearing is continued.

Councilman Peterson moved to continue this public hearing until August 14, 2001, without further advertisement. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick instructed the City Attorney to inform Vice-Mayor Cloninger and Councilman Hay what they have to do in order to participate in the continued public hearing. In addition, she asked Mr. Green to invite Mr. Baldwin to be present at the meeting to address Council's concerns.

-11-

## **B. PUBLIC HEARING TO REZONE PROPERTY AT 35 AND 47 ACTON CIRCLE AND 7 ACTON WOODS ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

### **ORDINANCE NO. 2830 - ORDINANCE TO REZONE PROPERTY AT 35 AND 47 ACTON CIRCLE AND 7 ACTON WOODS ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

Mayor Sitnick opened the public hearing at 6:05 p.m.

Chief Planner Gerald Green said that this is consideration of an ordinance to rezone property at 35 and 47 Acton Circle and 7 Acton Woods Road from Neighborhood Business District to Community Business II District. This public hearing was advertised on July 13 and 20, 2001.

The City has received a petition requesting the rezoning of property located at 35 and 47 Acton Circle and 7 Acton Woods Road (PIN Nos. 9617.11-66-2579, 2629, and 2812) from Neighborhood Business District to Community Business II District. The 2.09-acre tract is located off Smoky Park Highway at the intersection of Acton Circle and Acton Woods Road. It is bounded on the south and the east by Highway Business zoning. A Home Depot building supply store is located to north of the site and a Bi-Lo shopping center is under construction on adjacent property to the southwest of the site. These developments have resulted in a change in the character of the area. The requested CB II zoning would provide a good transition from the

Highway Business zoning to the residential zoning to the northwest and west of the site. Development standards for the CB II zoning district would assure that any development of the site would be compatible with the surrounding area. The CB II development standards permit structures of a size that the site could be developed in a uniform fashion with a single design approach. Uses permitted in the CB II zoning district are intended to serve adjacent neighborhoods.

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

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 35 and 47 Acton Circle and 7 Acton Woods Road from Neighborhood Business District to Community Business II District. The Planning and Development staff recommends approval of the requested rezoning.

Mayor Sitnick closed the public hearing at 6:12 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. 2830. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilman Peterson said that he was not happy to be losing more residential stock, but since Acton Circle has changed from a residential street to a very busy commercial street, it's not fair for these homeowners to live on such a thoroughfare, if they would prefer something else.

#### **ORDINANCE BOOK NO. 19 – PAGE**

**-12-**

#### **C. PUBLIC HEARING TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARDS REQUIRING THAT ALL RESIDENTIAL LOTS ABUT A PUBLICLY MAINTAINED STREET IN BINTER SUBDIVISION LOCATED AT 296 DEAVERVIEW ROAD**

Mayor Sitnick opened the public hearing at 6:13 p.m.

Chief Planner Gerald Green said that this is the consideration of a request to grant a modification to the subdivision regulations to permit the creation of two residential lots that do not abut a publicly maintained street in Binter Subdivision. This public hearing was advertised on July 13 and 20, 2001.

The City has received a request from Stephen Bitner to permit the creation of two residential lots that do not abut a publicly maintained street. All new residential lots are required by the City's subdivision regulations to abut a publicly maintained street unless a modification is granted by City Council. The property for which the modification is requested is located between Deaverview Road and Huffman Road. A publicly maintained street does not abut the property; access is provided via deeded rights-of-way. Two homes are located on the property and no additional construction is proposed. The property owner wishes to subdivide the existing lot into two separate lots so that each home has its own lot. Access to the homes is currently provided via a 15' wide right-of-way from Deaverview Road (accesses one of the homes) and a 10' wide right-of-way from Huffman Road (accesses the other home). The status of access to the property and the homes would not change as a result of the requested modification. Granting of the modification would permit the sale of one or both homes to separate owners. The modification request was reviewed by the Technical review Committee, which recommended approval of the request. No concerns regarding the proposed subdivision and requested modification have been received from any City department.

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

The Planning and Zoning Commission voted 6-0 to recommend approval of the request for a modification of the subdivision regulations to permit the creation of two residential lots that do not abut a publicly maintained street. The Planning and Development staff recommends approval of the requested modification.

Councilwoman Bellamy said that this is a good example of infill lots.

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

Councilwoman Bellamy moved to approve a modification from the subdivision standards requiring that all residential lots abut a publicly maintained street in Binter Subdivision located at 296 Deaverview Road. This motion was seconded by Councilwoman Field and carried unanimously.

**IV. UNFINISHED BUSINESS:**

**V. NEW BUSINESS:**

-13-

---

**A. RESOLUTION NO. 01-122 - RESOLUTION  
AUTHORIZING THE CITY MANAGER TO ENTER  
INTO A LEASE AGREEMENT WITH DISCOVERY  
MOUNTAIN CORPORATION LTD FOR INDOOR  
FOOTBALL**

---

---