

Worksession

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

Absent: Councilman James E. Ellis and Councilman Brian L. Peterson

CONSENT:

Relinquishing Easement for Sanitary Sewer Project

Summary: The consideration of a resolution authorizing the Mayor to relinquish the City's easement crossing real property owned by Hershel T. Anderson and Lucy D. Anderson.

As part of the Brevard Road Annexation Phase III Contract "3" sanitary system improvements project, the City was required to provide sanitary sewer service to this property and other adjoining parcels. The City acquired an easement from the Andersons. The Andersons conveyed an easement to the City for the aforesaid purpose and the easement was recorded in Deed Book 2446 at Page 523 of the Buncombe County Register of Deeds Office. Subsequent negotiations with other affected property owners resulted in the revision of the horizontal alignment of the sanitary sewer line away from the Anderson's property. The City's Engineering Department has determined that this easement is no longer needed for this purpose or any other future needs.

The Engineering Department recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed relinquishing the City's easement interest.

Clerk to Advertise an Offer to Purchase Disposal Parcel 74 on Martin Luther King Jr. Drive

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74 in the East End/Valley Street Community for the appraised value of \$12,000.

Disposal Parcel 74 is a residential lot located on the east side of Martin Luther King Jr. Drive at the intersection with Miller Street comprising 6,970 square feet. The lot is irregular in shape and sloping upward from street level. The bid from WNC Housing, Inc., equals the appraised value of \$12,000. WNC Housing, Inc., proposed to construct a single family dwelling on the lot.

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 authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74.

Extension of Contract as a State Regional Hazardous Materials Response Team

Summary: The consideration of a resolution authorizing the City Manager to extend an agreement with the N. C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for Region Six.

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North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N. C. Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response.

The region six area covers from Rutherford County west to the Tennessee Border. Twenty counties comprise the response region. The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-1995, and during the nine years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

The N. C. Dept. of Public Safety and Crime Control is now in the process of extending contracts with seven North Carolina governmental units in North Carolina for provision of regional hazardous materials emergency response.

The State of North Carolina provides funding that fully supports the operational costs of the program.

City staff recommends City Council authorize the City Manager to renew extension of the Regional Hazardous Materials Contract with the N. C. Dept. of Public Safety and Crime Control for Region Six.

Water Authority Bid Awards for Critical Needs Phase III Contracts 1 and 2

Summary: This is a review of the Regional Water Authority's bid awards for Contracts 1 & 2 of the Critical Needs Phase III Water Distribution System Improvements.

Contract 1 - Sealed bids were received and opened on Thursday, March 6, 2003, for the Authority's Critical Needs Phase III Contract 1. Nine bids were received for Contract 1 with Wheeler Construction Company, Inc., submitting the low bid of \$751,689.00. Contract 1 includes the installation of approximately 14,400 linear feet of 8-inch and 6-inch ductile iron waterlines with all related appurtenances. A complete list of bidders follows:

Critical Needs Phase III – Contract 1
Engineer's Estimate: \$ 900,000

<u>COMPANY</u>	<u>BID</u>
Wheeler Construction Company, Weaverville, NC	\$ 751,689.00
Precision Contracting, Inc., Asheville, NC	\$ 765,900.00
Buckeye Construction Company, Canton, NC	\$ 883,544.75
Payne, McGinn & Cummins, Inc., Travelers Rest, SC	\$ 887,137.28
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Huntley Construction Company, Inc., Asheville, NC	\$ 959,889.00
Steppe Construction Company, Inc., Mill Spring, NC	\$ 983,425.00
T & K Utilities, Asheville, NC	\$ 985,100.00
Hobson Construction Company, Inc., Arden, NC	\$ 993,925.00
BC & D Construction, Cullowhee, NC	\$1,164,300.00

This Contract is the second of three that will comprise the Authority's Critical Needs Phase III program and are funded by the \$3 million high unit cost grant. The first contract, Contract 3, is being performed by Precision Contracting and is nearing completion. Critical Needs projects are focused at locations where our existing infrastructure is old, leaking and inadequate to maintain high levels of customer service.

The Office of Minority Affairs reviewed these bids and Wheeler Construction Company's bid complies with the requirements of the Minority Business Program. McGill Associates, P.A., the project engineers for Contract 1, have recommended award of this contract to the low bidder, Wheeler Construction Company.

Contract 1 has a liquidated damages clause of \$250.00 per day for failure to complete the project in the time allocated. Construction on the project will occur in the months of May through September 2003.

Contract 2 - Sealed bids were received and opened on Thursday, March 6, 2003, for the Authority's Critical Needs Phase III Contract 2. Nine bids were received for Contract 2 with Wheeler Construction Company, Inc., submitting the low bid of \$692,172.50. Contract 2 includes the installation of approximately 14,400 linear feet of 8-inch and 6-inch ductile iron waterlines

with all related appurtenances. A complete list of bidders follows:

Critical Needs Phase III – Contract 2
Engineer's Estimate: \$ 900,000

<u>COMPANY</u>	<u>BID</u>
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Wheeler Construction Company, Weaverville, NC	\$ 692,172.50
T & K Utilities, Asheville, NC	\$ 751,975.00
Precision Contracting, Inc., Asheville, NC	\$ 756,700.00
Payne, McGinn & Cummins, Inc., Travelers Rest, SC	\$ 756,994.12
Steppe Construction Company, Inc., Mill Spring, NC	\$ 802,795.00
Buckeye Construction Company, Canton, NC	\$ 838,526.50
Hobson Construction Company, Inc., Arden, NC	\$ 933,750.00
BC & D Construction, Cullowhee, NC	\$1,118,000.00
Huntley Construction Company, Inc., Asheville, NC	\$1,132,307.00

This Contract is the third of three that will comprise the Authority's Critical Needs Phase III program and are funded by the \$3 million high unit cost grant.

The Office of Minority Affairs reviewed these bids and Wheeler Construction Company's bid complies with the requirements of the Minority Business Program. McGill Associates, P.A., the project engineers for Contract 2, have recommended award of this contract to the low bidder, Wheeler Construction Company.

Contract 2 has a liquidated damages clause of \$250.00 per day for failure to complete the project in the time allocated. Construction on the project will occur in the months of May through September 2003.

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This report is provided to City Council for information only.

Water Authority Bid Award for Mount Royal Water Storage Tank

Summary: This is a review of the Regional Water Authority's bid award for the contract known as Mount Royal Water Storage Tank to Hobson Construction Co, Inc., of Arden, North Carolina, as the lowest responsible bidder.

The Engineering Department developed construction documents and specifications for the contract known as Mount Royal Water Storage Tank.

The project was advertised in March and due to lack of interest bids could not be opened as originally scheduled. The project was re-advertised and this time four bids were received and opened on April 10, 2003. The Engineering Department received very competitive bids. The following is a complete list of bidders:

<u>Company</u>	<u>Bid</u>
Hobson Construction Co., Inc	\$150,970.00
Cooper Construction Company	\$174,200.00
Buckeye Construction Company	\$183,892.00
Hickory Construction Company	\$219,500.00

The construction time for this project is identified as 90 calendar days in the contract documents. All bids were reviewed by the Office of Minority Affairs for compliance with the City's minority business goals. The bid by Hobson Construction Company, Inc. was found to be in full compliance and was deemed as a responsive bid.

This report is provided to City Council for information only.

Special Worksession on Joint Planning Area Scheduled for Thursday, May 29, 2003, at 12:15 p.m., in the First Floor North Conference Room, City Hall Building

Mayor Worley 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.

UPDATE FROM THE HAW CREEK PEDESTRIAN SAFETY TASK FORCE

Mr. Calvin Underwood updated City Council on the progress of the Haw Creek Pedestrian Safety Task Force.

Mr. Underwood said that in April of 2001 City Council adopted a resolution establishing the Haw Creek Pedestrian Task Force. The Task Force consists of staff from the City and N. C. Dept. of Transportation as well as community representatives. Members include: Al Kopf, Bernie Arghiere, Bob Brummond, Calvin Underwood, Cathy Ball, Chris Pelly, Deloris File, Gerry Hardesty, Jim Orr, Kenneth Wilson, Scott Shuford and Tony Moore.

He said that the criteria for sidewalks in the Pedestrian Thoroughfare Plan include: ½ mile of school; ½ mile of community center; ½ mile of church; commercial or business center; along major corridor; and high use area/pedestrian generator.

The Task Force has (1) met monthly since July 2001; (2) developed short term goal – install sidewalk between Liberty, Park and School; (3) developed long-term goals – install

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greenway connections in the Valley; develop an educational/awareness program; and sidewalks the length of the Valley.

The good news is that the TEA 21 Enhancement Grant has been approved for the Avon Road sidewalk as well as New Haw Creek Road sidewalk from Beverly Road to Arco Road.

Regarding the Avon Road Project, the design is complete for approximately 1,100 linear feet of sidewalk by City staff, they have obtained easements for sidewalk, and they have received a TEA 21 grant to fund most of the project.

Regarding New Haw Creek Project of Beverly Road to Arco Road, the design is complete for approximately 1,700 linear feet of sidewalk by City staff; they have received \$150,000 from N. C. Dept. of Transportation (NCDOT) Small Urban Funds for curb and gutter, resurfacing and storm sewer pipe; they have obtained all but three easements needed to construct the sidewalk; and they have received a TEA 21 Grant for most of the remaining funding.

Mr. Underwood explained the financial status of the current Phase I project which estimated costs are \$507,000. What they need to complete Phase I is (1) \$140,000; (2) in-kind services to complete the work; and (3) continued support for the Task Force.

Mr. Underwood said Phase II consists of (1) New Haw Creek from Arco to the end of the NCDOT right-of-way southwest of the intersection with Tunnel Road; and (2) Trinity Chapel Road.

Regarding the Trinity Chapel Road Project, the design is complete for approximately 1,800 linear feet of sidewalk by City staff; they are exploring options for funding; and they have obtained one of ten easements needed for construction. The estimated costs for this project is \$280,000, which is unfunded.

Regarding the New Haw Creek Project of Arco Road to Tunnel Road, the design is in progress for approximately 1,200 linear feet of sidewalk by City staff; they are exploring options for funding; they are preparing easements for sidewalk; they are contracting for easement acquisition; and, the State Road qualifies for NCDOT Small Urban Funds, which were requested in Fiscal Year 2003-04 budget. The estimated costs for this project is \$400,000, which they have the potential of \$250,000.

The current status of Phase II projects is that they anticipate \$250,000 from the NCDOT Small Urban Fund money; and the City will need to complete design and easement acquisition.

Beyond Phase II is (1) continue to ask for Small Urban Funds from the NCDOT for \$250,000 per year for New Haw Creek Road; (2) apply for TEA 21 Funds Bi-Annually; and (3) request additional City support either in funding or in-kind services.

Mr. Chris Pelly asked Council to direct the Public Works staff to stretch the available dollars as much as possible.

City Engineer Cathy Ball and Task Force member responded to various questions from Council.

On behalf of City Council, Mayor Worley thanked Mr. Underwood, Mr. Pelly and the entire Task Force for their efforts on this important issue.

FINAL REPORT FROM THE SUSTAINABLE ECONOMIC DEVELOPMENT TASK FORCE

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Mr. Jack Cecil, Chair of the Sustainable Economic Development Task Force, gave the final report of the Task Force, which has a sunset date of June 30, 2003.

He said that in May 2000, City Council adopted the Sustainable Economic Development Strategic Plan and, at the same time, appointed an Implementation Task Force (ITF) of local citizens to make recommendations for its implementation. The three-year term of the ITF expires in June 2003. He outlined several implementation successes for not only the City of Asheville, but for other agencies as well.

Going forward they would suggest the City prepare for fundamental shift in economic base; capitalize on strongest asset (Quality of Place); collaborate with other agencies; seek public-private partnerships for redevelopment; build tax base, provide housing, enhance community with higher density, mixed use development in commercial areas; improve both inter and intra-city transportation and telecommunications access and connectivity; continue Task Force in advisory capacity; and focus areas where the City has an opportunity for impact: sustainable development pattern; new development tools – regulatory and financial; riverfront development; entrepreneurial/small business development; technology infrastructure; transportation; and creative/knowledge economic workforce.

The Task Force members have determined a need for continuing this effort and have developed a recommendation asking Council to continue the Task Force as an advisory group for Phase II of implementation for an additional two-year period, terms to expire June 30, 2005.

Further, existing Task Force members were asked if they would like to continue serving in this capacity. For any vacancies, the Task Force will seek Council approval of any potential replacements.

City staff recommends City Council approve the resolution and re-appoint the Sustainable Economic Development Implementation Task Force for an additional two-year period to serve in an advisory capacity to City Council and City staff.

Upon inquiry of Vice-Mayor Bellamy, Planning & Development Director Scott Shuford explained how the Sustainable Economic Development Strategic Plan correlates to the Asheville City Plan 2025.

Vice-Mayor Bellamy suggested more women be appointed to the Task Force.

Councilman Mumpower asked how City Council could be more supportive of the Task Force. Mr. Cecil hoped Council will be supportive when there is an appropriate opportunity to make investment of capital; being supportive of the Task Force; and commitment to the Plan itself.

Councilman Dunn asked what the Task Force feels about the merits of annexation and what are some of the negative impacts of the Sustainable Economic Development Plan. Mr. Cecil responded and invited Councilman Dunn and other Council members to attend the Task Force meetings to get various questions and/or comments addressed.

Councilwoman Jones suggested more small business people as well as people who represent the creative economy be appointed to the Task Force.

On behalf of City Council, Mayor Worley thanked Mr. Cecil and the Task Force for their hard work on this Task Force.

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Mayor Worley 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

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 has been scheduled on May 13, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Revision to the Requirements for Home Occupations

Mr. Scott Shuford, Director of Planning and Development, said that this is the consideration of an amendment to the Unified Development Ordinance to revise the requirements for home occupations.

- This code amendment is a general "housekeeping" type amendment intended to clarify and simplify the wording of this section of the Unified Development Ordinance and to formalize prior interpretations of the code. For example, the existing subsections containing language about prohibitions against advertising and allowance of signage that may have seemed to be potentially conflicting are combined in one section for clarification purposes.

The two material changes to the code are listed below. Each codifies prior interpretations of the code.

- The revision of the parking requirements to establish a specific parking requirement and to allow someone who cannot park in the side or rear to have a home occupation (subsection f).
- The establishment of a specific limitation on the number of visitors allowed (subsection i).

The Planning and Zoning Commission recommended approval of this code amendment on April 2, 2003, by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mr. Shuford responded to a question from Vice-Mayor Bellamy regarding artist's studios and said that he would amend the ordinance in order to allow incidental retail sales.

Mr. Shuford responded to Councilman Mumpower when he asked if there was a way to have the affected people review this amendment. Mr. Shuford said that they could send the ordinance to a number of people who have home occupations to review, but felt that that could not be accomplished prior to the scheduled public hearing next week. After further discussion, Councilman Mumpower felt the scheduled public hearing next week could proceed.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this public hearing on the May 13, 2003, formal City Council agenda.

AMENDMENTS TO THE SOLICITATION/SIDEWALK ORDINANCES

Solicitation Ordinance

- City Attorney Oast said that this is the consideration of amendments to the ordinance regulating solicitation and panhandling.

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Back in November of last year, Council adopted some amendments to the City ordinance regulating solicitation and panhandling, particularly in downtown and Biltmore Village. Council expressed some concern about the reach of these amendments, and requested staff to propose further amendments to address these concerns.

The November amendments prohibited panhandling of any sort within a designated "halo" of certain locations such as banks, cash dispensing machines, or bus stops. It also prohibited panhandling while intoxicated or after dark; and prohibited panhandling from people standing in lines, such as for a musical or theatrical performance. The November amendments also prohibited panhandling within certain high traffic areas of downtown and Biltmore Village, because of their high tourist presence.

This draft retains the "halo" limitation, but clarifies that it applies to ATMs and financial institutions, and reduces the size of the halo from 50 to 20 feet; it retains other location-specific prohibitions, such as bus stops and taxi stands, and lines for entertainment venues; it adds outdoor dining areas and outdoor merchandise areas to the list of locations where panhandling is prohibited. The ordinance retains substantially all of the "aggressive begging" prohibitions, and adds some clarification to the acts that constitute aggressive begging. Also retained are the prohibitions against panhandling at night or while intoxicated. The previous ordinance prohibited those activities on public property; this proposal is not limited to public property.

The most significant change is in the regulation of panhandling within the high traffic areas. The areas themselves are the same. However, within these areas, a person would be able to make use of non-verbal means to panhandle or ask for money, such as displaying a sign, an open musical instrument case, or an upturned hat. What is prohibited within these areas is the use

of personally-directed words or gestures. Solicitation between mutual acquaintances or family members is excepted from this prohibition.

These amendments target the conduct that has been a problem, and the locations where those problems arise, and is based on ordinances from other cities that have been judicially upheld. With respect to the high traffic areas, the amendments do not prohibit panhandling, but essentially establish a different threshold for what constitutes "aggressive begging".

These amendments are being brought forward with some changes to the sidewalk vendor ordinance.

If Council desires to implement the changes described above, a motion to adopt the ordinance is recommended.

City Attorney Oast explained one suggested change to the proposed amendment, which will permit passive solicitation after dark.

Discussion occurred regarding aggressive, active or passive solicitation; why this ordinance is not applied city-wide; and the need for education of the ordinance.

Mayor Worley 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.

Sidewalk Ordinance

Director of Downtown Development Sasha Vrtunski said that this is the consideration of a revised sidewalk ordinance to improve the administration and implementation of the ordinance.

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In 1999, City Council approved revisions to the sidewalk ordinance, which regulated outdoor dining, merchandise, pushcarts and street entertainers on City sidewalks in downtown and Biltmore Village. Communities nationwide have discovered that active sidewalks augment downtown revitalization efforts and enhance downtown businesses. Asheville has been a leader in this area for the past ten years. Downtown currently has 21 restaurants with sidewalk dining, 4 retail shops that display merchandise, 12 pushcarts and approximately 70 street entertainers. These uses contribute to our vibrant downtown and help businesses expand their sales area, especially during the warmer months.

It has been four years since the last amendments to the ordinance and staff felt that there was a need to fine-tune the ordinance. Some of the changes are simply wording changes that will make the ordinance clearer for both the public and staff. Other changes are being recommended to you as substantive ways to streamline and improve the ordinance.

This is not a complete summary of changes, but the major proposed changes are as follows:

Street Entertainers - With the revisions to the solicitation ordinance, it will be allowable for anyone to passively solicit. To make the sidewalk ordinance compatible with the solicitation ordinance, permits would no longer be issued for street entertainers. The rules for Street Entertainers in Section 16-145 (general requirements) would still be in force. Currently, police officers provide enforcement for this ordinance, and would continue to do so. If these revisions are passed, the City Development office will notify all current street entertainers of the changes, including the entire list of rules for entertainers.

Amendments to 16-145 include:

- Perform no longer than one hour in a location, and wait an hour before returning to that location. Generally, there have not been conflicts between entertainers, but this requires entertainers to share locations in downtown, especially popular ones.
- Not perform at locations designated for community event or festival, unless permitted to play at the event or festival by the coordinator. This is not a new rule per se, but has been added to this section.
- Minimum distance of 40 feet between entertainers.
- Entertainers must comply with the solicitation ordinance and the noise ordinance, and all other federal, state and local laws.
- Removal of requirement for street entertainers to obtain a permit.

Pushcarts

- Pushcarts may not be enclosed such that the pushcart operator can stand inside it.
- Pushcart operator shall keep the immediate area within a 5-foot radius of his/her pushcart clean.

- If a permitted pushcart operator requests to move, then he/she shall submit a new application and fee.
- Hours of operation extended from 9 a.m. – 10 p.m. to 7 a.m. - 10 p.m.
- Pushcart operators cannot be absent from their location for more than 15 consecutive days during the months of April through September. These months represent the busiest season for downtown, and there is a high demand for pushcart locations in the core of downtown. Currently, there is a problem with people obtaining permits, using the location occasionally, sometimes not at all, and tying up the spot so that no other pushcart vendor can use it. In cases where a pushcart operator is not consistently operating their cart,

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staff will be able to revoke their permit for non-use and allow another individual to place a pushcart on the location.

No changes to the Outdoor Dining and Merchandise section.

City staff recommends approval of the proposed sidewalk ordinance revisions.

Upon inquiry of Councilwoman Jones, Ms. Vrtunski said that a permit is \$125/year and we have 11 pushcarts.

After a short discussion after Councilwoman Jones brought up the issue about pushcarts being displaced during Bele Chere, it was pointed out that the prohibition applies to all outdoor festivals, not just Bele Chere. However, Ms. Vrtunski said that she would talk to the Bele Chere Board and perhaps a compromise could be reached, noting that the spots are extremely competitive.

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Mayor Worley 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.

MISCELLANEOUS

At the City Manager's suggestion, it was the consensus of City Council to delete the May 20, 2003, City Council worksession. Councilwoman Jones suggested devoting one Tuesday afternoon for the budget worksession next year.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:58 p.m.

CITY CLERK

MAYOR