

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Diana Hollis Jones

PLEDGE OF ALLEGIANCE

- Councilman Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 5-9, 2005, AS “MINORITY ENTERPRISE DEVELOPMENT WEEK”

Councilwoman Bellamy read the proclamation proclaiming September 5-9, 2005, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. Marvin Vierra, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING SEPTEMBER 2005 AS “CHILDHOOD CANCER AWARENESS MONTH”

Mayor Worley read the proclamation proclaiming September 2005 as "Childhood Cancer Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Mike Traynor, President of the Pediatric Brain Tumor Foundation, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING SEPTEMBER 2005 AS “CELEBRATION OF THE ARTS MONTH”

Mayor Worley read the proclamation proclaiming September 2005 as "Celebration of the Arts Month" in the City of Asheville. He presented the proclamation to Mr. Dean Schatley, Vice-Chair of the Arts Council, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Vice-Mayor Mumpower, Consent Agenda Items “B” and “D” were removed from the Consent Agenda for individual votes.

At the request of Councilwoman Bellamy, Consent Agenda Items “F” and “G” were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 9, 2005, AND THE WORKSESSION HELD ON AUGUST 16, 2005

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B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE TO CONSTRUCT A TENNIS FACILITY AT ASTON PARK

This item was removed from the Consent Agenda for further discussion.

C. RESOLUTION NO. 05-163 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of \$836,729.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of \$836,729, is for the Airport Improvement Program Project No. 3-37-0005-30. This project consists of expanding the terminal apron (including rehabilitation), Phase II.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-30.

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D. BUDGET AMENDMENT FROM A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR ASTON PARK RENOVATION

This item was removed from the Consent Agenda for further discussion.

E. RESOLUTION NO. 05-164 - RESOLUTION AMENDING THE CITY COUNCIL 2005 MEETING SCHEDULE TO INCLUDE A COMMUNITY MEETING ON TUESDAY, AUGUST 30, 2005, AT 7:00 P.M. IN THE WILLIAM F. WOLCOTT JR. BUILDING LOCATED AT 161 S. CHARLOTTE STREET

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F. RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 27, 2005, TO CONSIDER CLOSING AN UNNAMED ALLEY OFF CLINGMAN AVENUE

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

G. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

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

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.

Councilman Dunn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR INDIVIDUAL VOTES

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RESOLUTION NO. 05-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE TO CONSTRUCT A TENNIS FACILITY AT ASTON PARK

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Carolina Cornerstone Construction to construct a tennis facility in Aston Park.

The City of Asheville Parks and Recreation Department is in the process of implementing the first phase of development on the Aston Park Master Plan. This phase of significant public park improvements includes a new tennis facility, driveway and handicap parking to replace the current building that is in poor condition and doesn't meet the needs of the tennis program and the community. The project was bid out according to City standards that include the Minority Business Plan. The Director of the Asheville-Buncombe Office of Minority Affairs has reviewed the bid submittal and found that the company provided the appropriate good faith effort documentation along a listing of certified firms that will be participate on this project. Funds for this project are coming from the Irene & Dick Covington Foundation and the Parks & Recreation Trust Fund grant. This building will also house the memorabilia from Dick Covington who was affectionately known as "Mr. Tennis" for his work in Asheville on enhancing this sport for over five decades.

Pros

- The construction of this portion of the project is an integral-supporting aspect of the unique clay tennis courts.
- The park will provide greatly needed recreation facilities for recreation users, especially the tennis players in the area.
- The tennis facility will be a local and regional attraction that will foster economic development.
- No City tax funds will be used in the development of this facility.

Cons

None

City staff recommends that City Council authorize the City Manager to enter into a contract with Carolina Cornerstone Construction, in the amount of \$361,237, to construct the tennis facility at Aston Park.

Mr. Jack Petty felt that there are adequate facilities at Aston Park. He felt there is no need to build an attractive nuisance. In addition, he felt the Asheville tennis players have not been brought into the discussion of the use of public funds for expansion of the facilities, other than those that are directly involved in tennis. He felt this is a waste of public funds.

City Manager Jackson noted that the City is working on addressing the existing unwanted element in Aston Park.

Mr. Irby Brinson, Director of Parks & Recreation, said that this process has been going on for five years. It was the dream of Dick & Irene Covington to build a clubhouse at Aston Park for two reasons: (1) to house the memorabilia of Mr. Covington through his many years of tennis; and (2) to build a facility to be used by the public, not only for tennis. The funds for the project are coming from the Dick & Irene Covington Foundation, being matched by a Parks & Recreation Trust Fund grant. He noted there are no taxpayer dollars going into construction of this facility. This has been discussed many times through the N.C. Tennis Association and the Irene and Dick Covington Foundation. In addition, a community meeting was held to discuss the overall design. He will continue to work to build a dialogue with the public as we proceed with this process.

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Mr. Fred English felt that to build the new facility will be a waste of money, due to the number of vagrants that frequently use the park.

Mr. Bobby Robinson, speaking on behalf of the Dick & Irene Covington Foundation, spoke in support of the facility, noting it was Mr. Covington's dream to do something for the City and County that was suitable for visitors and players to enjoy a decent and clean facility.

Mr. Gene Hamilton urged City Council to support the building of this new facility.

Vice-Mayor Mumpower said that we do have people that misuse the area, but we don't stop doing good things because of bad people. He said we are working to make Aston Park a better place.

Councilwoman Bellamy moved for the adoption of Resolution No. 05-162. This motion was seconded by Councilman Dunn and carried unanimously.

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D. ORDINANCE NO. 3278 - BUDGET AMENDMENT FROM A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR ASTON PARK RENOVATION

Summary: The consideration of a budget amendment, in the amount of \$260,000, from a \$260,000 grant award from the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund.

The City of Asheville applied in January 2005 for a grant from the N.C. Dept. of Environment and Natural Resources, Department of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund. The grant was recently awarded in the amount of \$260,000.

The money will be used for the Irene and Dick Covington Center construction, new backboard, trailhead for greenway to Clingman Forest.

Pros:

- Allows for the City to develop improvements to Aston Park without taxpayer investment.

- Completes the construction of the Irene and Dick Covington Tennis Center.
- Completion of the Center will allow for community use in the meeting space provided.
- Allows for the construction of the trail head for the Clingman Forest Greenway.

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Cons:

- None

This action complies with City Council's Strategic Plan in that it deals with the 11 areas of greenway development mentioned in the Strategic Plan.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of \$260,000 to increase the budget for the renovation of Aston Park.

Councilman Dunn moved to adopt Ordinance No. 3278. This motion was seconded by Councilman Davis and carried unanimously.

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ORDINANCE BOOK NO. 22 – PAGE

RESOLUTION NO. 05-165 - RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 27, 2005, TO CONSIDER CLOSING AN UNNAMED ALLEY OFF CLINGMAN AVENUE

Councilman Davis moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

Summary: The consideration of a resolution of intent to close an unnamed alley off Clingman Avenue and set a public hearing for September 27, 2005.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Mountain Housing Opportunities has requested the City of Asheville permanently close to public use as an unnamed alley off Clingman Avenue. This alley is more particularly described as the alley mentioned in Deed Book 1700 at page 471 and prior deeds in the same chain of title, said alley being further described as Lot 1 of a plat of property of Wilson and Teasley as recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 2 at page 24 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this alley is not a City maintained street. Closure of this alley will not deny any of the abutting properties a reasonable means of ingress or egress as Mountain Housing Opportunities has submitted to the Planning Department a recombination request for the parcels affected. There are three parcels that abut this section of alleyway. They are identified by PIN Nos. 9648.05-08-4179, 9648.05-08-5118, and 9648.05-08-4248. The petitioner has authority over all the abutting parcels.

Pros:

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- The closure allows the property to be used to its maximum (density) potential.
 - Affordable housing can be constructed on the consolidated site.
 - There will be no future compromise of ingress/egress to other property.

Cons:

- In consideration of the proximity of the alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution setting a public hearing for September 27, 2005, to close an alley off Clingman Avenue.

Councilman Newman moved for the adoption of Resolution No. 05-165. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION NO. 05-166 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

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Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

The Arts 2 People group has requested, through the Asheville Parks and Recreation Department, that City Council permit them to serve beer and/or unfortified wine at their Lexington Avenue Arts & Fun Festival, scheduled for Sunday, September 4, 2005, from 11:00 a.m. – 10:30 p.m.

City staff requests City Council adopt a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

Councilman Dunn moved for the adoption of Resolution No. 05-166. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilwoman Bellamy voting “no.”

RESOLUTION BOOK NO. 29 – PAGE 200

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING AND APPLICATION OF A PLANNED UNIT DEVELOPMENT OVERLAY ZONING TO 72 ACRES LOCATED OFF KENILWORTH ROAD AND RESERVOIR ROAD, IDENTIFIED AS KENILWORTH HEIGHTS, FROM THE UNDERLYING ZONING OF RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT; AND MASTER PLAN APPROVAL FOR A 172 UNIT RETIREMENT COMMUNITY WITH RELATED AMENITIES

City Attorney Oast said that the City has received a protest petition and, using the procedures that the staff normally uses, staff has determined that it is a valid protest petition.

Mr. Albert Sneed, attorney representing the developer, provided City Council with various documents regarding ways to calculate whether a protest petition is valid. He felt City staff arbitrarily decided how to pick their four sides for calculation. He requested City Council rule on its validity, not City staff.

City Attorney Oast observed that there is no case law to provide much guidance on the issue of what constitutes a side for purposes of validating a protest petition, especially with an irregular shaped piece of property, such as this. He explained how staff reviews protest petitions and added that staff has always, in his experience, done it this way.

Vice-Mayor Mumpower felt Mr. Sneed raised some valid concerns, however, he didn't feel this was the appropriate time to address those concerns. This protest petition has been reviewed based on our current practices and past actions.

City Attorney Oast said that there is an amendment to the statute that is under consideration by the General Assembly and if, and when, it passes, it will be a good opportunity for us to re-examine our current process.

Vice-Mayor Mumpower moved to adopt staff's interpretation that the protest petition is valid. This motion was seconded by Councilman Davis and carried unanimously.

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Mr. Sneed said that only six Council members are present at this meeting, he requested a continuance of the public hearing until all seven Council members are present, in fairness to the applicant.

Councilman Newman moved to continue this public hearing until September 13, 2005. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3275 – SECOND AND FINAL READING OF AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A POTENTIAL OUTPARCEL USE BASED ON NEW INFORMATION INCLUDED IN AN UPDATE TO THE TRAFFIC IMPACT ANALYSIS FOR THE RIVERBEND MARKETPLACE DEVELOPMENT, LOCATED OFF BLEACHERY BOULEVARD

Mayor Worley said that the public hearing and first reading of this ordinance was held on August 9, 2005. A second reading was required since the ordinance passed on a 4-3 vote.

After a brief discussion about the 90% capacity issue, Councilman Newman said that he could not support this motion because when the conditional use permit was originally approved, Council stated that they would not allow expansion of the traffic impact, as part of this project, unless there was additional traffic mitigation measures to address it and he did not see that additional traffic being mitigated.

By a show of hands, Ordinance No. 3275 carried on a 4-2 vote with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting “yes” and Councilwoman Bellamy and Councilman Newman voting “no.”

ORDINANCE BOOK NO. 22 – PAGE

V. NEW BUSINESS:

A. RESOLUTION NO. 05-167 - RESOLUTION SUPPORTING FULL IMPLEMENTATION OF THE FEDERAL CLEAN AIR ACT AND THE ADOPTION OF OTHER MEASURES TO CONTROL INTERSTATE POLLUTION

Councilman Newman read the following resolution and asked for City Council’s support: “WHEREAS, air pollution is a significant contributing cause of respiratory and other ailments in the population of Western North Carolina, especially in the very young and very old; and WHEREAS, air pollution has harmful effects on the ecology and environment, including depletion of the ozone layer, and weakening and destruction of vegetation at high elevations; and WHEREAS, air pollution has a harmful effect on the economy of Western North Carolina, in that it interferes with mountain views which have long been an attraction for the tourism industry; and WHEREAS, a substantial amount of the air pollution that affects Western North Carolina originates in other states and drifts into this area on prevailing winds; and WHEREAS, in 2001, the State of North Carolina adopted the Clean Smokestacks Act in order to reduce air pollution originating from within the State; and WHEREAS, federal law, like the federal Clean Air Act, is the most effective way to control interstate air pollution. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The City Council of the City of Asheville does hereby support full implementation of the federal Clean Air Act, and the adoption of laws that would make the standards established by the N. C. Clean Smokestacks Act applicable in other states; and (2) The City Council of the City of Asheville urges the N.C.

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Congressional Delegation to oppose any legislation that would weaken the federal Clean Air Act or that would undercut or delay North Carolina’s legal authority to seek reductions in pollution that originate from upwind states.”

Vice-Mayor Mumpower wanted to be supportive but would not because he felt that Council should limit their resolutions to issues that they have a direct impact on or control over.

Councilman Newman moved for the adoption of Resolution No. 05-167. This motion was seconded by Councilwoman Bellamy and carried on a 5-1 vote, with Vice-Mayor Mumpower voting “no.”

RESOLUTION BOOK NO. 29 – PAGE 202

C. RESOLUTION NO. 05-168 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Mumpower said that the terms of Cindy Weeks, Jerome Jones and Hedy Fischer, as members on the Planning & Zoning Commission, expired on August 14, 2005.

At the City Council worksession on August 16, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Weeks and Mr. Jones, each to serve a three-year term respectively, terms to expire August 15, 2008, or until their successors have been appointed.

Also at the City Council worksession on August 16, City Council instructed the City Clerk to arrange interviews for Leslie Fay, Darryl Hart, and Janet Whitworth. Mr. Harry Weiss is also a candidate, however, it was not necessary to bring him in for an interview. Ms. Fay was unable to attend the interview.

After each Council member spoke in support of the candidates interviewed, Leslie Fay received no votes; Darryl Hart received five votes; Janet Whitworth received no votes; and Harry Weiss received one vote. Therefore, Darryl Hart was appointed as a Planning & Zoning Commission member to serve a three-year term, term to expire August 15, 2008, until his successor has been appointed.

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D. RESOLUTION NO. 05-169 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Mumpower said that Mr. Randy Fluharty 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.

At the City Council's worksession on August 16, the City Clerk was instructed to arrange interviews for Joseph Malki, Eric Scheffer, Elizabeth Sims and James Rentz. Mr. Rentz was not interested in the position at this time.

After each Council member spoke in support of the candidates interviewed, Joseph Malki received one vote; Eric Scheffer received five votes; and Elizabeth Sims received no votes. Therefore, Eric Scheffer was appointed to the Buncombe County Tourism Development Authority, to serve a three-year term, term to expire August 30, 2008, until his successor has been appointed.

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VI. OTHER BUSINESS:

Vice-Mayor Mumpower said that a group of businesses have contributed a basketball court to Deaverview Apartments and invited the public to attend the dedication ceremony.

The following claims were received by the City of Asheville during the period of July 29 – August 11, 2005: Dan Gerber (Water), John Moutos (Streets), Julia S. Reed (Police), Swen Froemke (Engineering) and Paul Raybon (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke about the need for the City of Asheville to have a comprehensive quality plan.

Mr. Fred English spoke about the high fuel prices in Asheville.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:56 p.m.

CITY CLERK

MAYOR