

Regular Meeting

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

Absent: Councilman Joseph C. Dunn

PLEDGE OF ALLEGIANCE

Marine Corp Veteran Danny Roberts led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 12, 2003, AS "WORKPLACE PARTNERSHIP FOR LIFE CELEBRATION DAY"

Mayor Worley read the proclamation proclaiming Tuesday, August 12, 2003, as "Workplace Partnership for Life Celebration Day " in the City of Asheville. He presented the proclamation to Mr. Ed Jenest and Mr. Alan McKenzie who briefed City Council on some activities taking place during the day. They passed out to Council a lapel pin and an organ/tissue donor card.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 8, 2003, AND THE WORKSESSION HELD ON JULY 15, 2003

B. RESOLUTION NO. 03-116 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RELOCATE A WATER LINE IN THE STATE RIGHT-OF-WAY ON US 19-23 AT BRIDGE 123 (SMOKY PARK)

Summary: The consideration of a resolution authorizing the Mayor to execute a utility agreement with the N. C. Dept. of Transportation (NCDOT) to relocate a water line in the State right-of-way on US 19-23 at Bridge 123 (Smoky Park).

The Water Resources Department operates a 6-inch water main along 19-23 under the policies of the Regional Water Authority of Asheville, Buncombe and Henderson (RWA), which is owned by the City of Asheville. According to the 1996 Master Plan, this line needs to be upgraded to an 8-inch line. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT and the City staff agreed to relocate the 6-inch water line and upgrade it to an 8-inch main to meet the requirements of the 1996 Master Plan. The NCDOT has estimated the construction cost of this relocation at \$32,424.75. An additional \$4,875.25 needs to be added to include contingency and inspections, so the total amount that is budgeted is \$37,300.

The Utility Agreement will authorize NCDOT to include the water main relocation in the highway construction project, with NCDOT administering the construction and invoicing the City

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of Asheville upon completion of the project. The lump sum payment \$32,424.75 is due within sixty days of invoicing by NCDOT. Funding will be available in the 35 Fund – Water Major Capital Improvements Fund effective July 1, 2003. The Fiscal Year 2003-2004 Transfer to Capital will fund this NCDOT project as well as other NCDOT Projects, Annexation Projects, and Treatment Plant Improvements.

Staff recommends that City Council approve a resolution authorizing the Mayor to execute a Utility Agreement with NCDOT to relocate a water line in the State right-of-way on US 19-23 at Bridge 123 (Smoky Park).

RESOLUTION BOOK NO. 27 – PAGE 447

C. RESOLUTION NO. 03-117 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY BETWEEN COURTLAND AVENUE AND HOUSTON STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located between Courtland and Houston Streets.

The subject property is an RS-8 Residential Single-Family High Density District parcel located on Courtland Avenue and extending south to Houston Street comprising of approximately 3.8 acres (PIN No. 9639.20-91-4343). The Fair Reuse Value for the parcel is \$65,600. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development. The property was appraised by Richard L. Smith, SRA, on May 22, 2003, at a value of \$65,600.

Flynn Christian Fellowship Home has submitted a bid to purchase the property in the amount of \$65,600. The proposal includes a plan to build three two-story buildings on Courtland Avenue for office and residential space along with an additional two story residential structure on Houston Street at an anticipated development cost of \$700,000.

Approval of the resolution will establish a minimum price of \$65,600 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution authorizing advertisement for upset bids.

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D. RESOLUTION NO. 03-118 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSTALLATION OF SIDEWALK ALONG US 19-23/74A

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for the installation of approximately 1,600 linear feet of concrete sidewalk along US 19-23/74A from Asheville School to the newly constructed bridge over the railroad tracks.

NCDOT is currently in the process of replacing a bridge on US 19-23/74A (also know as Smoky Park Highway). This bridge is located in front of Lowe's. As part of this project we have requested that sidewalk be installed along the section of roadway adjacent to the construction.

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The agreement will require NCDOT to pay up to \$50,000 for the construction of the sidewalk. The City of Asheville will be required to pay any costs above this amount. The City has an additional amount of \$10,000 budgeted in this year's budget for this project. While the sidewalk has not been constructed, the cost of the sidewalk is not expected to exceed \$60,000.

As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State maintained roadways.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with NCDOT for the installation of approximately 1,600 linear feet of concrete sidewalk along US 19-23/74A from Asheville School to the newly constructed bridge over the railroad.

RESOLUTION BOOK NO. 27 – PAGE 449

E. ORDINANCE NO. 3041 - ORDINANCE AMENDING APPENDIX B – SCHEDULE OF CIVIL PENALTIES – ESTABLISHING FIRE CODE VIOLATIONS

Summary: The consideration of an ordinance amending the fire code violations in order to be consistent with the new State Fire Code.

The North Carolina State Building Code Council adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina effective January 1, 2002. Section C of Appendix B (Schedule of Civil Penalties) establishes Fire Code violations that coordinate with Chapter 6 of the Code of Ordinances, which is the Fire Code for the City of

Asheville.

Staff recommends City Council adopt the ordinance amending Section C of Appendix B (fire code violations) of the Code of Ordinances in order to be consistent with the new State Fire Code.

ORDINANCE BOOK NO. 20 – PAGE 385

F. RESOLUTION NO. 03-119 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY BY NON-WARRANTY DEED WHATEVER INTEREST THE CITY MAY HAVE IN A PORTION OF WESTCHESTER DRIVE

Summary: The consideration of a resolution authorizing the Mayor to convey by non-warranty deed whatever interest, if any, the City may have in a portion of Westchester Drive containing residential encroachments.

Westchester Drive is located between Chiles Avenue and Holland Place in the Kenilworth Community. Harry M. Weiss and wife Roberta J. Cole along with Mary Caudill Weiss own the real property located at the corner of Chiles Avenue and Westchester Drive, being 17 Chiles Avenue. Situated on the property at 17 Chiles Avenue is a residential structure with a garage. Approximately 3 ft. of the garage along with a portion of the porch and foundation wall, encroaches onto the right of way of Westchester Drive. It is unclear whether the encroachments existed before or after the right of way of Westchester Drive was established; although the evidence appears to indicate that the dwelling existed prior in time to the designated right of way. Due to future plans for the property, the property owners desire to resolve the encroachment issue as such is a potential cloud on title. City staff has investigated and determined that the encroachment of the garage and possibly the other encroachments have been in existence since 1925. The City has exercised neither dominion nor control of the area of the encroachments and has no interest in exercising such control. To the extent the City has any interest in the area of

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the encroachments, which the City believes it has no interest, conveying such interest is in the City's best interest.

The Public Works Department recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed conveying whatever interest, if any, the City has in the right of way containing the encroachments as specified above.

RESOLUTION BOOK NO. 27 – PAGE 450

G. RESOLUTION NO. 03-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH E. LUKE GREEN CO., INC., TO PROVIDE DEMOLITION SERVICES TO REMOVE FOUR BUILDINGS AT THE HAYWOOD STREET PARKING DECK LOCATION

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with E. Luke Green Co., Inc., in the amount of \$184,377 for the demolition of four structures on the proposed Haywood Street Parking Garage Project.

In an effort to remove buildings for the new downtown parking deck, City staff, through the capital improvement process, has determined that four buildings have to be demolished. City staff solicited sealed bids from General Contractors, three of which were minority contractors, to provide demolition services. The following seven qualified bids were received:

E. Luke Green Co., Inc.	\$184,377
Jones Grading & Fencing, Inc.	\$224,000
Cherokee, Inc.	\$230,500
Buncombe Const. Co., Inc.	\$259,500
Still Enterprise, Inc.	\$288,995
Taylor & Murphy Const. Co., Inc.	\$327,889
Empire Dismantlement Corp.	\$345,670

City staff has reviewed all bids and determined that E. Luke Green Co., Inc., is the lowest bidder. City staff recommends acceptance of the total bid amount of \$184,377.

Approved funding is available in the capital improvement project account to pay for the demolition of these four buildings.

City staff recommends City Council authorize the City Manager to enter into an agreement with E. Luke Green Co., Inc., in the amount of \$184,377 for the demolition of four structures on the proposed Haywood Street Parking Garage Project with the condition that the City own all the structures prior to authorizing the contract to proceed.

RESOLUTION BOOK NO. 27 – PAGE 451

- H. MOTION SETTING A PUBLIC HEARING ON AUGUST 12, 2003, TO CONSIDER AMENDING THE MINIMUM HOUSING CODE**
- I. RESOLUTION NO. 03-121 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A LEASE WITH THE MEN'S GARDEN CLUB OF ASHEVILLE FOR ½ ACRE ON AZALEA ROAD**

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease with the Men's Garden Club of Asheville (MGCA) for 1/2 acre of land on Azalea Road.

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The 1/2 acre on Azalea Road is a portion of the property acquired by the City of Asheville from John Moyer. The City previously leased the space to the MGCA for one year from November 1, 2001, to October 1, 2002.

The MGCA has offered to enter into a nine (9) year lease for the space where it currently has constructed a greenhouse and appurtenant facilities at a rent of \$750.00 per year payable in goods and services. The proposed lease will enable MGCA to continue operating the greenhouse facility in its current location. The lease may be terminated by either party upon 60 days written notice.

The Parks and Recreation Department and Planning & Development Department staff recommend adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 452

- J. RESOLUTION NO. 03-122 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE**

Summary: This is the consideration of appointing members to the Sustainable Economic Development Implementation Plan Task Force.

There currently exists three vacancies on the Sustainable Economic Development Strategic Plan Implementation Task Force: Bob Roberts, Paula O'Hara and Jean Keen.

The Task Force has presented City Council with the following list of people who have been contacted and who have confirmed their willingness to serve, if asked: Laura Webb (Webb Insurance Services), Jacqueline Grant (Roberts & Stevens), John Mark Stroud (Fast Signs), Daniel Prevost (Institute at Biltmore), David McConville (Black Box Studio) and Peter Alberice (Camille-Alberice Architects).

On July 15, 2003, it was the consensus of City Council to appoint Laura Webb (Webb Insurance Services), Jacqueline Grant (Roberts & Stevens) and Daniel Prevost (Institute at Biltmore) to each serve a two year term, all terms to expire June 30, 2005.

RESOLUTION BOOK NO. 27 – PAGE 453

- K. RESOLUTION NO. 03-123 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS**

Summary: This is the consideration of appointing members to the Board of Electrical Examiners.

The terms of Tommy Wilson, Ronnie McAbee, Terry Ponder, Joe Enderle and Harold Garland expired on July 1, 2003.

On July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Tommy Wilson (electrical contractor), Ronnie McAbee (journeyman electrician), Terry Ponder (utility representative) and Harold Garland (layman) to each serve an additional three-year term. All terms will expire on July 1, 2006, or until their successors have been duly appointed.

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In addition, on July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to appoint Brian Kintner (licensed engineer) to serve a three year term, term to expire July 1, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 454

L. RESOLUTION NO. 03-124 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: This is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

The terms of Frank Thomson and Curtis Walk expired on July 1, 2003.

On July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Frank Thomson and Curtis Walk to each serve an additional three year term, terms to expire July 1, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 455

M. ORDINANCE NO. 3042 - ORDINANCE LENGTHENING THE TERMS OF THE NOISE ORDINANCE APPEALS BOARD FROM TWO YEARS TO THREE YEARS

Summary: The consideration of an ordinance increasing the length of term for Council appointees to Noise Ordinance Appeals Board from 2 years to 3 years.

In connection with its appointment of new citizen members to the Noise Ordinance Appeals Board, Council requested an amendment to the noise ordinance, increasing the length of the term from two years to three years. This three-year term length is consistent with most other boards and commissions in the City. The ordinance will be effective for the terms of Council's appointments made at this July 22 meeting.

ORDINANCE BOOK NO. 20 – PAGE 386

N. RESOLUTION NO. 03-125 - RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

Summary: This is the consideration of appointing members to the Noise Ordinance Appeals Board.

The terms of James Fink (Regular member), Susan Andrew (Regular member) and Scott Fowler (Alternate member) expired on July 1, 2003.

On July 15, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint James Fink (Regular member) and Scott Fowler (Alternate member) to each serve a three year term respectively, terms to expire July 1, 2006, or until their successors have been appointed.

In addition, on July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to appoint Sieglinde Anderson (Regular member) to serve a three year term, term to expire July 1, 2006, or until her successor has been appointed.

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O. RESOLUTION NO. 03-126 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Summary: This is the consideration of appointing a member to the Transit Commission.

Mickey Mahaffey has resigned as a member of the Transit Commission, thus leaving an unexpired term until December 31, 2003.

On July 15, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Jennifer Knudtson to serve the unexpired term of Mr. Mahaffey, term to expire December 31, 2003, or until her successor

has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 457

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on 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 Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE DEVELOPMENT STANDARD BONUSES IN RESIDENTIAL DISTRICTS

Vice-Mayor Bellamy moved to continue this public hearing until August 12, 2003, in order to give Councilman Mumpower an opportunity to meet with Planning & Development Director Scott Shuford and time for the City Attorney to explore the Charlotte conditional use zoning process. This motion was seconded by Councilman Ellis and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REQUIREMENTS FOR SIGNS

ORDINANCE NO. 3043 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REQUIREMENTS FOR SIGNS

Mayor Worley opened the public hearing at 5:12 p.m.

Planning Development Services Director Joe Heard said that this is the consideration of an amendment to the Unified Development Ordinance to revise the requirements for signs. This public hearing was advertised on July 11 and 18, 2003.

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This code amendment is a general "housekeeping" type amendment intended to add language allowing community identification signs, create sign code allowances for several new zoning districts, and to formalize prior interpretations of the code.

A summary of the Sign Code changes include:

- Adds language relating to approval bodies in first paragraph.
- Codifies community identification sign allowances and standards.
- Adds provisions for Urban Residential District, Urban Village District, and Neighborhood Corridor District.

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- Achieves consistency with building code permitting requirements (previous requirement was for 60 day permit validity).

The Planning and Zoning Commission unanimously recommended approval of this code amendment on June 19, 2003 by a vote of 4-0. City staff also recommends approval of the proposed code amendment.

Mr. Heard said that the Coalition of Asheville Neighborhoods and the Council of Independent Business Owners have reviewed this amendment. He said that each group has had an opportunity to comment and amendments have been made accordingly.

Upon inquiry of Councilman Peterson, Mr. Heard explained the procedure of placing a sign in the median.

Mayor Worley closed the public hearing at 5:20 p.m.

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

Councilman Peterson moved for the adoption of Ordinance No. 3043. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 388

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-127 - RESOLUTION AUTHORIZING CITY COUNCIL TO AUTHORIZE THE PUBLIC ART BOARD TO PROCEED WITH THE PURCHASE OF THE IDA KOHLMAYER PIECE TO BE PLACED ON CITY-OWNED PROPERTY

Dr. Barbara Cary, Chair of the Public Art Board, presented a proposal to City Council for the acquisition of a piece of sculpture by an American artist from the south, Ida Kohlmeyer. They are carrying out the charge made to the Board by City Council. That charge includes making recommendations to Council for the acquisition of high quality artwork that reflects Asheville's unique character, that will be visible and accessible to as many residents and visitors as possible, and that will promote Asheville as an arts destination city. The Board is a group made up of local artists, arts educators and other arts professionals. Knowledgeable about public art and mindful of the best interests of the people of Asheville, the Board has selected this artwork. It's a piece created by a distinguished, highly regarded American artist and we believe that it's an artwork that any art savvy American city would be proud to own. The following are some cities that own outdoor Ida Kohlmeyer art sculptures: Two in New Orleans, LA; Charlotte, NC; Mobile, AL; Palm Springs, CA; San Francisco, CA; Santa Fe, NM; Miami, FLA; Hampton, NY; and Chicago, IL. A list of major museums exhibiting Ida Kohlmeyer's work are: Tate Museum, London; New Orleans Museum of Art; Museum of Women in the Arts, Washington, DC; High Museum, Atlanta, GA; National Gallery, Washington, DC; Jewish Museum, NY City; and Metropolitan Museum and the Museum of Modern Art, NY City. The sculpture stands eight feet high on a two-foot display pad. It is constructed of ¼ inch aluminum and finished with a baked on paint like a car finish. It can be maintained in much the same way that you maintain a car finish, with annual waxing, which should protect it from weather and make graffiti easy to remove, if necessary. The expense of maintaining this piece will be minimal. Several sites for the piece have been considered by the Board including the Glenn's Creek Greenway on Weaver Boulevard, a site on Patton Avenue as

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a gateway sculpture, and in various park systems along the French Broad River. Because the Public Art Board Master Plan includes a provision for neighborhood and gateway art, it may not be placed downtown. Other reasons for a non-downtown site are that downtown is in a state of design flux right now and also that the downtown area is almost approaching art saturation. When installed, it will join the City's other 35 artworks as the only outdoor piece created by a woman.

Upon inquiry of Councilman Peterson, Dr. Cary said that the total cost of the piece is \$55,000 and that doesn't include installation. Out of the \$55,000, \$32,000 has already been raised and \$5,000 is yet to be raised by the Board. They are requesting \$18,000 from the City, which has already been appropriated for public art. She said that this piece would help further tourism and attractions of Asheville as an art city. She said that the policy is to have the most diverse collection that can be acquired. Asheville has traditional representational pieces and what we wanted to do was to find something that would add some breath to our collection and add some diversity. She said most of our collection is conservative and more traditional and this piece is for people who don't have conservative tastes.

Upon inquiry of Councilwoman Jones, Dr. Cary explained how the board selected this piece. She said various artists made presentations to the Board of their work. The Board talked about the characteristics of the piece they wanted Asheville to acquire. This recommendation is being made after a lot of consideration was given. We wanted to acquire a piece by a woman artist, which was unlike anything else that we had, and a monumental piece. She said this is the first major acquisition that the Art Board has made to Council for art since the City set up the fund in 2000.

Upon inquiry of Councilman Ellis, Dr. Cary said that with outside public art vandalism is an on-going concern and something that can't be ensured against. This piece has a high resistant finish and if it is waxed and maintained, graffiti and those kinds of things are fairly easy to remove. We did research that and talked to people who were familiar with the conservancy of pieces like this.

Upon inquiry of Councilman Ellis, Ms. Pam Myers, member of the Public Art Board, said that Ida Kohlmeyer has passed away and the Foundation she set up continues to exist to safeguard the future of her work. They are placing remaining artworks in museums and with communities throughout the country. As with anything that becomes scarcer over time, the value will continue to increase.

Upon inquiry of Vice-Mayor Bellamy, Parks & Recreation Director Irby Brinson said that his department currently maintains the existing 35 pieces the City has under its ownership, which majority of that being the Urban Trail locations. We maintain those with in-house crews and they know how each piece is required to be maintained. We have a scheduled maintenance for each

piece which is generally every 2-3 months and once vandalism or graffiti is seen we remove it that day. The on-going maintenance of this piece is probably less than what we are doing with some of the current Urban Trail pieces. Regarding the installation of this piece, Mr. Brinson said that we will probably have an engineer give us a drawing of what is needed and we will handle it in-house, as we do it all the time.

Upon inquiry of Vice-Mayor Bellamy, Dr. Cary said that they are making this recommendation to Council to broaden the collection. Asheville is an arts destination city. This is a sophisticated piece and for people who know something about art will enjoy.

Mr. Walter Plaue spoke in opposition of the purchase. He suggested the City donate a piece of property for the piece to be located on and the Public Art Board come up with the balance of the funds.

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Mr. Fred English, Haw Creek resident, spoke against purchasing the piece in that Asheville already has too much diversity.

Mr. Chad Nesbitt spoke in opposition of the purchase. He felt that money should be allocated to the film business because that will put jobs back in our area.

Mr. Alan Ditmore, Leicester resident, spoke against the purchase and was concerned about the materials of the sculpture.

Mayor Worley said that Councilman Dunn could not be present at this meeting, but asked that he read the following statement on his behalf: "While I realize the value of the arts within our city, and how much it impacts the lives of many people, I feel I must go on record, despite the fact that I am not present for this vote. Public money that we spend on any issue must, in my opinion, look out for the well being and needs of the majority of our citizens. This is especially true in tight economic times. I would not be making these statements if our city found itself in a good financial situation. Art is a very subjective thing. It can bring out emotions in everyone that sees, hears, or feels the thoughts of the artist who create the piece. In this case, it is really not my place to judge the art. Whether I like it or not has nothing to do with my decision. My decision not to support this purchase is based on the fact that our city has not recovered from budget problems that have lead us into two stormy years of trying to get the maximum use of smaller amounts of money. I do not have to remind the Council that we have supported the Arts Council, the Civic Center, Parks and Recreation, and the list goes on and on. All of these ventures support art in one way or another. I also do not have to tell Council that many worthy causes were not supported by this last budget. Help-Mate was one of many that was not funded. But while we could not fund these areas, some members on Council are ready to support taxpayer dollars on a piece of art that is very costly! Sure, \$18,000 does not seem like a lot of money, but to those citizens who are burdened by higher taxes and poorer service, this sends a message that their hard earned tax dollars are not being cared for as much as they should be! This piece of art does not reflect our city's or region's personality, culture or history. We have many local artists who can create art for our city in wonderful ways. This money could be kept within our community instead of going to New Orleans. I have serious doubt that a large majority of our citizens will appreciate this purchase. Those fine folks in our community who will appreciate it will be in a small minority. I feel our citizens will find this piece to be divisive in nature and create more conflict than study and reflection. The tax money taken from our citizens needs to be cared for carefully. To say that this purchase meets the needs of our city is 'very doubtful at best.' I had an email from a very hard working citizen who just wanted to know how we can spend this amount of money when her street has not been paved in 40 years? Another call left a message saying she did not want to hear Council crying about not enough funding for basic city services, where there is money available for these kinds of projects. I have to agree with them both. In closing, I do not feel our city is in the position of spending money on projects like these. If the arts community strongly feels this piece needs to come to Asheville, I would suggest they use their money to do so. Place it in a museum for those who will appreciate it and are willing to pay to see it. Let's turn our attention to local artists and allow them to create art for the public's consumption that reflects our region, state and city in a more understandable way! Finally, many citizens are being very careful with any small excess money they have. I feel City Council needs to show the same restraint. When this money was given to the board for art purchases, we were not in such a tough financial constraint. Circumstances change. We need to show that our decisions truthfully reflect situations as they now exist. Buying this piece at this time will send the wrong message to our citizens. Maybe at another time or place this could be appropriate, but tonight is not that time!"

Councilman Mumpower said it was not pleasant to resist folks that we have appointed to help us with this issue. He feels the Board knows what they are doing. Council is required to vote on this project for a number of reasons. One of them is we are charged to be good stewards with our money. He believes we have a responsibility to spend our limited public art money on

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projects that a reasonable majority of our citizens can embrace. He is concerned that this piece goes to an end of the spectrum that will lose a lot of folks who might otherwise appreciate a public art opportunity. Art should stimulate, but art can also alienate.

He believes the Board when they say art is important to the community, but is concerned again that when we go to certain extremes we risk alienating people unnecessarily. We have a large pool of local artists in the community and he would like to see us spend our local money on local efforts. Whatever the vote is, he personally encouraged the Board to reach out to some of the local artists. If this becomes a private effort, he will donate a couple weeks of his City Council take-home pay to the Board. But, when it comes to spending the public's money on this effort, he was afraid that he will be compelled to say no. He thinks it steps a little further than he is personally comfortable with.

Councilwoman Jones said that she would support the purchase of this piece. City Council takes the job of placing people on our boards very seriously and this Council-appointed Board has studied this for three years. She knows this is a lot of money, however, there is buy-in from other sectors and that bodes well that a lot of people in this community do care about this piece and do want to see it here. She feels like putting in 1/3 of the purchase price is fair, particularly since the Board was charged with public art and expanding our collection. She was initially concerned about the artist's reputation, but with additional research she feels a lot better about that, particularly with a list of the other cities that have chosen to display her art. Even though art is not her passion, she does feel like we need to hold all of the citizens' interest and attention. Public art is something that we have charged this Board with and they have done their job. On a personal note, she is excited that we will have an outdoor piece of public art by a woman.

Councilman Ellis thanked the members on the Public Art Board for doing this. There is no question that this is not a conversation piece and the Board has raised the awareness of arts in this community to a level we haven't seen in a long time. He understands that is what the Public Art Board is doing tonight, but many times public hearings are held prior to coming to City Council. He used the Civic Center Commission and the Planning & Zoning Commission as examples: (1) The Civic Center Commission has held at least two public hearings regarding the possibility of hockey returning to Asheville and he felt they have done their due diligence in their recommendation to Council; and (2) The Planning & Zoning Commission always has at least one public hearing prior to coming to Council. In his opinion, because this is such a conversation piece in the community, and thus controversial, he would prefer to have a little more due diligence by the Public Art Board. He would like to see a little more effort to bring the community to a buy-in on a piece of this type. He was also concerned about the piece being safe and secure. He suggested the Board come back to Council after more public input on this piece and with a more definite location of it. He does want to support the Board because Council appoints boards to bring recommendations to Council on behalf of the citizens.

Mayor Worley said that he intends to support the acquisition of the piece. This is not about whether he likes or dislikes this particular piece. He recognizes that no matter what piece of public art we might seek to obtain, someone will like it and someone will dislike it. It's about individual tastes. It's not about diverting funds from some of our needs in the City. These funds were set aside for the purchase of public art long ago. It's not about local art vs. out of town art. We have a lot of public art that reflects our heritage. We are a diverse community. He thinks this is really about who we are and what we want to be for all of our citizens. We tend to view issues, like the acquisition of public art in isolation and we forget how they relate to the goals of the entire City. It's easy to say don't spend that money when we do have other needs in other areas. Again, these funds come from monies that have already been set aside. This is \$18,000 to apply towards a purchase price of \$55,000. This is a bargain in terms of the City's expenditures to acquire it. Our budgets are always tight. No matter what the art or when the occasion, you will have that thrown out as a reason not to purchase it. We have a lot of needs in the community.

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First and foremost we need jobs. We are like many communities that have experienced the decline in the manufacturing jobs. We have infrastructure needs. But the question is how do we fulfill those needs. If you think about this in the big picture, we pay for those needs by attracting business to Asheville and by bringing people here. It's a changing climate when it comes to the economy and success in providing jobs. Sense of place becomes critical to our success in bringing companies here. We are in a new economy, a knowledge-based economy, and a technology-based economy that has replaced the traditional manufacturing. We are in an economy where those who control the jobs and those who can bring the jobs can live and work anywhere in the United States. It is that sense of place, along with the other basic infrastructures, such as broadband and things that we have developed, that enable us to be successful. For at least three years, Asheville has been named as one of the top 25 art destinations in the United States. That helps create the sense of place. We are in a wonderful area and art adds to that. When he looks at the acquisition of this art, he looks at it in the context of the big picture. Is this what we need to do to make Asheville successful, not just in the arts, but in all areas of economy in ways that will bring us jobs and ways that will keep our children here? He thinks the answer is yes. We need to maintain our place as one of the top art destinations in the county. He thinks we need to do more things like this that maintain and improve our sense of place. He thinks it's not just the acquisition of art, but an investment in our future.

Vice-Mayor Bellamy said that many years ago Council developed Amboy Road Park. When the idea was before Council it required a lot of money, including grants. She didn't like the idea, but she felt that there were citizens in our community who appreciate open spaces, greenways and parks. Earlier this month we received an award for that Park. Over 75,000 people last

year enjoyed that Park. It required a leap of faith from the Council to support that Park in the beginning. Asheville is an arts destination. That is who we are. That is one of the reasons why tourists come to our City. Tourists pay taxes and taxes help pay for streets and sidewalks. City Council is made up of seven individuals who represent nearly 70,000 people. Of that 70,000 people, all of them do not like affordable housing, parks and greenways, or art; however, we have to keep collectively in mind that we can't only support our passions. We must keep in mind all of our citizens. She personally doesn't like the art piece, but it's not for her to decide on who does and doesn't like this art. She will support this acquisition because there are people in the community who believe this art should be here. Also, in her trip to Portland, Oregon, they have an ordinance mandating that every development in their downtown area set 1% aside that must be used for art. They believe it makes a difference in their economy. She doesn't think Asheville needs to go that far but feels we must be supportive of all the citizens in our community.

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

Councilman Peterson moved for the adoption of Resolution No. 03-127. This motion was seconded by Vice-Mayor Bellamy and carried on a 4-2 vote with Councilman Ellis and Councilman Mumpower voting "no".

Mayor Worley said that since Resolution No. 03-127 passed by a 4-2 vote and it involves the expenditure of public funds, it must have a second reading before final adoption. The second reading will be held on August 12, 2003.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that if a Council Member is absent from a meeting entirely, their vote doesn't count one way or the other.

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B. RESOLUTION NO. 03-128 - RESOLUTION MAKING APPLICATION FOR COVERAGE OF RETIREMENT COVERAGE GROUPS OF EMPLOYEES UNDER THE OLD AGE, SURVIVORS, AND DISABILITY INSURANCE PROVISIONS OF TITLE II OF THE FEDERAL SOCIAL SECURITY ACT

Human Resources Director Belinda Odom said that this is the consideration of a resolution approving Social Security Contributions for firefighters providing the referendum outcome on Monday, October 27, 2003, is approved by the majority of voters.

City Council, during the budget process, appropriated funds to cover Social Security Contributions for firefighters, provided firefighters, by majority vote, approve the referendum.

The State Treasurer's Office requires an approved resolution by City Council, an appointed referendum officer, an effective date of coverage, and the date of the referendum prior to the referendum taking place.

Adoption of this resolution will accomplish the following: (1) appoint Belinda Odom, Human Resources Director, as the appointed referendum officer; (2) establish October 27, 2003, as the date of the referendum and the effective date of coverage providing the referendum is approved; and (3) verify that there will be 203 eligible voters in the referendum.

City staff recommends City Council adopt a resolution approving the date of the referendum as October 27, 2003, on the question of mandatory social security contributions/deductions for all firefighters.

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

Councilman Ellis moved for the adoption of Resolution No. 03-128. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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C. CIVIC CENTER MINOR LEAGUE PROPOSALS

Mr. Peter Crosa, Chair of the Civic Center Commission, made the following report to Council:

Recommendation #1 – We recommend that, while hockey is a viable event for the Civic Center, it would be best to wait

until the following year (2004/2005) to schedule and host a hockey team.

- Booking hockey at the Civic Center represents 30 potentially profitable events, thus, further reducing the City's contribution to operating the Civic Center.
- It is understood that a hockey team would need six to 10 months to prepare for a successful season.
 - a.) Attempting to execute a contract and initiate a Hockey season now (even by August 1, 2003) would only allow two months for a team to:
 - confirm investors,
 - set up offices and staff,
 - recruit players and coaches,
 - schedule games, and
 - sell tickets and sponsorships.

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- Postponing a hockey season to October 2004 would allow the team a better choice of dates, thus, a greater chance for success.
- Postponing a hockey season to October 2004 would allow City staff to determine which league represents the best deal for the citizens of Asheville.

Recommendation #2 – We recommend that City staff and Council use this additional time to conduct thorough “due diligence” to determine which league has the greater potential for success and that staff negotiate the best possible contract with that league by November 10, 2003, for the hockey season starting October 2004.

- Due diligence should include:
 - a. Adequate review of business plans,
 - b. Learning the identity and commitment of investors,
 - c. Review the general franchise document to determine investor commitment and liability to the team,
 - d. Checking references of league and team owners,
 - e. Evaluate management's (or proposed management) experience in sports management, marketing, recruiting, etc.,
 - f. Community outreach,
 - g. Review performance (financial, outreach, etc.) in cities with existing teams,
 - h. Interview facility managers in other cities to determine the advantages and disadvantages of the league's team in that city's facility, and
 - i. Establish a weighted evaluation template with the objective of an impartial, numerical representation of the relative value/viability of the teams, prior to beginning the “due diligence” function.

Upon inquiry of Councilman Mumpower, Mr. Crosa said that there has been no official statement by either league that they can put this together in a couple of months, but at least one investor questioned whether it was getting too late in the year to begin a new season.

When Vice-Mayor Bellamy asked about the timeframe for this to come back to City Council, Mr. Crosa said that the Commission and City staff will have a contract negotiated with the chosen league by November 10, 2003, for the hockey season starting October 2004. They will bring their recommendation to the November 18, 2003, City Council worksession with anticipated formal action on November 25, 2003.

Vice-Mayor Bellamy noted that the major reason for delaying a recommendation at this time is because of the timing. Mr. Crosa explained that it's not only the Commission's opinion that it is too late in the season, but the opinion of other experts in the field of sports team management that felt at least 6-10 months would be desirable to prepare for a new team in a given city.

Upon inquiry of Councilman Peterson, Mr. Crosa said that Asheville wants a viable team and to give the team the best possible chance for success. Bringing in a team two months before the season starts is a recipe for trouble. It would be better for the City and the Civic Center to do it right starting off and not just jumping in.

Councilman Ellis thanked the Commission for their hard work at arriving at the best possible solution at this time.

Councilman Peterson said this is a good example of a citizen advisory board reviewing the options and coming up with better suggestions to recommend to Council.

Upon inquiry of Councilman Peterson, Civic Center Director David Pisha said that if hockey were to begin this season, they would only have seven weekend dates. If they start next season, then the NBDL's contract allows for an equitable sharing of dates. As far as finances, there is a sliding rent scale that actually protects the City from a lot of the change-over costs because that is built into the rent. Both leagues have said they would accept that.

When Councilman Peterson asked about the cooling tower, Mr. Pisha said that the cooling tower could not be replaced within two months so delaying the season would give the City an opportunity to study that issue as well. City Manager Westbrook said that the cooling tower is a large dollar cost item and it's one of those long-term issues. We have been repairing the cooling tower part by part, so even though it is an old structure functionally, it is operating. He said he didn't anticipate replacing the cooling tower because it is very expensive, but he would be glad to work with a league if they would be willing to finance it.

Councilman Peterson asked if we have received any information about the NBDL staying in Asheville after their contract runs out at the end of this season. He said that if the timeline for making a decision about a hockey league is this fall, then it would make a big difference whether the NBDL is here or not. He said there seems to be a concern that there are only so many weekend dates and can the City support two teams trying to play at the same time at the same facility and how that affects public skating. Mr. Pisha responded that there will be public skating, with or without hockey. It was the consensus of City Council to have the City Manager contact the NBDL's representative to find out about their future plans.

Councilman Mumpower said that in his discussion with the NBDL's local representative, it was his understanding that they fully intend to stay in Asheville and that they are actually expanding the league into other regions.

Councilman Mumpower said that Mr. Pisha and the Commission have been very careful to make a cautious decision and weight out realities of the facility with the demographics of our community. He appreciated them taking measured, cautious steps that give consideration to the fact that ice is a desired resource in the community, but it's also a very expensive resource and a complex resource and when you are talking about an older facility maintaining it, is it tough.

Mr. Fred English stated that since the Civic Center has never turned a profit since it opened in 1974, it should be closed.

Councilman Ellis spoke strongly in support of the Civic Center. In fact, the subsidy has lost less money almost every year since it opened. He has not been able to find one Civic Center around the country where the building itself makes money. The Civic Center is here to serve the people of this area. The vibrant downtown with all the restaurants is made possible by the Civic Center. He also pointed out that more people have been going through the turnstiles at the Asheville Civic Center since the Greenville Bi-Lo Center opened.

Mr. Chad Nesbitt felt the Civic Center staff should reach out to bring in shows.

Mr. Alan Ditmore felt the role of government is human needs and not luxury activities.

Mr. Walter Plaue felt the City needed to start bringing in more entertainment at the Civic Center.

Mr. Cliff Finegold, Asheville resident, briefed Council on the present situation of hockey. The Atlantic Coast Hockey League (ACHL) has been attempting to negotiate with the City and locate a group of local investors since April of 2003. The success of hockey would hinge on local people being involved in the ownership and promotion. The World Hockey Association 2 has not

sought any local ownership support. The ACHL makes good sense for an Asheville team. Travel expenses would be very manageable and rivalries, which promote more attendance, would be possible. He said that Mr. Ron Hansis, from the ACHL wanted him to ask the City Council what steps are necessary to get a commitment from Asheville for the ACHL. He told him as late as last night that the ACHL would still be willing to start this season in Asheville if an equitable lease could be negotiated in the next couple of days. With the limited number of Saturday dates available and the shortness of time between now and the beginning of the season in mid-October this is certainly not ideal, but they are still willing to make every effort to make this a success in Asheville for this coming season. If the lease cannot be worked out as soon as possible, he asked what the City Council would require of the ACHL to get the commitment for next season? Mr. Hansis will come to Asheville for meetings along with League Commissioner Mr. Jim Riggs whenever requested. The ACHL has its mid-winter meetings in January and they would very much like to announce and have representation from Asheville at those meetings. The Civic Center will make money from a hockey lease and concessions, public skating, figure skating clubs, youth hockey and adult recreation league hockey. The City will

profit from increased use of downtown parking, taxes from increased usage of downtown restaurants and hotels, and enhancement of the quality of life.

Mr. Dennis Justice felt the NBDL is committed to being in Asheville, but they may want to negotiate their lease. The City has not heard from any league on how they can help address the renovations of the Civic Center.

A Candler resident hoped that the City Council will bring hockey back to Asheville.

Councilman Mumpower moved to instruct City staff and the Civic Center Commission to continue exploration of a tenant relationship with an appropriate hockey league for the 2004-05 season with anticipated resolution of contractual discussions by November 10, 2003. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

D. MOTION SETTING A PUBLIC HEARING ON AUGUST 12, 2003, FOR THE SALE OF DOWNTOWN PROPERTY TO THE GROVE PARK INN

City Attorney Oast said that this is the consideration of adoption of a motion setting a public hearing on August 12, 2003, on the conveyance of City-owned property.

Earlier this year, the City entered into a Downtown Development Agreement with Grove Park Inn for the possible development of two sites for mixed use buildings. Site #1 is a relatively small site (approximately four-tenths acre) located at the southeast corner of the intersection of Market Street and College Street, and is traversed diagonally by Patton Avenue. Site #2 is a larger tract consisting of several acres in several tracts on the south side of City Hall (the parking lot). The agreement provides that the City will consider entering into option agreements with the Grove Park Inn for purchase of the properties, and further provides that Council will have a public hearing on the options as required by law, and that those hearings will occur on or before August 12, 2003. The purpose of this motion is to set the public hearing date for the option as to Site #1.

The option will incorporate the material terms of the Development Agreement, and will include a more precise description of the property, as well as a selling price (which has yet to be determined), and this information will be summarized in the required public notice.

For a variety of reasons, neither the City nor Grove Park Inn are in a position to proceed with the option on Site #2 at this time, but we anticipate doing so soon. An extension of the public hearing date for this option may be required.

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City staff recommends City Council setting a public hearing for August 12, 2003, on the conveyance of City-owned property.

City Attorney Oast said that when Council votes on this issue, it would be approving the City entering into an option. That could lead to a sale. Again, Council would be approving the terms of that sale to be incorporated into an option that would be consummated within 3-6 months.

After a brief discussion initiated by Councilman Peterson, it was the consensus of City Council to not vote on the proposed sale to the Grove Park Inn immediately after the August 12, 2003, public hearing to give an opportunity for Council and the public to become more informed. City Clerk Burleson was instructed to note on the August 12, 2003, agenda that it is the intent of City Council to not vote on the item immediately after the hearing.

Vice-Mayor Bellamy pointed out that the public hearing on August 12, 2003, is for Site #1 only and that is for the site east of the Biltmore Building and borders on College Street and Market Street.

Councilman Peterson moved to set a public hearing on August 12, 2003, for the sale of downtown property to the Grove Park Inn. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Upon inquiry of Councilman Peterson about the public hearing for Site #2, City Attorney Oast said that the Grove Park Inn is not interested in moving as fast on Site #2 and they have informally asked of we would postpone that public hearing date. We do not need to do that right now and he will have a better idea soon of when that public hearing might occur.

E. RESOLUTION NO. 03-129 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Tree Commission.

Kasty Latven has resigned as a member of the Tree Commission, thus leaving an unexpired term until December 31, 2005.

On July 15, 2003, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Robert Wieselman and Bill Jones.

It was the unanimous recommendation of Council to appoint Bill Jones to serve the unexpired term of Mr. Latven, term to expire December 31, 2005, or until his successor has been appointed.

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VI. OTHER BUSINESS:

Minimum Housing Code Public Hearing

After a brief discussion, it was the consensus of City Council to hold the public hearing on August 12, 2003, and after the hearing to make a determination on whether Council is prepared to vote or not.

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Claims

The following claims were received by the City of Asheville during the period of June 13-July 10, 2003: Tara L. Johnson (Transit Services), Miriam Weinstein (Inspections), Amie Paul (Transit Services), Lyna Brigman (Water), Bellsouth (Water), United Producers (Streets), Gary Sergent (Sanitation), McDonalds (Water), Ted Knicely (Water), Robin Williams (Sanitation), Kathy Tweed (Sanitation), Martin K. Anderson (Police) and Mountainbrook Long Term Care (Water),

The following claims were received by the City during the period of July 11-17, 2003: Charlie Tucker Jr. (Water), BellSouth (Water), BellSouth (Water), Adrienne Crowther (Parks & Recreation), Ted Warner – Broadways (Water), Heidi Muelenberg (Water) and BellSouth (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. and Mrs. Atkins, owners of a loft at the Sawyer Motor Building located at the corner of Hilliard Avenue and Coxe Avenue, asked for City Council's help in cleaning up the prostitutes and drug dealers in their immediately area. City Council instructed the City Manager to meet with the Atkins' to see what the Asheville Police Department can do to combat these problems.

Mr. Fred English spoke about several different issues ranging from Asheville being too diverse to never receiving any City services in the Haw Creek area.

Mr. Mike Fryer spoke about the high property taxes in the City and felt the City wants to expand, but provide no services. He felt he was picked out specifically for annexation and Council was misled by City staff.

Mr. Chad Nesbitt spoke about the good quality of work by APAC and Taylor-Murphy on the new 19-23 Connector to Tennessee.

Mr. Dennis Justice felt that City Council needs a smart strategy plan to get money for renovations at the Civic Center. He noted that Ashevilleciviccenter.com has been cyber-squatted and if Ashevilleciviccenter.org isn't reserved by August 21, 2003, he will get it himself and cyber-squat it.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:30 p.m.

CITY CLERK

MAYOR