

Tuesday – December 18, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; and Councilman R. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brian L. Peterson

INVOCATION

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON NOVEMBER 27, 2001, THE ORGANIZATIONAL MEETING HELD ON DECEMBER 4, 2001, AND THE WORKSESSION HELD ON DECEMBER 11, 2001

B. RESOLUTION NO. 01-187 - RESOLUTION ADOPTING THE 2002 SCHEDULED CITY COUNCIL MEETINGS

RESOLUTION BOOK NO. 27 – PAGE 21

C. RESOLUTION NO. 01-188 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO ENTER INTO A LICENSE AGREEMENT WITH CIRCLE NET INC. FOR ANTENNAS AND RELATED EQUIPMENT AT 36 RESERVOIR ROAD (FORMERLY WHITE FAWN RESERVOIR)

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed License Agreement with Circle Net, Inc. for antennas at 36 Reservoir Road.

The property at 36 Reservoir Road is the site of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

Circle Net, Inc. has offered to enter into a license agreement for space on the tower known as the "U. S. Cellular Tower". The proposed License Agreement will enable Circle Net to operate antennas and related equipment at the site. 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. Circle Net will pay a License Fee of \$7,800 for the first term with a 5% increase annually thereafter. In addition to the License Fee, Circle Net will pay a Utility Fee of \$150.00 per annum.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 22

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D. RESOLUTION NO. 01-189 - RESOLUTION CONFIRMING A MEMBER TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of one member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan (subsequent amendments to the Minority Business Plan were adopted by City Council in November 1998 and December 1999).

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. Marvin Vierra has been named by the Asheville Business Development Center to represent them on the Minority Business Commission. Mr. Vierra has been nominated to fill the position left vacant by Mr. Ronnie Blythe and his term will run through August, 2002.

City staff recommends City Council adopt a resolution confirming the appointment of one member of the Minority Business Commission.

RESOLUTION BOOK NO. 27 – PAGE 23

E. RESOLUTION NO. 01-190 - RESOLUTION AMENDING THE MINORITY BUSINESS PLAN

Summary: The consideration of a resolution to amend the Minority Business Plan in order to further enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, to expand participation in the Mentor-Protégé Program; and again in December 1999 to clarify the provisions of the Plan.

At their meeting on August 16, 2001, the Minority Business Commission recommended that the Plan be amended to further enhance and clarify provisions of the Plan. The most significant change is the requirement of certification renewal every two years instead of annually. In addition, the options to meet the annual training requirement have been expanded and the complete list is now included in the Plan.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

RESOLUTION BOOK NO. 27 – PAGE 24

F. ORDINANCE NO. 2877 - BUDGET AMENDMENT FOR THE PURCHASE OF A 15-PASSENGER VAN FOR THE SENIOR CITIZEN PROGRAM

Summary: The consideration of a budget amendment, in the amount of \$19,000, from the annual appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging, and private donations via the Asheville Parks and Greenway Foundation to establish a budget for the purchase of a 15-passenger van for Parks and Recreation's Senior Citizen Program.

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The City of Asheville received approval for \$11,364 in October 2001 for the 2001 Senior Center General Purpose Funding from the State of North Carolina, Department of Health and Human Services, Division on Aging. Donations totaling \$7,636 is available via the Asheville Parks and Greenway Foundation. The funds

will be used to purchase a 15-passenger van to transport senior citizens to five senior centers and community centers to participate in nutrition programs and recreation activities. The van will serve 30% more seniors, thus allowing them to benefit from the senior citizen services of Parks and Recreation.

The Parks and Recreation Department recommends City Council approve the budget amendment to establish a budget for the purchase of a 15-passenger van.

ORDINANCE BOOK NO. 19 – PAGE 355

G. RESOLUTION NO. 01-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND AGREEMENTS NECESSARY TO PARTICIPATE IN THE N.C. LOCAL GOVERNMENT DEBT SETOFF PROGRAM

Summary: The consideration of a resolution authorizing the Mayor and the City Manager to execute documents and agreements necessary to participate in the NC Local Government Debt Setoff Program and designating both William L. Schaefer, Jr., Finance Director, and Cynthia A. Miller, Finance Operations Manager, and their successors as the persons to conduct necessary proceedings.

During the 1997 General Assembly session, the North Carolina Association of County Commissioners (NCACC) and the North Carolina League of Municipalities (NCLM) were successful in having enacted a legislative goal enabling counties and cities to participate in the state's income tax debt setoff program. The program permits counties and cities to submit any outstanding delinquent debt (\$50 or more) through a local government clearinghouse to the NC Department of Revenue, to attempt to match these debts against individual income tax refunds. The local government clearinghouse is also charged with disbursing offset funds back to the receiving county and/or city. NCACC and NCLM have organized a joint NC Local Government Debt Setoff Clearinghouse to make this program available to all North Carolina counties and cities. N. C. Gen. Stat. sec. 105A authorizes county and city participation in the debt setoff program through a clearinghouse function, and limits clearinghouse participation to only counties and cities.

Delinquent debt is a sum that is at least \$50 owed to a county or city (claimant agency) that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum. A full 60 days must lapse after a local government labels the debt as delinquent before the debt can be submitted to the clearinghouse. The county or city must furnish the full name and social security number of each debtor. Costs of participation will be \$15 for each successful match of debt against an individual debtor's tax refund. No charges will accrue unless a successful tax refund setoff is made. The \$15 cannot be charged to the debtor but must be paid by the participating agency. Procedures are in place to notify a debtor of a proposed setoff, to allow a debtor who decides to contest a proposed setoff to receive a hearing with the designated hearing officer and, further, to file a petition with the Courts if desired. No debt can be submitted to the clearinghouse until the entire notification and appeals process is completed for that debt.

NCACC and NCLM have contracted with Five Star Computing, Inc. of Columbia, S.C., to administer the program. Five Star has managed the South Carolina Association of Counties debt setoff program since its inception five years ago.

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City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 27 – PAGE 25

H. RESOLUTION NO. 01-192 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF THREE

LIGHT TRANSIT VEHICLES

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for funding the three light transit vehicles recently purchased by the Transit Services Department.

The NC DOT requires an agreement between the City and the NC DOT for reimbursement of up to \$26,250.00 for purchase of three Light Transit Vehicles and associated equipment. The state will reimburse the City up to 10% of the total expended amount. All funds must be expended by June 30, 2003. Most, but not all, funds have been expended and the remainder will be expended for radios and tires by June 30, 2002.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 26

I. MOTION ADOPTING THE 2002-03 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2002/2003 budget schedule.

The proposed Fiscal Year 2002/2003 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e., City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2002/2003 budget is scheduled for June 25, 2002.

City staff recommends City Council to adopt the Fiscal Year 2002/2003 budget schedule.

J. ORDINANCE NO. 2878 - BUDGET AMENDMENT TO APPROPRIATE ADDITIONAL STATE AND FEDERAL GRANT FUNDS FOR TRANSIT SERVICES

Summary: The consideration of a budget amendment, in the amount of \$633,062, to reflect additional and appropriated revenue and offsetting expenses in the Transit Services Department.

The City of Asheville expects to receive \$317,447 in additional state grant funds during the current fiscal year which are earmarked for transit operations in Fiscal Year 2001-2002. Additionally, the Transit Services Department is requesting the re-appropriation of unspent federal and state grant funds from Fiscal Year 2000-2001 in the amount of \$315,615. These are funds earmarked for operations and capital project funds. Staff is requesting that these funds be appropriated in the current fiscal year to further enhance transit service.

Transit Service Enhancements include:

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- the revision of service delivery to address scheduling and capacity problems,
- an increase in marketing capability
- an increased ability to implement the capital portions of the Transit Improvement Plan, including
- Radios and tires for new Light Transit Vehicles
- Insulation of wash tunnel
- the purchase and installation of additional shelters
- budget for additional Cross Walks on city streets

- security enhancements
- other capital projects

City staff recommends City Council adopt a budget amendment to reflect additional revenue and offsetting expenses in the Transit Services Department.

ORDINANCE BOOK NO. 19 – PAGE 357

K. ORDINANCE NO. 2879 - BUDGET AMENDMENT FOR THE OUTDOOR RECREATION PROGRAM

Summary: The consideration of a budget amendment, in the amount of \$6,774.00, to allow the Outdoor Recreation Program to collect fees and expend these fees to pay for a weekend snow skiing trip to Snowshoe, West Virginia.

The Outdoor Recreation Program of the Parks and Recreation Department offers a variety of opportunities for all ages and abilities to enjoy the outdoors. One of the most successful activities offered through this program is the learn-to-ski snow skiing instructional program offered each winter in conjunction with the French Swiss Ski College at Appalachian ski Mountain. This learn-to-ski program is celebrating its 30th year in 2002. During the past 30 years, the program has offered participants from time to time an opportunity to travel to a more advanced skiing destination. This year, participants have requested that staff organize a trip to Snowshoe, West Virginia. The cost of the activity, including charter bus transportation, lodging, lift tickets and taxes/fees will be paid by the participants. It is estimated that the total cost of this activity is \$6,774.00, which is based on a minimum of 30 participants. Revenue from the participants will cover the expenses of the trip with no cost to the City of Asheville.

City staff recommends City Council adopt the budget amendment.

ORDINANCE BOOK NO. 19 – PAGE 359

L. RESOLUTION NO. 01-193 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY

Summary: The consideration of appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson.

The term of Tommy Sellers, as a member on the Regional Water Authority, expired on September 30, 2001.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Mayor Charles Worley to serve a three year term, term to expire September 30, 2004, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 27

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M. RESOLUTION NO. 01-194 - RESOLUTION APPOINTING A MEMBER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: The consideration of appointing a member to the ADA Compliance Committee.

Councilman Peterson has resigned from the ADA Compliance Committee, thus creating a vacancy.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper

paperwork to appoint Councilman Carl Mumpower as the elected representative to the ADA Compliance Committee to serve a term according to his Council term of office.

RESOLUTION BOOK NO. 27 – PAGE 28

N. RESOLUTION NO. 01-195 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: The consideration of appointing a member to the Citizens/Police Advisory Committee.

Councilman Peterson has resigned as the City Council representative on the Citizens/Police Advisory Committee thus leaving a vacancy.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilman Joe Dunn as the non-voting City Council member on the Citizens/Police Advisory Committee to serve a term according to his Council term of office.

RESOLUTION BOOK NO. 27 – PAGE 29

O. RESOLUTION NO. 01-196 - RESOLUTION APPOINTING A MEMBER TO THE CRIME STOPPERS BOARD OF DIRECTORS

Summary: The consideration of appointing a member to the Asheville-Buncombe Crime Stoppers Board of Directors.

Vice-Mayor Bellamy has resigned as the City Council representative on the Asheville-Buncombe Crime Stoppers Board of Directors.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilman Joe Dunn as the City Council representative on the Asheville-Buncombe Crime Stoppers Board of Directors to serve the unexpired term of Vice-Mayor Bellamy, term to expire June 30, 2002, and then to serve a full three year term, term to expire June 30, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 30

P. RESOLUTION NO. 01-197 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE DOWNTOWN COMMISSION

Summary: The consideration of appointing a member to the Asheville Downtown Commission.

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The terms of Barbara Field and Chuck Cloninger, as City Council representatives on the Downtown Commission have expired.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilman Jim Ellis as the City Council representative on the Asheville Downtown Commission to serve a term according to his Council term of office.

RESOLUTION BOOK NO. 27 – PAGE 31

Q. RESOLUTION NO. 01-198 - RESOLUTION APPOINTING AN EX-OFFICIO MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Summary: The consideration of appointing a member to the Buncombe County Tourism Development Authority.

Due to the Barbara Field's term ending as a City Council member, there exists a need to appoint a City Council representative as the ex-officio non-voting member on the Buncombe County Tourism Development Authority.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Vice-Mayor Terry Bellamy as the ex-officio non-voting City Council representative on the Buncombe County Tourism Development Authority to serve a term according to her Council term of office.

RESOLUTION BOOK NO. 27 – PAGE 32

R. RESOLUTION NO. 01-199 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN EASEMENT FOR RELOCATION OF A POWER LINE AT THE ASHEVILLE REGIONAL AIRPORT

Summary: The consideration of a resolution authorizing the City Manager to execute an easement for relocation of a power line at the Asheville Regional Airport.

In connection with some other work currently being done at the Asheville Regional Airport, Carolina Power & Light plans to relocate an existing overhead power line and put most of it underground. The Airport's engineer has reviewed and approved the plans. The City owns the property, and Council approval is required for this easement.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 27 – PAGE 33

S. RESOLUTION NO. 01-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE ASHEVILLE CITIZEN-TIMES FOR RETAIL ADVERTISING

Summary: The consideration of a resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Each year City staff and the staff of the Asheville Citizen-Times reviews retail advertising that the City has placed during the year to determine what rates the City will qualify for the following year. Last year all departments in the City ran a total of 32 column inches per week in the Asheville Citizen-Times. This qualifies the City to take advantage of a weekly frequency rate running 16 to 31 column inches per week.

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The open rate for advertising in the Asheville Citizen-Times is \$47.02 per column inch daily and \$62.18 per column inch on Sunday. This contract will allow the City to advertise for \$29.85 per column inch daily and \$39.84 per column inch on Sunday. Based on the amount of advertising placed in 2001, the City saves \$29,618 by signing the weekly frequency contract.

This contract is valid for all City departments that advertise with the Asheville Citizen-Times, including the Asheville Civic Center.

Staff recommends approval of the resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Mayor Worley 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.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

At the request of the petitioner, Councilwoman Jones moved to continue this public hearing until January 22, 2002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY KNOWN AS OLMSTED, SECTION 2 OF BILTMORE PARK

ORDINANCE NO. 2880 - ORDINANCE TO EXTEND THE CORPORATE LIMITS TO INCLUDE OLMSTED, SECTION 2 AT BILTMORE PARK

Mayor Worley opened the public hearing at 5:03 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to property located north of Long Shoals Road and identified as Olmsted, Section 2 of Biltmore Park. This public hearing was advertised on December 7, 2001.

Biltmore Farms, Inc. and seven other property owners have submitted annexation petitions for Olmsted, Section 2 at Biltmore Park. This area is contiguous to the existing corporate limits, being bordered to the north, south and east by sections of Biltmore Park that have been previously annexed

The area proposed for annexation consists of 30 acres and is platted for 26 single-family residential lots, and a common area. The area will be accessed by primarily by Olmsted Drive. This area is within the ETJ and is currently zoned RS-8.

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Biltmore Farms Inc. is developing utilities and streets. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

This would be the 24th section of the Biltmore Park development to be annexed. Tax valuation of the area annexed to date is \$106, 608,100.

City staff recommends City Council adopt a resolution fixing the date of a public hearing on December 18, 2001, on the question of annexation of property located north of Long Shoals Road and identified as Olmsted, Section 2 at Biltmore Park.

Upon inquiry of Vice-Mayor Bellamy, City Manager Westbrook explained the Biltmore Park development.

When Councilman Dunn said that there is an area in the City that has been annexed and is not receiving City

garbage service. City Manager Westbrook asked for that information in order to make sure that this service is provided.

Mayor Worley closed the public hearing at 5:13 p.m.

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

Councilman Dunn moved for the adoption of Ordinance No. 2880. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 361

C. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF 2360 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2881 - ORDINANCE TO REZONE A PORTION OF 2360 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:13 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance to rezone a portion of 2360 Sweeten Creek Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on December 7 and 14, 2001.

On September 28, 2001, the Givens Estates submitted an application for the rezoning of the eastern portion of the property identified as 2360 Sweeten Creek Road from RS-8 to RM-16 (PIN No. 9655.07-58-3386). The property is located on the east side of Sweeten Creek Road, between the existing Givens Estate property and Park Avenue. The entire parcel is 72 acres, but the rezoning request is only for the 55 acre portion of the property fronting on Sweeten Creek Road.

The RM-16 District, which allows up to 16 units per acre, is established to permit a full range of high density multi-family housing types along with limited public, institutional and

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commercial uses. It is intended that this district be located near employment centers, shopping, roads and other urban infrastructure capable of supporting the demand generated by higher density residential development. The maximum height in the RM-16 District is 40 feet as is the existing RS-8 District.

The RS-8 District is a higher density single family district allowing up to eight units per acre and is established where public infrastructure is sufficient to support such development, while providing the necessary stability to protect the district's residential character.

Givens Estates, an existing multi-family retirement community, is planning an expansion that will encompass this parcel, which lies to the north of the existing development. The requested zoning will allow the expansion to continue as planned. The topography and urban infrastructure are capable of accommodating the increased density. The proposed parcel area to be rezoned is over 50 acres and continues an existing zoning pattern, thus it would not constitute spot zoning. The 2010 Plan indicates residential uses for this area. Any high density residential development that is built adjacent to existing single family development will require a full landscaped buffer up to 25 ft. in width per the Unified Development Ordinance.

Ms. Merten said that the maximum height of any building would be 40 feet as in the existing district, the buffer would depend on the density of the use but would be between 20-25 feet, and the setback would depend on the size of the building, but a maximum of 50 feet.

Planning & Development staff recommend approval of the rezoning request. The Planning & Zoning Commission reviewed this at their meeting on November 7, 2001, and unanimously recommended that the parcel be rezoned to RM-16 Residential Multi-Family High Density District

Mr. W. Louis Bissette Jr., attorney representing the Givens Estate, explained the project to Council.

City Attorney Oast reminded Council that if Council rezones this property, they will be rezoning it for any uses allowed in the RM-16 district classification.

Mayor Worley closed the public hearing at 5:17 p.m.

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

Councilman Mumpower moved for the adoption of Ordinance No. 2881. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 364

D. PUBLIC HEARING TO CLOSE A PORTION OF PORTER STREET FROM POND AVENUE TO ROSSCRAGGON ROAD AND THE 15-FOOT ALLEYWAY FROM PORTER STREET TO LEE STREET

RESOLUTION NO. 01-201 - RESOLUTION TO CLOSE A PORTION OF PORTER STREET FROM POND AVENUE TO ROSSCRAGGON ROAD AND THE 15-FOOT ALLEYWAY FROM PORTER STREET TO LEE STREET

Mayor Worley opened the public hearing at 5:21 p.m.

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Mr. David Foster, Public Works Project Coordinator, said that this is the consideration of a resolution to close a portion of Porter Street from Pond Avenue to Rosscraggon Road and the fifteen foot alleyway from Porter Street to Lee Street. This public hearing was advertised on November 23, 30, December 7 and 14, 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, McGuire, Wood and Bissette, Law Firm, on behalf of Balus and Margaret Chastain, has requested to close a portion of Porter Street from Pond Avenue to Rosscraggon Road and the fifteen-foot alleyway from Porter Street to Lee Street.

Public Works Department staff has determined that the right-of-way known as Porter Street, beginning at Pond Avenue, and ending at Rosscraggon Road and the fifteen foot alleyway, beginning at Porter Street and ending at Lee Street as shown in Plat Book 1771, Page 0552 is not part of an adopted street plan and is not a City maintained Right of Way.

City staff recommends City Council adopt the resolution closing a portion of Porter Street from Pond Avenue to Rosscraggon Road and the fifteen foot alleyway from Porter Street to Lee

Street, subject to retaining a sewer easement for MSD.

Mayor Worley closed the public hearing at 5:25 p.m.

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

Councilman Dunn moved for the adoption of Resolution No. 01-201. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 35

E. PUBLIC HEARING TO CONSIDER THE REZONING OF 14 FOREST RIDGE DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2882 - ORDINANCE TO REZONE 14 FOREST RIDGE DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2883 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 14 FOREST RIDGE DRIVE

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.

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After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:27 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), City Exhibit 3 (Staff Report dated 12/18/01). This public hearing was advertised on December 7 and 14, 2001.

Mr. Green said that this is the consideration of an ordinance to conditionally rezone property located on at 14 Forest Ridge Drive from RM-6 Residential Multi-Family Low Density District to Community Business II District/ Conditional Use, and issuance of a conditional use permit for an automobile and motorcycle repair business.

At their November 7, 2001, meeting, the Planning and Zoning Commission recommended rezoning of property located at 14 Forest Ridge Drive from RM-6 to Community Business II. Paul Carroll is the owner and applicant. The one acre site is located on Forest Ridge Drive, just off Old County Home Road in the City's extraterritorial jurisdiction area (Location Map – attached to City Exhibit 3). The site is bounded by Smith Mill Creek and a portion of the site is located within a designated flood hazard area. Forest Ridge Drive provides access to the site. A variety of land uses are located along Old County Home Road, but the uses in the immediate vicinity of the site are residential. Surrounding zoning is RM-6. Properties fronting on Leicester

Highway east of Old County Home Road are zoned CB II.

The request is to conditionally zone the property as Community Business II/Conditional Use to allow the owner to operate an automobile and motorcycle repair business on the property in addition to the owner's home, which is currently located on the property. The owner's home is approximately 1200 square feet and would continue to be used as a residence. A building, not to exceed 1200 square feet initially, would be constructed on the property to house the auto repair business. The owner has asked that he be permitted to expand the building at a later date up to 2,200 square feet. The proposed building would be buffered from adjacent residential properties by a wood privacy fence and vegetation (Site Plan – attached to City Exhibit 3). Most of the repair work would take place inside the proposed building, although cars needing and/or undergoing repair would be parked outside the building on a gravel lot.

The Technical Review Committee has not reviewed this project. A Transportation Impact Analysis was not required for this project.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval for conditional uses are met 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)]. Staff's preliminary opinion, absent the benefit of public input, is that all seven standards appear to be met.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed use will require the construction of a building on the property to house the repair of automobiles and motorcycles. The operation of an automobile and motorcycle repair business on this site will not materially endanger the public health or safety if the site is developed in accordance with the approved site plan and applicable regulations.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

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The proposed development of the land is compatible with natural and topographic features on the site and within the immediate vicinity. Some fill will be required adjacent to the designated flood hazard area, but the fill will not be located within the flood area.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

Mr. Green pointed out that staff's initial recommendation was for denial of this project. The Planning & Zoning Commission unanimously recommended approval of the project based on public input and the feeling that this use would be compatible with adjacent properties. Some of these standards and findings have changed in light of the Planning & Zoning Commission's recommendations from those first presented by the Planning & Development staff. The revised response is that:

The project will be screened from abutting property to mitigate the potential adverse impact associated with the automobile/motorcycle repair business.

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 located.

The structure to be constructed on the site is in harmony with the scale and bulk of other structures in the area. The proposed 1200 square foot structure will be located on a one acre lot on which only one other structure, a single family home, is located. The development will be in harmony with the coverage and density found in the area. The area in which the site is located has a mixture of uses, from what appear to be junkyards to nice single family homes.

5. That the proposed use or development of the land will generally conform to the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the City.

The Comprehensive Plan appears to indicate low density residential uses for this area. A home would continue to be located on the property under this proposal. The operation of an automobile repair business in a residential area is not addressed in any of the City's official plans.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

All services and facilities are available to meet the needs of the proposed use.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed use will be a small-scale automobile/motorcycle repair business with one employee. Traffic generation will be minimal. A Traffic Impact Analysis is not required for the proposed use.

To recap, the proposed project is a 1200 square foot building that will house an automobile/motorcycle repair business. Future plans call for the expansion of the building up to 2,200 square feet. The 1.0 acre site also contains the home of the property owner/applicant. Construction of the building in accordance with the site plan and adherence to the conditions recommended for the approval of the conditional use permit for this project would ensure that the impacts on surrounding property owners are mitigated.

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The Planning and Zoning Commission reviewed the requested conditional use rezoning and the site plan for the proposed use at their November 7, 2001, meeting. No one spoke in 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 (6 – 0) to recommend approval of the conditional use rezoning, subject to the conditions identified by staff. The Commission's recommendation for approval included the future expansion of the building up to 2,200 square feet.

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) The owner of the automobile/motorcycle repair business must live on the site; and (2) Inoperable automobiles cannot be stored on the property.

Mr. Green entered into the record a note from William B. Simpson, 16 Forest Ridge Drive (City Exhibit 4). He also stated that he received a call from a neighbor about the noise from the motorcycles.

There was considerable discussion amongst Council members regarding the noise from testing engines in the evening hours.

Vice-Mayor Bellamy recommended hours of operation be included as a condition in this permit.

Vice-Mayor Bellamy questioned the condition recommended by staff that no automobiles be stored on the property and what would happen if a vehicle could not be repaired in one day. Mr. Green suggested a definition of inoperable be included, e.g., a vehicle that remains on the site unable to be operated for a period of two weeks. City Attorney Oast felt, however, that it may be easier to enforce a limit on the number of vehicles that can be stored on the property, whether they are operable or not.

Councilman Mumpower was hesitant to add more restrictions on this property owner since the City currently has a noise ordinance and a junked vehicle ordinance.

Councilman Dunn was also concerned about the Council putting restrictions on a small businessman and telling him when he can and can't work at his trade. He felt the owner should be allowed to work anytime, day or night, as long as his noise at night does not negatively impact his neighbors.

Mr. Green entered into the record City Exhibit 5 which was a petition signed by 17 area residents who had "no objections to Paul & Lisa Carroll to rezoning their property ... from RM-6 to CBII."

Mr. Paul Carroll, petitioner, did not want Council to restrict his working hours in that he had every intention of being respectful of his neighbors with regard to noise. He said that he does have a building and he will work in the building at night. He said that he did go door to door and talked to everyone in the neighborhood about this proposed change.

Upon inquiry of Councilwoman Jones, Mr. Carroll said that he usually does not do any business after 7:00 p.m.

Vice-Mayor Bellamy suggested a condition that there will be no testing of engines outside of the building before 7:00 a.m. or after 7:00 p.m.

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There being no request for rebuttal, Mayor Worley closed the public hearing at 6:00 p.m.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2882 to rezone property at 14 Forest Ridge Drive from RM-6 Residential Multi-Family Low Density District to Community Business II District/Conditional Use. This motion was seconded by Councilman Mumpower and carried unanimously.

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When Mr. Carroll said that he would be happy to abide by the City's noise ordinance, it was determined that this property lies in the extraterritorial jurisdiction area and is not subject to the City's noise ordinance. However, Buncombe County does have a noise ordinance that would apply.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2883 granting the conditional use permit for 14 Forest Ridge Drive with the following conditions: (1) the owner of the automobile/ motorcycle repair business must live on the site; (2) inoperable automobiles cannot be stored on the property; and (3) that there will be no testing of engines outside of the building before 7:00 a.m. or after 7:00 p.m.; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilwoman Jones.

Councilman Mumpower said that on the basis that the City cannot enforce it's noise ordinance on this property, he would be willing to support the motion.

Councilman Ellis agreed with Councilman Mumpower but felt it was not fair to put restrictions on property that is stronger than if that property were in the City.

Upon inquiry of Vice-Mayor Bellamy, Mr. Green said that Leicester Highway is about 800-1,000 feet from this property and about 100 feet from the residential areas.

Councilman Mumpower didn't think the Council should set up a special noise standard for Mr. Carroll's neighborhood than is different than other neighbors in the City of Asheville.

Vice-Mayor Bellamy amended the third condition in her motion to read "that the applicant will adhere to the City's noise ordinance between 7:00 a.m. and 10:00 p.m. Councilwoman Jones accepted the amendment to the motion. Said amended motion carried on a 5-1 vote, with Councilman Dunn voting "no".

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. BUNCOMBE COUNTY ECONOMIC DEVELOPMENT COMMISSION

As discussed at the December 11, 2001, worksession, Councilman Ellis moved to appoint Councilman Dunn as the City representative to the Buncombe County Economic Development Commission. This motion was seconded by Councilman Mumpower and carried unanimously.

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B. UPDATE ON NATIONAL LEAGUE OF CITIES CONFERENCE

Vice-Mayor Bellamy updated City Council on her recent trip to the National League of Cities Conference held in Atlanta, Georgia. The following are three issues she briefed Council on: (1) the need to call our legislators for home security funds; (2) during the water agreement negotiations, City Council should limit their agreement for five years; and (3) need to make sure our boards and commissions reflect our City make-up.

C. CLAIMS

The following claims were received by the City of Asheville during the period of November 9 – 29, 2001: Greg Northrup (Streets), Lindsey Miguez (Sanitation), Robert Mirabal (Civic Center), Dianna Smith (Streets), Nickie Ballard (Parks & Recreation), BellSouth (Water), BellSouth (Water), Ken Myrick (Water), Laurel Frick (Fire) and Slade Smith (Transit Services).

The following claims were received by the City during the period of November 30-December 6, 2001: Albert Spack (Streets), Herman Brown (Water), Natasha Watkins (Police) and Earl Stuckenbruck (Water).

The following claims were received by the City during the period of December 7-13, 2001: Robin Elliott (Water), James Lanstra (Transit Services), Paul Thomas (Streets) and Rachel Eunice (Finance).

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

D. LAWSUIT

The City was served with the following Complaint from Ronald L. Levitan on November 1, 2001: Complaint for money owed for damage to automobile due to negligent maintenance of city-owned manhole cover. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English commented on various issues ranging from the appointment of the seventh member of City Council on December 4, 2001, to urging City Council not to allow football.

B. COMMENTS BY MIKE MORGAN

Mr. Mike Morgan asked City Council to investigate the strong sewer order from a small restaurant in West Asheville.

C. COMMENTS FROM KEVIN NUTTELL

Mr. Kevin P. Nuttall, advocate for people living with HIV and AIDS and Director of Public Policy in Government Relations for the North Carolina AIDS Policy Center, questioned Councilwoman Jones's seat on the Western North Carolina HIV AIDS Consortium.

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D. COMMENTS FROM WALTER PLAUE

Mr. Walter Plaue suggested City Council look to the Hispanic and Native American communities for additional representation on City boards and commissions. He also felt that more information should be on the agenda regarding impacts to the City's budget.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:43 p.m.

CITY CLERK MAYOR
