

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; 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: None

CONSENT:

Grant for Crash Investigation Equipment and Software

Summary: The consideration of a resolution and budget amendment, in the amount of \$9,480, to receive additional grant money from the North Carolina Governor's Highway Safety Program for crash investigation equipment and software and travel/training money for the Asheville Police Department's Regional County Coordinator.

In August of 2003, City Council accepted an \$8,000 grant from the Governor's Highway Safety Program (GHSP) to fund crash investigation equipment and software and travel/training needs for the City's Regional Coordinator. GHSP recently informed the City that it will receive an additional \$9,480 in grant money. The total amount available to the City will now be \$17,480. There is no match requirement for these funds.

The crash investigation equipment and software will enhance the capabilities of the Asheville Police Department to investigate vehicular accidents and provide greater safety to the officers at the scene of an accident. The travel/training funds will allow the Regional Coordinator to participate in highway safety meetings throughout the southeast offered by the Federal government as well as those in North Carolina offered by the State government to fulfill their duties as the Regional Coordinator.

City staff recommends the adoption of a resolution and budget amendment, in the amount of \$9,480, to accept additional grant funding from the N.C. Governor's Highway Safety Program for crash investigation equipment and software and travel/training funds for the Regional Coordinator.

Bid Award for Ballfield Light Replacement at Memorial Stadium

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with The Lighting Company for the installation of field lighting at Memorial Stadium.

The City of Asheville Parks and Recreation Department is continuing to upgrade parks throughout the City of Asheville. One of the parks in need of renovation is the Memorial Stadium Complex, which is situated above McCormick Field. This park is the home of the Asheville Youth Sports Program, the Asheville Splash (women's semi-professional soccer team), the Asheville Grizzlies (men's semi-professional football team), the Asheville Assault (women's semi-professional football team), the Asheville-Buncombe Youth Soccer Association and many other user groups. This particular segment of the renovation has become a necessity within the last year, due to safety issues surrounding the existing system. Existing poles are too deteriorated for repair companies to work on them, light fixtures do not illuminate enough of the playing field, and "banks" of lights are going out in the middle of scheduled activity. In order to complete this portion of the project, staff prepared bid specifications for the installation of a turn-key field lighting system. The following is a list of the six qualified bidders that responded:

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The Lighting Company	\$107,092
M.B. Haynes Electric Company	\$124,900
Progress Energy	\$129,746
Newco Inc.	\$130,000
Greenlight Electric Company	\$134,111
Wise Electric Control Inc.	\$169,726

The Lighting Company was the lowest responsible bidder, at a cost of \$107,092. The bid process and The Lighting Company have complied with the Minority Business Plan. This project will be financed, along with other Fiscal Year 2004 equipment purchases, through an installment purchase contract over a period of five years. The Finance Department anticipates

soliciting proposals for financing in January of 2004. Funding for this year's installment payments for the lighting project is included in the Parks and Recreation Fiscal Year Capital Improvement Plan.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with The Lighting Company to furnish and install the lighting system for Memorial Stadium.

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.

RESOLUTION NO. 03-188 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD AND SETTING A PUBLIC HEARING ON DECEMBER 16, 2003

Summary: The consideration of a resolution of intent to close a portion of an unopened section of Emma Road between Leicester Highway and Old County Home Road and setting a public hearing for December 16, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close a portion of an unopened section of Emma Road extending northwesterly from Leicester Highway toward Old County Home Road to a line extending from the northeastern corner of the property of Dennis and Dane Dettweiler (PIN No. 9629.14-23-7485) to the northwestern corner of the property of Charles and Doris Haney (PIN No. 9629.14-23-9397).

Public Works Department staff has researched and determined that this portion of right-of-way is not a City maintained street and its closure will not deprive any property owner of a reasonable means of ingress or egress to their property. This portion of right-of-way is abutted by four lots, identified by PIN Nos. 9629.14-23-9397; 9629.14-32-0959; 9629.14-23-8346; and 9629.14-23-7485.

City staff recommends that City Council adopt the resolution setting a public hearing for December 16, 2003 to close a portion of an unopened section of Emma Road.

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

Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

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Councilwoman Jones moved to adopt Resolution No. 03-188. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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CIVIC CENTER MINOR LEAGUE HOCKEY

Mr. Paul Hornyak, member of the Civic Center Commission, said that over the past several months the Civic Center Commission has conducted due diligence into the viability of two hockey leagues that concluded with our meeting of October 27, 2003. Based on our evaluation we recommended that Civic Center staff immediately begin negotiations with the World Hockey Association 2 (WHA2) for the placement of a hockey team in the Asheville Civic Center for the 2004/2005 hockey season. In addition we believe that the following guidelines should be followed during these negotiations:

1. Any upgrades or repairs required specifically for hockey should be the responsibility of the hockey team or league. The league or team's due diligence on the facility should be finalized before negotiations are complete.
2. Under no circumstances should City funds be used for the financial sustenance or viability of the hockey team.
3. Cognizant of the potential additional liability to the city as a result of having ice in the Civic Center, the contract should insure that this liability is mitigated through standard risk avoidance/diminution language.
4. The contract should seek to limit the city's liability from systems failures at the Civic Center through legal and other risk mitigation strategies. The center should be leased "as is" and not with a service level that is unattainable.

The Commission recognizes and proclaims that, in addition to the money collected from ticket and concession sales, a positive economic impact will be engendered to the City as a whole by the addition of 30 events at the Civic Center. This could mean 30-90,000 additional patrons of our restaurants, hotels, retailers and city parking facilities.

Mr. Hornyak then reviewed with Council the weighted evaluation template that was used for the hockey leagues.

Civic Center Director David Pisha said that the following items are the major points of the contract:

- The term is for three years beginning July 1, 2004, and ending June 30, 2007.
- The team is responsible for any upgrades to the Ice Plant or ancillary equipment to meet their standards.
- The team has agreed to hold the City harmless for any losses resulting from any equipment, system or premises failure.
- The team agrees to pay for any repairs to the Ice Plant in excess of \$2,500.00.
- The rent to be paid the Civic Center is based on ticket sales and actual attendance at games.
- The team is required to put down a \$60,000.00 non-refundable deposit at the beginning of each season. It will be credited back to them on a pro-rata basis, but if for any reason the team stops play at any time, the remainder of any deposit is forfeited.
- The team is allowed to practice only at the discretion of the Civic Center Director when it does not interfere with the financial interests of the venue.
- Any promotions by the team that cost the City money are to be made up by the team.

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- The City can terminate the contract should the lease interfere with the City's plans to perform major renovations or construct a new facility. It can also terminate the agreement if the cooling tower fails and the City decides not to purchase a new unit.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute any related contractual documents regarding booking a hockey team affiliated with the WHA2 into the Asheville Civic Center.

Mr. Pisha answered various questions/comments from Council regarding the contract, some being, but are not limited to: wear and tear of equipment, especially the Zamboni; what happens to the \$1 user fee; how does the rent sliding scale work; are the backers of this team stable; what is the City's fixed costs per game; and how was the figure of \$2,500 arrived at for repairs.

Vice-Mayor Bellamy suggested that as we look to renovations of the Civic Center and perhaps our main users will see fit to join hands with us and achieve that goal.

Vice-Mayor Bellamy suggested that City Council be provided with a pro forma or additional financial information anytime the City enters into a contract that we have financial liability.

Councilwoman Jones said that if renovations are planned to the Civic Center, she hoped that we communicate that with our users as early as possible, especially if they invest in capital improvements to the Civic Center.

Councilman Mumpower thanked the City Manager, Civic Center Director, Civic Center Commission and City Attorney's Office for their efforts in this agreement to protect the City's interest.

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.

ACCEPTANCE OF SECTION 108 GUARANTEED LOAN & ECONOMIC DEVELOPMENT INCENTIVE GRANT

- After a brief discussion on November 5, 2003, it was the consensus of City Council to delay consideration of the budget amendment for two weeks in order to give Eagle/Market Street Development Corporation, the neighborhood and interested people an opportunity to meet and discuss concerns. Additional information was also requested.

- Planning & Development Director Scott Shuford reviewed with Council additional information on the financing and background to Eagle/Market Streets Development Corporation's proposed redevelopment project on Eagle Street and South Market Street.

At the City Council worksession on November 5, 2003, Council Members requested additional information on the background to a proposed budget amendment which would recognize receipt from the U. S. Dept. of Housing and Urban Development (HUD) of an \$800,000 Section 108 Guaranteed Loan and a \$340,000 Economic Development Initiative (EDI) grant for South Pack Square redevelopment.

The following was provided to Council:

- A chronology of significant events over the last 10 years in the effort to redevelop South Pack Square.

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- A budget and timeline for the redevelopment project now proposed.
- Architectural Plans for the project.
- Relevant extracts from the South Pack Square Design Guidelines.
- An organization chart for the development team.

Council already has a copy of the South Pack Square Redevelopment Plan, as amended in Sept 1996, which Mr. Gene Ellison handed out at the November 5, 2003, worksession.

The Project

The project under consideration consists of the rehabilitation of a row of retail units at 17-23 Eagle Street (the Collette Building), 38 S. Market Street (the Campbell or Del Cardo Building), and a new infill building, which will become 40 S. Market Street.

A third existing building at 3 Wilson Alley is part of the redevelopment plan, but it is heavily contaminated by mold and must be demolished. Its site will provide additional parking, with the possibility of future redevelopment.

The project has been recommended by the South Pack Square Design Review Committee and approved by the Downtown Commission. It does not require Planning & Zoning Commission or Council approval. However, adjacent property owners whose window light is affected by the infill building have raised objections and suggested that the project is not consistent with the Redevelopment Plan, and that there has been inadequate opportunity for review and input by interested parties.

The Architectural Plans and their Review

Although staff was shown some tentative scale drawings in July, we understand that the existing plans, which are significantly different, were not completed until the end of September.

On October 3, plans were submitted to the Downtown Commission and, on October 6, to area property owners and Community Development staff. After hearing concerns from the owners of 13-15 Eagle Street and 42-44 South Market Street, the plans were redrawn to pull the infill building at least 3 feet away from those buildings.

The plans show how the existing buildings will be physically tied into the new structure. The infill construction will not only result in four new commercial units and 12 new residential units, but will also provide basement parking extending under the Collette Building and elevator and staircase access to the 2nd and 3rd floor residential units in the Del Cardo Building. The development team has stressed to staff that without the infill building, the rehabilitation of the existing structures becomes both physically and financially infeasible.

Future Development Phases

The project described above is just the first phase of a larger redevelopment being pursued by the development team. The second phase, which should also start quite soon, is the rehabilitation of the three derelict buildings to the east of S. Market Street, which belong to Mount Zion Missionary Baptist Church. The financial feasibility of each Phase depends on the other. Separately, each would be too small to attract the financial backing they now have. Future phases will center on the buildings south of 42-44 S. Market Street, and on the large vacant parcel around the Jones Convenience Store, but these phases are not so advanced in planning.

Redevelopment Roles

The South Pack Square Redevelopment Plan, originally approved in 1993 and amended in 1996, sets out roles for various bodies with interests in the area:

- (1) **Eagle Market Streets Development Corporation** (EMSDC), whose mission is closely tied to the redevelopment of the area, is accountable to the City for administering the Redevelopment Plan, carrying out physical development work, and managing public involvement in implementation of the Plan. It is the "redeveloper" defined in State redevelopment law, and, along with the City must approve any revisions to the Plan.
- (2) The **YMI Cultural Center** is to have input into the process
- (3) The **YMI Community Development Corporation** (YMICDC) is to implement job training and business development activities (in practice EMSDC has assumed this role).
- (4) The **South Pack Square Association** is to have input into the process. At the time when the Plan was prepared, this was an extremely active group of property owners, business owners, residents, bankers and other concerned citizens. It was never an incorporated entity and has not met for several years. Mr. Ellison has recently established a new group under the name of the South Pack Square Business Association, which may be able to serve a similar role in the future.
- (5) The **City of Asheville** is the major source of funding. It contracts annually with EMSDC for specific implementing steps and monitors EMSDC's progress.
- (6) The **South Pack Square Design Review Committee** consisting of City staff, representatives of EMSDC and YMICDC, a property owner and an architect, is to review proposed redevelopment work and coordinate with other review bodies (e.g. Planning & Zoning Commission and the Downtown Commission). This Committee has recently met to review the plans for the current proposed project.

Additionally, a **Development Team** has been created by EMSDC and its partners in this particular project. Its complexity is typical of redevelopment projects where multiple partners and funding sources are necessary to the success of the project. The involvement of Rogers & Associates and the Enterprise Foundation has been critical in getting the project to this point.

After 10 years of very slow progress, EMSDC has finally put together a Development Team with the expertise and financial capacity to effectively implement the goals of the Redevelopment Plan. During that period, some conditions have changed and new ideas have surfaced, including the concept of an infill building at 40 South Market St. The Plan encourages such flexibility and innovation (page v: "This Redevelopment Plan should be viewed as a starting point and not a final product"; page 16: "The predominant land use ... will be that of mixed use development which includes residential, commercial, office and light manufacturing"; page 21: "Infill on vacant property for new commercial structures on Market Street and Biltmore Avenue is encouraged".)

It is staff's view that the project is consistent with the Redevelopment Plan, and, further, represents the only realistic opportunity for significantly implementing the Plan that has been offered in the past 10 years.

Failure to authorize use of the Section 108 and EDI funds at this stage would cause both this project and the Mount Zion project to fail. Staff can see no prospect then of reviving interest in a major redevelopment effort. It would be left to individual property owners to do what they see fit with their own properties without regard to the Redevelopment Plan. This may ultimately result in the demolition of buildings in the area, resulting in loss of the historic fabric of the area and its links to the African American community.

City staff recommends approval of the budget amendment to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square.

There was considerable discussion regarding the project, the roles of each interested body, the different companies, questions raised by Mr. Gene Ellison, risks, public input, and what the consequence of delay.

Councilman Peterson hoped that this project would not be like the Pack Plaza Project where the City of Asheville lost money.

Councilman Dunn moved to not place this item on the November 25, 2003, formal meeting agenda until there was more resolution of the matter and for City staff to add it to an agenda as soon as possible. This motion was seconded by Vice-Mayor

Bellamy.

Members of Council voiced their opinion on Councilman Dunn's motion.

Rev. John Grant from Mt. Zion Missionary Baptist Church and Ms. Elizabeth Russell from the Eagle-Market Streets Development Corporation voiced opposition in delaying the budget amendment.

The property owner of the Wilson Building and Mr. Gene Ellison, owner of the Ritz Building, voiced support to delay action on the budget amendment.

The motion made by Councilman Dunn and seconded by Vice-Mayor Bellamy carried on a 4-3 vote, with Vice-Mayor Bellamy, Councilman Dunn, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Ellis and Councilman Mumpower voting "no."

At 4:50 p.m., Mayor Worley announced a short break.

REPORT ON RENOVATIONS TO MEMORIAL STADIUM

- Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the Parks and Recreation Department to proceed with a conceptual design for renovations to historic Memorial Stadium.

- The Parks and Recreation Department has been working the past several months on a conceptual design for renovations to historic Memorial Stadium. The Stadium was originally constructed in the late 1920's and dedicated in the early 1930's as a memorial for veterans who served and died in WWI. The Stadium was dedicated again to WWI and WWII veterans in the 1940's. However, a true memorial to the men and women who gave the ultimate sacrifice to our country was never properly constructed.

In addition, Memorial Stadium was for years the home of both Lee Edwards/Asheville High Cougars and the Stephens-Lee Bears. Today, a number of youth sports groups including the Asheville Youth Sports, Asheville Grizzlies, WNC Bears, Asheville Assault, Asheville Splash, Asheville-Buncombe Youth Soccer Association, and a number of other groups currently call Memorial Stadium home.

The Stadium is in desperate need of repairs to a number of features including the lights, press box and Stadium seating and, more importantly, a proper recognition to our war dead as originally planned still needs to be constructed at this site. A plan has been developed by the

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Parks and Recreation staff to incorporate these issues into a conceptual design for the Stadium. This plan will address a number of funding options that include local civic club contributions, veterans groups, grants and foundation funding, and sponsorships. It is anticipated that the cost for the renovations and upgrades will total \$1.5 million. An Action Committee has been formed which will work with the Parks and Recreation Department to aggressively secure funding through grants, foundations and sponsorships, as well as the Capital Improvement Plan for the City of Asheville. The Department has also been working with Asheville Splash on a potential partnership that will assist in funding a portion of the cost. Memorial Stadium has been a high priority for the Department for a number of years due to the degree of use and age of the facility.

- City staff is requesting City Council authorize the Parks and Recreation Department to proceed with a conceptual design for renovations to historic Memorial Stadium.

Vice-Mayor Bellamy said that there are other individuals working on renovation of Mountainside Park and would let them know they should contact Mr. Brinson for coordination.

Councilman Peterson suggested contacting some of the athletic associations from years ago that used Memorial Stadium to see if they would like to help with funding renovations.

Mr. Brinson answered various questions from Council, some being, but are not limited to: is the City working with the Asheville Tourists on addressing the parking needs and are there plans to alter McCormick Street.

Mr. Brinson said that he had received two letters of support for renovation from the Asheville Tourists and the Asheville Youth Sports Program.

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.

ABC BOARD

Councilman Dunn voiced problems with the ABC Board and their management of the ABC operations.

He reviewed with Council the 2003 Management Letter of Crawley, Lee & Company, P.A.'s audit of the financial statement of the Asheville Board of Alcoholic Control. The auditors noted certain matters involving internal control and its operation that they consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to their attention relating to significant deficiencies in the design or operation of internal control that, in their judgment, could adversely affect the Asheville Board of Alcoholic Control's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements. Councilman Dunn then reviewed each of the conditions the auditors believed to be a material weakness: improve segregation of duties; develop accounting procedures and policy manuals; adopt a records storage and retrieval system; store data backup files off-site; and miscellaneous items.

Some issues Councilman Dunn were concerned with was the funding for police activity; money to non-profits; raises of board members; and the embezzlement case.

He felt that City Council as a responsibility to investigate the operation of the ABC Board. Councilman Dunn said that City staff has contacted the N.C. Alcoholic Beverage Control Commission. In Asheville's attempt to help improve the operations of the ABC Board, they suggested (1) review of the composition of the current board for needed financial/managerial/

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business expertise; (2) obtain audits of other ABC boards for comparative purposes; (3) contact other ABC Managers across the State to discuss successful business strategies; (4) contact other ABC Boards to compare their experience providing their own law enforcement; (5) request a copy from the Interim Asheville ABC Manager of the Management Report provided by the independent auditors for this year and last year's audits; (6) retain an outside consultant to conduct a head to toe managerial review of the entire Asheville ABC operation; and (7) put the hiring of a permanent manager on hold until the results of the above steps are available.

Therefore, Councilman Dunn requested City Council support in following the State Board's suggestions and ask the local Board have a management review performed by an independent firm; request legislation to increase the Board be raised from 3 to 5 members; direct the local Board not fill the Supervisor's position until after the study is complete; and ask the current Board members questions concerning the problems at the local Board.

Mayor Worley pointed out that the ABC Board has recently lost their Supervisor and has also gone through an embezzlement case. He said that the Board Chair has been extremely conscientious in keeping him up-to-date.

It was the consensus of City Council to (1) request a copy of 2002 audit and management letter; (2) add to the legislative agenda the increase of the ABC Board from 3 members to 5 members; (3) postpone appointing a member to the ABC Board and have the City Attorney review the statutes to see if the Chair can serve at the pleasure of Council; and (4) have the Mayor and Councilman Dunn meet with the Chair of the local Board and request the local Board to have a management review performed by an independent firm. If the local Board chooses not to do that, then the City will submit a request to the State Board for this.

BOARDS & COMMISSIONS

It was the consensus of City Council to appoint Alison Watson, Kathleen Kasben and Heidi Daugherty to the Asheville Film Commission.

It was the consensus of City Council to appoint Dana Irwin to the Public Art Board.

It was the consensus of City Council to appoint Jeff Richardson, Bill Schaefer and Ben Durant to the Victoria of Asheville Board of Directors.

MISCELLANEOUS

Upon inquiry of Councilwoman Jones, Mayor Worley said that he would talk with Buncombe County Commissioner Nathan Ramsey on whether or not the Interlocal Agreement with Buncombe County on the Joint Planning Area would be addressed on November 25, 2003, and advise City Council.

CLOSED SESSION

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At 6:12 p.m., Councilman Mumpower moved to go into closed session in Room 209 of the City Hall Building to consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:32 p.m., Vice-Mayor Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

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ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:32 p.m.

CITY CLERK

MAYOR