

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

Absent: None

PLEDGE OF ALLEGIANCE

- U.S. Air Force Staff Sergeant Tabitha Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

GIRL SCOUT TROOP

- Mayor Worley recognized Girl Scout Troop 531 who thanked the City of Asheville for their work through the recent Hurricanes Frances and Ivan.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Vice-Mayor Mumpower asked that Consent Agenda Item "H" be voted on separately.

Councilman Newman asked that Consent Agenda Item "I" be removed from the Consent Agenda and discussed as New Business.

Councilwoman Bellamy asked that Consent Agenda Item "K" be voted on separately due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 14, 2004

B. RESOLUTION NO. 04-195 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE MINORITY BUSINESS PLAN

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

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended four times: (1) November 1998 to expand participation in the Mentor-Protégé Program; (2) December 1999 to add the 72-hour delay requirements for "good faith efforts; (3) December 2001 to expand certification to two years; and (4) October 2002 to reduce the Minority Business Commission from 13 to 11 members and provide for clarification of the grievance process in the Plan.

At their meeting on August 12, 2004, the Minority Business Commission recommended that the Plan be further amended to enhance and clarify provisions of the Plan. The most

-2-

significant changes are the update of N.C. General Statutes in the changes made in the Plan regarding procurement, construction and professional services and the update of definitions.

On September 7, 2004, the Buncombe County Commissioners reviewed and approved the Plan.

Advantages:

- Changes in definitions will make the program easier and less complicated to understand.
- Update of N.C. General Statutes will provide that the current provisions are being used, updating our procedures for construction, procurement and professional services originally provided in the May 1998 adopted MB Plan.
- Removal of any reference to specific forms for minority business compliance so that it is not necessary to update with changes.
- Clerical changes for ease of reading in removing repeated information, clearer wording of procedures.
- Removal of any reference to certification being a prerequisite to contracting with the City of Asheville.

- City staff recommends City Council adopt the resolution amending the Minority Business Plan.

Upon inquiry of Vice-Mayor Mumpower, Finance Director Bill Schaefer briefed Council on how the City of Asheville is complying with the Minority Business Plan, noting that City staff is committed to the Plan.

RESOLUTION BOOK NO. 28 – PAGE 359

C. RESOLUTION NO. 04-196 - RESOLUTION AMENDING THE 2004 CITY COUNCIL MEETING SCHEDULE TO DELETE THE OCTOBER 5, 2004, WORKSESSION

Councilman Mumpower understands the positive impact on City staff with City Council holding only one worksession a month, however, he personally thinks that one is not adequate and that we are doing ourselves a disservice only holding one worksession a month. He feels that it forces Council to have condensed deliberations or limits the inclusion of items that Council otherwise would be able to address if we had two worksessions a month.

Mayor Worley said that in a comparison of two worksessions a month in 2003 vs. one worksession in 2004, we spent about 23.9 hours through August of 2003 and about 25.8 hours through August of 2004. His personal prospective is that it makes more sense to do the work in one meeting that is a little longer than two shorter meetings a month. He understands that we might be artificially condensing discussion, however, he thinks that in a lot of Council's deliberations that we artificially expand our discussions as well.

Councilman Dunn said that to sit 4-5 hours in one worksession makes it sometimes difficult to concentrate. He felt that City staff should be brief and only give Council the facts.

Councilman Newman tended to support only one worksession a month but was open to bringing the matter back up in the future.

Councilwoman Jones spoke in support of only one worksession a month.

RESOLUTION BOOK NO. 28 – PAGE 360

-3-

D. RESOLUTION NO. 04-197 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENT OF THE STATE RIGHT-OF-WAY ON BRIDGE 740 MILL CREEK

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 Bridge 740 over Mill Creek (NCDOT Project B-3616) and approval of an associated budget amendment, in the amount of \$83,000, to provide funding for this project.

The Water Resources Department operates a water main across Bridge 740 over Mill Creek under the policies of the Asheville, Buncombe & Henderson Regional Water Authority (RWA), which is owned by the City of Asheville. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT has estimated the construction cost of this relocation at \$74,656. An additional 10% needs to be added to include contingency and inspections, so the total amount that needs to be budgeted is \$83,000.

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 of Asheville upon completion of the project. Funding is currently available from excess funds in the Critical Needs II matching funds. A budget amendment amending Capital Project Ordinance 82-25 (35 Fund) to reflect funding for this project is required.

Pros: Reprogramming funds for this NCDOT project will provide funding for a state mandated project that requires relocation of a water line that conflicts with an NCDOT right of way.

Cons: None noted.

City staff recommends that City Council approve the resolution authorizing the Mayor to execute a Utility Agreement with NCDOT for relocation of a water line and a budget amendment to provide funding for this project

RESOLUTION BOOK NO. 28 – PAGE 361

E. ORDINANCE NO. 3165 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENT OF THE STATE RIGHT-OF-WAY ON BRIDGE 740 MILL CREEK

Summary: See Consent Agenda Item "D" above.

Upon inquiry of Mr. Fred English, City Manager Westbrook explained that the City of Asheville has to pay their portion of the non-betterment costs of the State project.

ORDINANCE BOOK NO. 21 – PAGE

F. RESOLUTION NO. 04-198 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE A VACANT LOT ON MAX STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Max Street.

-4-

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel comprising approximately 0.04 acre located on Max Street (PIN No. 9648.07-59-8495) across from Stephens-Lee Center. The lot is too small to build on. The tax value for the parcel is \$1,500.

Brandon Knolls LLC has submitted a bid to purchase the property in the amount of \$1,500, and intends to combine it with adjacent property that is improved with a single-family house

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- The sale and combination of this lot with the adjoining lot will eliminate a substandard parcel.

Approval of the resolution will establish a minimum price of \$1,500 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

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

Upon inquiry of Councilwoman Bellamy, Field Services Coordinator Ed Vess explained exactly where the property was located.

RESOLUTION BOOK NO. 28 – PAGE 362

G. RESOLUTION NO. 04-199 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF EXCHANGE OF REAL PROPERTY LOCATED AT 14 MICHIGAN AVENUE FOR REAL PROPERTY LOCATED ON LYMAN STREET

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of real property located on 14 Michigan Avenue for real property located on Lyman Street.

The City and Brandon Knolls LLC (Knolls) have negotiated an exchange of real property at 14 Michigan Avenue for Knolls property on Lyman Street.

The property at 14 Michigan Avenue (PIN No. 9638.15-54-8270) is a 0.19 acre parcel zoned RM-8 Residential Multi-Family Medium Density District. The lot is on the east side of Michigan Avenue about 150 feet from its intersection with Haywood Road. It is elevated about 5 feet above street grade and mostly level except for a driveway. It has several large trees and some grass that has been worn bare due to frequent use by customers of the convenience store on the adjacent lot. All utilities are available to the lot. There is a sidewalk across the front of the property at the street. The property has a tax value of \$16,800.

The property owned by Knolls (PIN No. 9648.17-01-5372) is a 0.88 acre parcel located on the French Broad River at the intersection of Lyman Street and Amboy Road. It is directly across the river from the French Broad River Park and highly visible from the park. It slopes steeply down from the road at Amboy and levels off at the river. It is long and narrow, wider at Amboy and tapers off as it runs North with the western boundary of Lyman Street. Traveling North, the grade of Lyman Street descends closer to the river thus improving the access to the

-5-

property. The parcel has a tax value of \$83,600. Knolls purchased the lot at a tax foreclosure sale for the upset bid amount of \$7,250. After purchasing the lot, Knolls offered to exchange the lot for City-owned property. An exchange of property was negotiated which includes an additional cash payment to the City in the amount of \$5,000.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It is consistent with the greenway master plan.

It will protect the view from the park across the river.

- Acquisition of the entire parcel will allow greater flexibility than an easement.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff recommends adoption of the resolution authorizing the City Clerk to publish a notice regarding the exchange of real property located 14 Michigan Avenue for real property located on Lyman Street.

RESOLUTION BOOK NO. 28 – PAGE 363

H. BUDGET AMENDMENT TO HELP SUPPORT THE 2005 LEGISLATIVE WEEKEND

This item was pulled off the Consent Agenda for an individual vote.

I. RESOLUTION APPROVING REQUEST FOR PROPOSALS FOR THE WATERSHED MANAGEMENT PLAN FOR NORTH FORK AND BEE TREE WATERSHEDS

This item was pulled off the Consent Agenda to be discussed under New Business.

J. RESOLUTION NO. 04-200 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY KNOWN AS TRACT I ON CHOCTAW STREET TO TILMAN AND SABRINA JACKSON

Summary: The consideration of a resolution authorizing the Mayor to convey property on Choctaw Street.

A bid has been received from Tilman and Sabrina Jackson, in the amount of \$17,400, for the purchase of Choctaw Street, Tract 1, PIN No. 9648.10-25-5447, in the East Riverside Redevelopment Project. This bid amount is not less than the appraisal value of \$17,400.

Choctaw Street Tract 1 is a residential zoned lot on the north side of Choctaw Street and opposite the intersection with Congress Street comprising 0.224 acre. The parcel is level with the street and sloping up toward the rear line. It is covered with natural vegetation consisting of grass, small trees and brush.

The Jackson's own the adjoining property where they reside. There are no improvements planned for the subject property at this time.

On September 14, 2004, the City Council directed the City Clerk to advertise for upset bids on Choctaw Street, Tract 1. The advertisement ran in the Asheville Citizen-Times on

-6-

September 17, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Tilman and Sabrina Jackson in the amount of \$17,400 was not upset and the sale to Tilman and Sabrina Jackson should be approved.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the tax appraisal.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey property on Choctaw Street to Tilman and Sabrina Jackson, in the amount of \$17,400.

RESOLUTION BOOK NO. 28 – PAGE 364

K. MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 2004, TO AMEND THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

This matter was removed from the Consent Agenda for an individual vote.

L. RESOLUTION NO. 04-201 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Asheville-Buncombe Fair Housing Commission.

Kim Moore has resigned as a member of the Asheville-Buncombe Fair Housing Commission, thus leaving an unexpired term until

December 31, 2004.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Geraldine Melendez to the A-B Fair Housing Commission, to serve the unexpired term of Ms. Moore, term to expire December 31, 2004, and then to serve a full three year term, term to expire December 31, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 365

M. RESOLUTION NO. 04-202 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND BOARD OF TRUSTEES

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Firemen's Relief Fund Board of Trustees.

Mr. Lloyd Williams has recently died, thus leaving an unexpired term until January 1, 2005.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Eva Estelle Williams as a member of the Firemen's Relief Fund Board of Trustees, to serve the unexpired term of Ms. Williams, term to expire January 1, 2005, and then to serve a full two-year term until January 1, 2007, or until her successor has been appointed.

-7-

RESOLUTION BOOK NO. 28 – PAGE 366

N. RESOLUTION NO. 04-203 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Mumpower said that this is the consideration of appointing members to the River District Design Review Committee.

The terms of Marvin Slosman (owner of property within the River District) and Laura Webb (member of the RiverLink Board of Directors) expired on September 1, 2004.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Pattiy Torno, as the owner of property within the River District, to serve on the River District Design Review Committee for a three year term, term to expire September 1, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 367

O. RESOLUTION NO. 04-204 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson.

The term of Councilman Joe Dunn, as a member on the Regional Water Authority of Asheville, Buncombe and Henderson, expires on September 30, 2004.

At the City Council's worksession on September 21, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Councilman Dunn as a member of the Regional Water Authority of Asheville, Buncombe and Henderson, to serve an three year term, term to expire September 30, 2007, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 368

P. RESOLUTION NO. 04-205 - RESOLUTION DESIGNATING CITY OF ASHEVILLE'S AGENTS TO THE N.C. DIVISION OF EMERGENCY MANAGEMENT

Summary: The N.C. Division of Emergency Management requires a resolution designating the City's agent. This resolution will designate William F. Schaefer, Jr., Finance Director, as the primary agent and Cynthia A. Fortune, Finance Operations Manager, as the secondary agent.

RESOLUTION BOOK NO. 28 – PAGE 369

Q. ORDINANCE NO. 3166 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR EMERGENCY STORM RELATED EXPENSES

Summary: The consideration of a budget amendment, in the amount of \$1.25 million, to provide funding for emergency storm

related expenses.

- Tropical depression Frances severely damaged all of the water transmission lines from the North Fork Water Treatment Facility including the 36-inch, 24-inch, and twin 16-inch lines supplying Asheville

-8-

and an 8-inch line supplying Black Mountain. There was also an 8-inch line that runs along US 70 in Swannanoa that was damaged by floodwaters. Crews and contractors worked around the clock from September 8th to September 16th to make repairs in order to fully restore water to Asheville and Black Mountain. Hurricane Ivan damaged the twin 16-inch lines that supply water to portions of Swannanoa and caused power outages at all of our critical pump stations resulting in widespread water outages.

The Fiscal Year 2004/2005 Water Fund Budget does not contain a provision for expenses related to emergencies such as droughts or floods, so it will be necessary to adopt a revised budget to fund these severe storm events. Expenses include repairs to water transmission lines, purchase of water from Weaverville, and protective emergency measures. These expenses are estimated to be at least \$1.25 million.

Pros: FEMA is expected to reimburse the City for a portion of flood related expenses.

City staff recommends City Council approve the budget amendment to provide funding for emergency storm related expenses.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook and Interim Water Resources Director David Hanks responded to various financial questions regarding when the City can expect reimbursement and what would happen to the Water Fund if something else unexpected happens and the reimbursement has not yet been received.

ORDINANCE BOOK NO. 21 - PAGE

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 Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA TO BE VOTED ON SEPARATELY.

ORDINANCE NO. 3167 - BUDGET AMENDMENT TO HELP SUPPORT THE 2005 LEGISLATIVE WEEKEND

Summary: The City has received a request from the Chamber of Commerce for a \$10,000 appropriation to help support the 2005 Legislative Weekend.

The Asheville Area Chamber of Commerce, on a biannual basis, invites the North Carolina General Assembly to travel to Asheville and meet with members of the Chamber and local governments. The purpose of the event is to build relationships and familiarize members of the General Assembly with the needs of the Asheville area. In 2003, there were 200 legislators and spouses who committed to attend the event here. Since that was the first and the weather was not at its best, we expect more than 200 this year.

The private sector is supporting the 2005 Legislative Weekend, in addition to an appropriation of \$30,000 from Buncombe County. Members of the Chamber of Commerce are working with the local delegation to the General Assembly to plan an appropriate agenda and program. The Chamber is requesting \$10,000 from the City to support the program. As you know, the City has some important issues coming before both the local delegation and other members of the General Assembly in the next several years. This will be an excellent opportunity to start previewing those needs and concerns with them.

-9-

City staff recommends Council adopt a budget amendment, in the amount of \$10,000, from Contingency to the Chamber of Commerce in support of the 2005 Legislative Weekend.

Vice-Mayor Mumpower felt this is a good effort, however, he feels that it is inappropriate to use City taxpayer dollars to help fund a Chamber of Commerce initiative.

Vice-Mayor Worley and Councilwoman Jones both spoke in support of the request in that Council's Strategic Operating Plan includes many other bodies, including state decision-makers, to achieve Council's goals so we need to continue to work closely with them.

Councilman Newman said that this is a good investment of dollars, however, double taxation of City residents is a problem and we do need to review each proposal carefully.

Councilwoman Jones moved for the adoption of Resolution No. 04-196. This motion was seconded by Councilman Davis and

carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 21 – PAGE

MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 2004, TO AMEND THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in the matter due to a conflict of interest. This motion was seconded by Councilman Newman and carried unanimously.

Summary: The consideration of a motion setting a public hearing on October 12, 2004, to receive public input on a proposed amendment to the 2004 Consolidated Action Plan

The Annual Consolidated Action Plan sets out the City's planned use of federal CDBG and HOME funds for the next fiscal year. The 2004 Action Plan was approved by Council on April 13, 2004, and amended on August 24, 2004, to incorporate American Dream Downpayment Initiative funding from HUD.

Mountain Housing Opportunities has now requested an additional allocation of \$25,000 in the form of a HOME Pre-Development Loan. The funds will be used to determine the feasibility of developing a 2-acre parcel on Depot Street, including the former Glenrock Hotel. HOME program income funds are available to budget for this purpose.

Additional information on the potential uses for the site will be provided before the public hearing.

City staff recommends City Council set a public hearing on October 12, 2004, to received public input on the proposed amendment to the 2004 Consolidated Action Plan.

Vice-Mayor Mumpower moved to set a public hearing on October 12, 2004, to amend the 2004 Consolidated Community Development Block Grant and HOME Action Plan. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

-10-

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR REMOVAL/RELOCATION AGREEMENTS FOR NON-CONFORMING OFF-PREMISE SIGNS

ORDINANCE NO. 3168 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR REMOVAL/RELOCATION AGREEMENTS FOR NON-CONFORMING OFF-PREMISE SIGNS

Mayor Worley opened the public hearing at 5:45 p.m.

City Attorney Oast said that this is the consideration of an amendment to the Unified Development Ordinance authorizing the removal/relocation/ replacement agreements for off-premise signs. This public hearing was advertised on September 17 and 24, 2004.

A. History of sign ordinance and enforcement efforts

1. Since 1977, the City has adopted several ordinances regulating the size and placement of billboards. Some of the ordinances contained amortization provisions, requiring the removal of nonconforming billboards within a certain amount of time.
2. Most recently in 1997, the City adopted an ordinance that essentially prohibited the placement of new billboards within the City's zoning jurisdiction, and made existing billboards nonconforming. That ordinance had a companion ordinance providing for amortization of nonconforming off-premise signs, but it was invalidated in 2001 in a case that went to the N. C. Supreme Court.
3. Beginning in 1997, the City undertook enforcement proceedings with respect to some billboards that have been made nonconforming by a 1990 ordinance, and should have been brought into compliance—and in some cases removed--in 1995. These efforts have been contested and are awaiting review by the Board of Adjustment. We have been to court at least twice on issues related to this enforcement effort, and the matter is still unresolved.
4. A new law adopted in 2004 and effective last month requires that cities that adopt amortization ordinances pay compensation based on a formula to the owners of billboards that are removed as a result of amortization. The new law does not affect pre-existing ordinances that provide for amortization.

- B. **Cap and Replace Ordinance.** The all-or-nothing approach of traditional billboard regulation, with amortized removal as the end result, has in some cases hampered the ability of cities and sign owners to come to some other mutual accommodation with respect to signs, frequently resulting in protracted litigation. What has developed over the years in other jurisdictions is a concept

known as “cap-and-replace,” which essentially freezes the number of billboards within a local government’s zoning jurisdiction at a specified number, but allows them to be moved or replaced within certain limitations. The same new N.C. law that now requires compensation for amortized removal also authorizes the use of “removal and relocation” agreements. Although this authorization appears to be set out primarily as an alternative to future amortization efforts, and prescribes requirements for agreements in those circumstances, it also provides for the use of removal-relocation agreements in other circumstances, such as on-going enforcement efforts.

-11-

- C. Proposed Ordinance. The availability of this tool will permit the City to resolve several on-going or potential enforcement issues without the necessity of initiating proceedings before the Board of Adjustment or in court. The proposed ordinance will require notification to sign owners, and will require registration of signs in order for those signs to be eligible for inclusion in an agreement. The proposed ordinance will permit eligible billboards to be relocated on site in order to deal with site-specific development issues, or to be relocated within designated overlay zones subject to certain restrictions as to height, size and setback. Ineligible signs will remain subject to the provisions of the code that restrict the ability to relocate or replace them.

The proposed ordinance does not allow for any increase in the number of billboards within the City’s zoning jurisdiction, nor does it allow for any increase in the size of affected billboards. The ordinance also does not restrict the City’s ability to enforce its ordinances with respect to any billboard. Rather, it permits the City and the sign owner to negotiate for the relocation of eligible billboards.

This proposed new ordinance does not restrict the City’s ability to adopt ordinances in the future that provide for the amortization of billboards. If the City chooses to do that, however, the new law will require compensation in accordance with the formulas set out in the law.

- D. Recommended Changes from Planning and Zoning approved draft. Based on further review by staff, the proposed ordinance as reviewed and approved by the Planning and Zoning Commission has been clarified as to certain provisions as follows (original draft language is shown following each affected provision in the proposed ordinance):

1. The term “Qualified Billboard” has been changed to “Qualified Sign.”
2. Paragraph (g)(1) has been changed to provide that Qualified Signs include signs with respect to which enforcement proceedings had been commenced; previously the proposed ordinance expressed these concepts as separate. This is a clarification.
3. Paragraph (g)(2)b. was revised to provide that signs must have been legal when erected in order to become a Qualified Sign.
4. The height limitation in paragraph (g)(2)c.2.ii. has been changed to provide that signs may not exceed 40 feet; the previous draft provided that they could not exceed their height prior to relocation, except with a variance. This change was made because 40 feet is the height limitation applicable to billboards in the 1990 ordinance. Measurement in all cases is from the base of the sign.
5. Paragraph (g)(2)c.2.iv. previously provided that Qualified Signs could only be located within the required separation distance from non-Qualified Signs with the approval of the Planning Director. This requirement was removed because any off-premise sign that is not a Qualified Sign is nonconforming and subject to removal.

Pros:

- Provides an alternative for resolving current enforcement actions regarding billboards, including removal of some billboards.
- Protects a visually sensitive corridor and the Blue Ridge Parkway viewshed.
- Establishes a cap on the number of billboards in the City.

-12-

- Makes an additional tool available for resolving some disputes, but does not require its use.
- Does not permit any increase in the number of billboards in the City.

Cons:

- At least with respect to enforcement efforts under the existing sign ordinances, an agreement could mean that some billboards now potentially subject to removal may not be removed.
- Allows billboards to be relocated to new locations.

Staff recommends adoption of the ordinance authorizing the removal/relocation/ replacement agreements for off-premise signs.

At 5:58 p.m., Mayor Worley closed the public hearing.

There was considerable discussion as City Attorney Oast responded to various questions from Council, some being, but are not limited to: where are the designated corridors; what is the compensation formula to owners of billboards that are removed as a result of amortization; how long has the City been dealing with the billboard issue; has there been any input and if so, what has it been, from the billboard owners regarding this proposed amendment; and what happens if the City extends its extraterritorial jurisdiction or annexes.

Councilman Newman was concerned that the property tax is nowhere near the income generated or the value placed on the billboard by the billboard companies.

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

Councilman Davis moved for the adoption of Ordinance No. 3168. This motion was seconded by Vice-Mayor Mumpower.

Councilwoman Jones spoke in support of the ordinance, however, requested that in the future more groups be solicited to review the ordinance.

At the request of Councilman Newman, it was the consensus of City Council to ask the City Manager to contact Buncombe County regarding the value process for billboards in the City and to make sure the value is consistent with the property tax being paid.

The motion made by Councilman Davis and seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

Planning & Development Director Scott Shuford said that this is the consideration of resolutions stating the intent of the City to annex the Ridgefield Business Park area, the Ascot Point Village area, the Long Shoals Road area and the Airport Road area.

He said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic

-13-

development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population.

The City of Asheville has initiated annexations for the past four years. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

It is now time for the City to initiate the next phase of annexations. Staff has identified the following four areas: Ridgefield Business Park area, Ascot Point Village area, Long Shoals Road area and Airport Road area.

The following steps and dates meet the process required by State law:

Council Adoption of Resolutions of Intent	September 28, 2004
Council Adoption of Plans of Services	October 12, 2004
Staff-Sponsored Public Informational Meeting	November 15, 2004
City Council Public Hearings	December 14, 2004
Council Adoption of Annexation Ordinances	January 11, 2005
Effective Date of Annexations:	
March 31, 2005 – Ridgefield Business Park area	
December 21, 2005 – Ascot Point Village, Long Shoals Road & Airport Road	

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Ridgefield Business Park area, Ascot Point Village area, Long Shoals Road area and Airport Road area.

Mr. Shuford stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General

Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 15th day of November, 2004, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 14th day of December, 2004, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the

-14-

public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

Our annexation strategy has been to (1) select areas that are clearly developed; (2) include areas where water and sewer have been extended; (3) improve city limits by eliminating pockets and clarifying boundaries; and (4) disperse areas geographically.

Councilwoman Bellamy felt the process should be delayed until January or February because the public information meeting and the City Council public hearings are near holidays. She felt people might be preoccupied with the season's festivities to adequately deal with potential annexation.

Mr. Shuford said that the statutes require a specific process and if Council wishes to delay action, then he would need additional time to review the statutes to make sure that all timeframes are met.

A brief discussion was held about the scheduling of the meetings around the holidays, noting that the weather is a bigger factor than the holidays themselves.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 04-206 - RESOLUTION OF INTENT TO ANNEX THE RIDGEFIELD BUSINESS PARK AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-206. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 370

RESOLUTION NO. 04-207 - RESOLUTION OF INTENT TO ANNEX THE ASCOT POINT VILLAGE AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-207. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 374

RESOLUTION NO. 04-208 - RESOLUTION OF INTENT TO ANNEX THE LONG SHOALS ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC

-15-

HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-208. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 378

RESOLUTION NO. 04-209 - RESOLUTION OF INTENT TO ANNEX THE AIRPORT ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON NOVEMBER 15, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON DECEMBER 14, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 04-209. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 382

B. RESOLUTION NO. 04-210 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Buncombe County Tourism Development Authority (TDA).

Mr. Chris Cavanaugh has resigned, as the individual who is involved in the tourist business who has demonstrated an interest in tourist development, and who does not own or operate hotels, motels or other taxable tourist accommodations, from the Buncombe County Tourism Development Authority, thus leaving an unexpired term until August 30, 2005.

Councilwoman Bellamy, who is the City Council liaison to the TDA, said that the TDA recommends Randy Fluharty.

Councilman Dunn was concerned about the room tax issue and felt the TDA make-up should be changed.

Councilman Newman spoke highly of Mr. Fluharty's skills, however, he explained why he felt he should be excluded from being eligible for this position. His other concern is about fair taxation in Asheville. In the past several years, City Council has raised property taxes and water rates on families and businesses in Asheville. Asheville has among the highest cost of living in North Carolina and the City taxpayers are paying \$800,000 to maintain our Civic Center and \$100,000 a year for the Chamber of Commerce's visitor center, yet Asheville has among the lowest hotel occupancy fees in North Carolina. The service sector in the hotel industry specifically pay among the lowest wages in our community, often times not paying living wages. No one has been able to show that if Asheville increased our local hotel occupancy fee to the state average to help pay for infrastructure that benefits the tourism industry and our community as a whole, that we would reduce tourism visitation to Asheville. The TDA provides recommendations to our state delegation regarding the hotel occupancy fees and rates and if we fill this position with people who support the status quo, then it will be harder to increase the local hotel occupancy fee to the state average to help pay for key infrastructure. The tour industry

-16-

should help pay their fair share. He felt we need to bring new voices to the TDA and he would support James Rentz.

After a brief discussion about the Council voting process regarding board appointments, Vice-Mayor Mumpower moved to appoint Randy Fluharty, as the individual who is involved in the tourist business who has demonstrated an interest in tourist development, and who does not own or operate hotels, motels or other taxable tourist accommodations, to the Buncombe County Tourism Development Authority, to serve the unexpired term of Mr. Cavanaugh, term to expire August 30, 2005, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Dunn and Councilman Newman voting "no."

RESOLUTION BOOK NO. 28 – PAGE 386

C. RESOLUTION NO. 04-211 - RESOLUTION APPROVING REQUEST FOR PROPOSALS FOR THE WATERSHED MANAGEMENT PLAN FOR NORTH FORK AND BEE TREE WATERSHEDS

Mr. David Hanks, Interim Water Resources Director, said that City Council approved the implementation of a watershed management plan for the North Fork and Bee Tree watersheds. This plan was the first phase in a comprehensive management plan covering the next five (5) years and beyond. The request for proposals (RFP) is the second phase of the watershed plan to ensure long range proper management of the watersheds.

Submitting watershed management firm must be qualified to address the best watershed management concepts and the scope of the proposal must include but is not limited to the following:

- Provide annual detailed recommendations to City of Asheville Water Resources staff for managing the watershed in the next fiscal year (July 1 – June 30)

- Insure that the annual recommendations maintain water quality as the primary objective
- Approval of the annual plan by City Council during the annual budget process for each fiscal year plan in order to proceed
- Provide detailed information on cost and any projected revenues of the annual proposed plan
- Identify areas within the watershed which require annual maintenance and specifically identify ways to address the annual maintenance needs using best forestry management techniques
- Provide recommendations for riparian buffer designs in order to reduce sedimentation and provide protection for streambanks
- Provide recommendations to reduce the risk of catastrophic events, such as fire, insects or disease to preserve the watershed in order to maintain high water quality
- Identify trees, underbrush, plants, shrubs, etc. which require one time maintenance or removal
- Identify trees, underbrush, plants, shrubs, etc. which require ongoing maintenance or removal during the life of the contract
- Identify roads, bridges, stream crossings, and road shoulders that require immediate maintenance
- Identify roads, bridges, stream crossings, and road shoulders that require long-term maintenance
- Identify invasive plant and tree species and provide action plans for removal or termination to insure continued health of the watershed
- Provide annual watershed plans that are compatible with the North Carolina Conservation Trust easement

-17-

- Provide annual watershed plans that protect and preserve the scenic view sites of the watershed from the Blue Ridge Parkway
- Assist in determining which emergency access roads should be maintained, closed or developed within the watershed
- Determine sites within the watershed for re-establishment of the American Chestnut tree
- Identify endangered/threatened species in the watershed area and provide recommendations for management
- Provide annual plans that will enhance native plants, wildlife, and other species found within the watershed
- It is the desire of the City to appoint a Watershed Advisory Committee made up of Water Resources and other City staff, representatives from the North Carolina Conservation Trust, Blue Ridge Parkway, and City of Asheville Tree Commission. This committee will be used to provide technical assistance and recommendations to the watershed management plan
- Any water-related work the firm is qualified to do (or sub-contract), as directed and mutually agreeable to both parties

Staff will bring an annual plan to City Council outlining specific details of what will be done within the watershed, except emergency maintenance, for the next fiscal year for Council approval.

City staff recommends City Council's approval of the proposed RFP for the next phase of managing the North Fork and Bee Tree watersheds.

Councilman Newman said that the management activities that are needed in the watershed include the maintenance and restoration of bridges on the watershed property, and the removal of identified exotic species that present a fire threat to the property. His concern is that this RFP is much broader than that and we are going to spend a lot of money paying consultants to develop a very broad plan and really the only pressing management needs that he can see in the watershed are the activities to maintain the road network and remove the exotic species. There is an element of commercial logging activities that is contemplated in the RFP and if we are going to use commercial logging as a management technique in the watershed property, we need to be more clear about exactly why we are doing that. It doesn't seem to him that it meets any of our management goals in the watershed, other than creating a source of revenue. He is concerned that we are unnecessarily vague about the role that we want that to play in the future management of the watershed. Based on the potentially high price we are going to pay for the consulting firm to create the second phase of the management plan, he will not support it.

Mayor Worley noted that this is only a RFP and when it comes back, Council will determine the scope of what, if anything, they want done and the cost associated with that.

Councilwoman Jones would not support the RFP largely because of the costs quoted.

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

Councilman Davis moved for the adoption of Resolution No. 04-211. This motion was seconded by Councilman Dunn and carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Jones and Councilman Newman voting "no."

RESOLUTION BOOK NO. 28 – PAGE 387

VI. OTHER BUSINESS:

-18-

Vice-Mayor Mumpower announced vacancies on various boards.

Vice-Mayor said that Square D has closed and thanked them for their important service to our community for over 30 years.

The following claims were received by the City of Asheville during the period of September 10-23, 2004: Homer Sams (Water), Eric Hornbeek (Police), Karen Valentine (Streets), Trace Bates (Streets), Vivian Smith (Water) and Marian Jacobsen (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:04 p.m.

CITY CLERK

MAYOR