

Tuesday – September 18, 2001 - 3:00 p.m.

Worksession

Present: Vice Mayor M. Charles Cloninger, , Presiding; 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: Mayor Leni Sitnick

### **RESOLUTION NO. 01-143 - RESOLUTION CONDEMNING TERRORIST ATTACK AND SUPPORTING THE PRESIDENT OF THE UNITED STATES**

Vice-Mayor Cloninger read the following resolution condemning terrorist attack on September 11, 2001, and supporting the President of the United States: "On September 11, 2001, the United States was suddenly and brutally attacked by foreign terrorists. These terrorists hijacked and destroyed four civilian aircraft, crashing two of them into towers of the World Trade Center in New York City, and a third into the Pentagon outside Washington, D. C. Thousands of innocent Americans were killed and injured as a result of these attacks, including the passengers and crew of the four aircraft, workers in the World Trade Center and in the Pentagon, rescue workers, and bystanders. These cowardly acts were by far the deadliest terrorist attacks ever launched against the United States, and by targeting symbols of American strength and success, clearly were intended to intimidate our nation and weaken its resolve. These horrific events have affected all Americans. It is important that we carry on with the regular activities of our lives. Terrorism cannot be allowed to break the spirit of the American people, and the best way to show these cowards that they have truly failed is for the people of the United States to stand tall and proud. Now, therefore, (1) The Asheville City Council condemns the cowardly and deadly actions of these terrorists; (2) That the Asheville City Council supports the President of the United States as he works with his national security team to defend against additional attacks, and find the perpetrators to bring them to justice; and (3) That the Asheville City Council recommends to its citizens to support relief efforts by giving blood at the nearest available blood donation center."

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

Thirteen individuals spoke with some comments expressed as follows: the word "cowardly" should be removed from the resolution, need for dialogue, discourage acts of retribution, support for President should be conditional, public hearing should be held, and others were in the World Trade Center other than Americans.

After hearing comments and suggestions from the public and after discussion by Council, Councilman Worley moved to adopt the amended resolution as follows : "On September 11, 2001, the United States was suddenly and brutally attacked by foreign terrorists. These terrorists hijacked and destroyed four civilian aircraft, crashing two of them into towers of the World Trade Center in New York City, and a third into the Pentagon outside Washington, D. C. Many innocent people, including thousands of Americans, were killed and injured as a result of these attacks, including the passengers and crew of the four aircraft, workers in the World Trade Center and in the Pentagon, rescue workers, and bystanders. These unprovoked acts were by far the deadliest terrorist attacks ever launched against the United States, and by targeting symbols of American strength and success, clearly were intended to intimidate our nation and weaken its resolve. These horrific events have affected all Americans, it is important that we carry on with the regular activities of our lives, terrorism cannot be allowed to break the spirit of the American people, and the best way to show the

perpetrators that they have truly failed is for the people of the United States to stand tall and proud. Now, therefore, (1) The Asheville City Council condemns the

-2-

unprovoked and deadly actions of these terrorists; (2) The Asheville City Council supports the President of the United States as he works with his national security team to defend against additional attacks, and find the perpetrators to bring them to justice; (3) The Asheville City Council recommends to its citizens to support relief efforts and, as necessary, to give blood at the nearest available blood donation center; and (4) The Asheville City Council encourages dialog among all people, and discourages acts of retribution against any person based on ethnicity or religious belief." This motion was seconded by Councilwoman Bellamy and carried unanimously.

## **RESOLUTION BOOK NO. 26 – PAGE 455**

### **CONSENT AGENDA:**

#### **Budget Amendment for Water 35 Fund**

Summary: The consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect funding for a \$3 million State Grant for Critical Needs Phase III Water System Improvements.

The Authority has been awarded a \$3 million grant from the State of North Carolina for critically needed water system improvements including areas with undersized lines, low pressure problems, and frequent water interruptions. This is the third year in a row that the Authority has received a grant from the State. They were one of the few water systems fortunate enough to receive a \$3 million grant in 1999, a \$2 million grant in 2000, and a \$3 million grant this year. The combined \$8 million will go a long way to help fund the replacement of our aging water system and improve service to locations most in need.

The following improvement projects have been identified as critical needs and will be funded with this grant: North Bear Creek Road, Deavermont Circle, Starnes Cove Road, Old Oak Hill Road, Town Mountain Road/Peach Knob Reservoir, Reed Road, US 70 East (Grovemont), Bull Mountain Road, Burgins Chapel Road, Old Buckeye Cove Road, Flint and Ocala Streets, Short Shiloh Road, June Sayles Road, Vista Street, Allen Avenue, Galax and Holly Streets, Dale and Courtney Streets, Branning Street, Millbrook Road, Worley Place, and Sunrise Drive. Most of these are very old two-inch water lines that need to be upgraded to six inch or larger lines. Construction is tentatively scheduled to start in Spring 2002.

Staff recommends approval of the budget amendment to the 35 Fund.

#### **Intent to Close Cherry Street from Marigold Street to Shiloh Road and Setting a Public Hearing on October 23, 2001**

Summary: The consideration of a resolution of intent to close the unopened right-of-way known as Cherry Street and setting a public hearing for October 23, 2001.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process, Matney and Associates Law Firm, on behalf of M Realty Limited Partnership, has requested to close Cherry Street.

Public Works Department staff has determined that the right-of-way known as Cherry Street, beginning at Shiloh Road, and ending at the Marigold Street, as shown on Plat Book 6 at Page 137, is not part of an adopted street plan and is not a City maintained right-of-way.

-3-

City staff recommends City Council adopt the resolution of intent to close the unopened right-of-way known as Cherry Street and to set the public hearing for October 23, 2001.

### **Appropriation of Fiscal Year 2001 Fair Housing Assistance Program Grant**

Summary: The consideration of a budget amendment, in the amount of \$50,800, for the Fair Housing Assistance Program (FHAP) for Fiscal Year 2001-02.

The City has been carrying out its Fair Housing Program under contract with the Asheville-Buncombe Community Relations Council (ABCRC) and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

In August 2001 we received notification of the grant awarded to the City for the current federal fiscal year of 10/1/00-9/30/01. This notification required the City to draw down the funds no later than September 15, 2001. Staff has submitted the necessary paperwork to HUD. It is characteristic of this grant program that we receive notification of the grant amount near the end of the program year.

A budget ordinance is required in order to receive these funds and subgrant them to ABCRC.

Community Development staff recommends adoption of the ordinance.

### **Budget Amendment from N.C. Dept. of Environment & Natural Resources for Computer Equipment and Training**

Summary: The consideration of a budget amendment, in the amount of \$25,000, to receive grant money from the N. C. Dept. of Environment & Natural Resources (NCDENR) for computer equipment and training.

The City of Asheville Engineering Department requested \$25,000 from NCDENR for training and computer equipment. Staff was successful in obtaining those funds. We received money to purchase five laptop computers and provide training for staff and contractors.

The computers and training will improve the City of Asheville Erosion and Sediment Control Program.

City staff recommends City Council approve the budget amendment to receive grant money from the NCDENR.

### **Contract for Improvements on W. T. Weaver Boulevard**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Precision Contracting, Inc. in the amount of \$635,465 for the greenway and roadway improvements on W.T. Weaver Boulevard.

City of Asheville requested bids for the construction of a new greenway and roadway improvements to W.T. Weaver Boulevard. Three bids were received on August 30, 2001. The bids were as follows:

- Precision Contracting.....\$635,465.00
- Carolina Mountain Construction .....\$868,227.00

Taylor and Murphy Construction...\$1,155,476.75

-4-

After reviewing the bids, staff recommends that the project be awarded to Precision Contracting in the amount of \$635,465. The Engineer's estimate for this project was \$600,000.

The City will receive a grant from the N. C. Dept. of Transportation, in the amount of \$195,465, for the cost of the greenway. The roadway portion of the project (\$440,000) is currently budgeted in the City budget.

Precision Contracting is a Certified Minority contractor and met the minority bidding requirements.

City staff recommends City Council authorize the City Manager to execute a contract with Precision Contracting, Inc.

### **Encroachment Agreement on West Haywood Street**

Summary: The consideration of a resolution authorizing an encroachment agreement at 401 West Haywood Street.

The owners of property at 401 West Haywood Street in the Chicken Hill neighborhood recently learned, through a survey, that the house on the property encroaches slightly on the City's right-of-way along West Haywood Street. This encroachment has existed since the house was built, many years ago. The encroachment is minimal, and does not extend into the paved portion of the right-of-way, but stops about 6-8 feet short of the pavement. The encroachment does not interfere with the use of the right-of-way.

The owners are trying to clear up this title issue in order to obtain financing for renovation of the house.

If Council agrees that the encroachment should be permitted, adoption of the resolution is recommended.

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

### **AZALEA ROAD PARK**

Director of Parks and Recreation Irby Brinson said that this is the consideration of a resolution approving the master plan for Azalea Road Park.

In January, 2001, City Council approved the purchase of 155 acres of property on Azalea Road for the development of a park. The City continued its agreement with Woolpert LLP to enter into the next phase of the contract which included the development of a master plan for the park.

Mr. Gary Stewart, representative from Woolpert LLP, said that a Steering Committee was formed as part of this master plan process which included members of adjacent neighborhoods, potential user groups, and other agencies such as Buncombe County Recreation Services and Blue Ridge Parkway. The process for developing the master plan included two public input sessions and three Steering Committee meetings with Woolpert. A consensus-building process was used to develop the master plan that included ideas generated by the public, Steering Committee, and staff for elements to be included in the park.

-5-

Mr. Stewart said the following sources were used in the program analysis: Asheville Parks 2015 Comprehensive Master Plan, Asheville Greenways Master Plan, recreation providers/City staff, the Steering

Committee and the general public. He reviewed with Council the different facilities with high and moderate percentage of approval. Two alternative concepts were developed and evaluated.

Final recommended recreational facilities included: soccer complex (both youth and adult); multi-field complex (youth baseball, girls softball and multi-purpose field); disc golf; meeting/retreat center; outdoor amphitheater (350) day-use only; picnic areas/shelters (throughout the park); volleyball, horseshoe, and playgrounds; fishing areas along the river and existing ponds; maintain open space throughout the park; Azalea Road to be closed; no vehicular access to Thomas Wolfe cabin; bikeway/greenway separate (can use same corridor); bikeway/greenway trails to be paved; bikeway to follow both Azalea Road and Swannanoa River; fitness trail – both moderate and extreme; interpretive trail – woods/river/wetlands; arts sculpture/ADA sensory trail; two pedestrian bridge connections; connection to Mountain to Sea Trail; connection to Recreation Park; and kayak launch/takeout areas.

It should be noted that this plan represents approximately a \$16 million investment. The consultant and staff are quick to share that this plan will be developed in five phases over at least a 10 to 15 year period. Phase I recreation facility improvements include: two picnic shelters; one large playground; two observation decks; one kayak launch area; walkway trail; fitness trail; interpretive trail; two soccer fields with irrigation; bleacher areas; 205 parking spaces; one restroom/concession building; and one maintenance building with security lighting, security gates and water/sewer service.

Funding will be from a number of sources including a commitment from the Western North Carolina Soccer Foundation to develop and maintain the soccer facilities.

The Parks and Recreation Advisory Board and staff recommend City Council approve the master plan for Azalea Road Park.

Mr. Stewart answered several questions from Council, some being, but are not limited to, concerns expressed by the Steering Committee, phasing, the reasoning behind the recommendation to close Azalea Road, and are soccer fields open to the public.

Councilwoman Field urged the City Manager to come back quickly with a report on the beneficial fill site as the City is spending a large amount of money every day dumping in other places.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

## **UDO AMENDMENT REVIEWS**

### **UPDATE – Establishing a New Urban Village Zoning District**

Planning & Development Director Scott Shuford reviewed with Council the changes they recommended at the September 4, 2001, worksession with regard to this Unified Development Ordinance amendment which is scheduled for public hearing on September 25, 2001.

Mr. Shuford addressed Councilman Peterson's concern about what would constitute increases in the overall development intensity to require the developer to bring back his revised master plan to City Council for review.

-6-

### **UPDATE – Revise Findings for Conditional Use Permits**

Chief Planner Gerald Green reviewed with Council the changes they recommended at the September 4,

2001, worksession with regard to this Unified Development Ordinance amendment which is scheduled for public hearing on September 25, 2001.

### **Exempt Agricultural Uses from Zoning Regulation, Define Confined Animal Feeding Operation, Add Research and Technology Production as Permitted Use in Certain Business Districts and to Eliminate Level III Review of Industrial Uses**

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled on Wednesday, October 10, 2001. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to exempt agricultural uses from zoning regulation, to define confined animal feeding operation, to add research and technology production as a permitted use in certain business districts, and to eliminate level III site plan review of industrial uses.

The proposed ordinance amendment would make several small changes in the UDO in an effort to address several small issues that have been identified by the staff and the public. These changes, though minor, will make it easier to undertake a variety of business activities in the City of Asheville and its jurisdiction while protecting the public interest. The proposed changes and the impacts of each change are described below:

- Exemption of bona fide agricultural uses from zoning regulation. This amendment codifies the City's existing approach to regulation of bona fide agricultural uses. An agricultural use recognized as such for tax purposes would be exempt from all zoning regulations. In order to be recognized as a bona fide agricultural use, the use would have to meet minimum acreage, income, and production standards. Confined animal feeding operations would not be exempt from zoning regulation.
- Confined animal feeding operations are defined as operations where the animal (or poultry) is confined inside a building for at least 60% of its life with waste products collected from the building and treated either on-site or off-site. Operations of this type can produce adverse environmental impacts and therefore would not be exempt from zoning regulation.
- Research and technology production uses are identified as permitted uses in several business districts. As our economy changes, we find that most high tech production activities do not create the type of adverse impacts typically associated with manufacturing and production activities. Research and technology production is often carried out in conjunction with retail operations. The proposed change would permit research and technology production uses in the Community Business II and higher intensity business districts, providing more opportunities for the location of businesses of this type.
- Elimination of the requirement that large industrial development projects be subject to the level III site plan review process. The level III site plan review process requires projects with potential community wide impacts to be reviewed and approved by City Council as conditional uses. Requirements already in place for industrial development projects would ensure that any impacts of these developments would be mitigated and industrial zones are located in areas that minimize the potential for such impacts. Elimination of this requirement would ensure that the City is committed to proactive economic development.

-7-

The proposed amendments would address issues that have come to staff's attention during the extension of the City's extraterritorial jurisdiction area and through discussions with persons involved in economic and industrial development. In presenting these amendments, the staff is being responsive to the reasonable needs of the community.

At their August 23, 2001, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the wording amendment.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on Wednesday, October 10, 2001.

### **CIVIC CENTER FACILITY FEE**

Budget Director Ben Durant said that this is the consideration of a resolution charging a \$1.00 facility fee for all ticketed entertainment events and a \$0.50 facility fee for all trade show events at the Asheville Civic Center.

The National Basketball Developmental League (NBDL) contract with the City of Asheville makes provisions for the collection of a \$1.00 facility fee. City staff surveyed other civic center and entertainment facilities in the southeast of similar size to determine if they charged a similar fee and if there was a revenue sharing arrangement between the city and event promoters regarding facility fee proceeds.

Seven cities were included in the survey and they are as follows: Roanoke, Virginia; Huntsville, Alabama; Mobile, Alabama; Fayetteville, North Carolina; Spartanburg, South Carolina; and Johnson City, Tennessee. All cities in the survey either collected such a fee or anticipated charging one in the near future. In addition, unless otherwise expressed in a contract, all revenue generated from the facility fee was retained exclusively by the city.

Based on the results of the survey, staff recommends charging a facility fee of \$1.00 on all entertainment tickets and \$0.50 on all trade show tickets. Staff further recommends that the City retain all revenues generated from this fee unless other contractual provisions have been made. Staff estimates that if implemented for a full year, this fee could provide an additional \$200,000 per year in revenues to the Center.

Staff further recommends this revenue be used in one or more of the following ways:

1. To fund capital maintenance projects;
2. To fund future expenses related to the on-going renovation efforts of the Civic Center Task Force;
3. To reduce the General Fund operating subsidy to the Center.

City staff recommends City Council adopt a \$1.00 facility fee on all entertainment tickets and a fee of \$0.50 on all trade show tickets with all fees taking effect immediately after adoption by Council.

Mr. Durant said that the Civic Center Commission has endorsed this fee.

Councilwoman Bellamy felt that if the City had a plan on how this revenue will be used, it may have more public support.

-8-

Councilman Hay said that he personally would like the first year's allocation to be earmarked for improvements to the Civic Center.

Upon inquiry of Councilman Peterson, Mr. Durant explained why they are recommending a flat fee and not a percentage fee.

Dr. Carl Mumpower, Chairman of the Civic Center Committee, said that the Commission is in favor of the development of a facility fee program for the Civic Center at the rate recommended by staff. They offered the

following comments and considerations: (1) the Commission raised the issue of a possible facility fee approximately two years ago and at that time the Commission was generally supportive of the concept; (2) prior to finalization of a fee plan, they would encourage that some input be solicited from promoters, consumers, and other facility users as to the potential impact of this fee; (3) they acknowledge that a facility fee is a standard practice with Civic Centers, and that a majority of facilities surveyed by staff receive substantial revenue support through such a fee; (4) they encourage that all funds received through this fee be specifically devoted to facility improvements; (5) they encourage the name of the fee be changed in such a way as to provide clarity to the public as to the targeted use of the fee – for example – facility improvement fee; and they recommend that, excepting existing contracts, all funds from this fee be retained for use by the facility and not implemented as a shared revenue source with other promoters or tenants.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

**ADJOURNMENT:**

Vice-Mayor Cloninger adjourned the meeting at 5:21 p.m.

---

CITY CLERK MAYOR

---