

Tuesday - February 7, 1995 - 4:00 p.m.

Asheville Civic Center - Thomas Wolfe

Auditorium

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Chris Peterson; Councilwoman Barbara Field, Councilman Gary McClure, Councilwoman Leni Sitnick, Councilman Joseph Carr Swicegood and Councilman Herbert J. Watts; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Swicegood gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION BY HOUSING AUTHORITY FOR PAYMENT IN LIEU OF TAXES

Ms. Annette Coleman, Chairman of the Housing Authority of the City of Asheville, presented Council with a check payment in lieu of taxes in the amount of \$61,327.83 which represents a total dating back to 1994 of \$991,176.

B. RESOLUTION NO. 95-14 - RESOLUTION TO RETIRING EMPLOYEE ANTHONY K. CAPPS

City Manager Westbrook read the resolution stating that Anthony K. Capps has been an employee for 16 years and has requested retirement from his position as Firefighter Senior in the Fire Department. He expressed City Council's appreciation to Tony for his service to the City of Asheville and its citizens.

Resolution No. 95-14 was adopted by acclamation.

RESOLUTION BOOK NO. 22 - PAGE 185

C. RECOGNITION OF CITY EMPLOYEES AND OUTSIDE AGENCIES REGARDING EMERGENCY RESPONSE AND RESCUE EFFORTS IN CONNECTION WITH FLASH FLOOD OF JANUARY 14-15, 1995

Mayor Martin read the Certificates honoring Asheville and Buncombe County emergency response forces who were pushed to their limits by flash flooding following heavy rains in Western North Carolina on January 14-15, 1995.

On the morning of January 14, 1995, heavy rains began that resulted in the heaviest, most damaging flash flooding in Asheville in more than a decade. Roads and other public works were damaged, and lives were in direct danger as a result of this flooding.

Literally hundreds of emergency responders gathered to deal with these emergencies. Those responders included firefighters, police officers, rescue squad members, paramedics and public works and water resources employees, among others.

The most dramatic incident - the rescue of motorist Johnny Ivester, which triggered the subsequent rescue of Skyland firefighters -2-

Buddy Thompson, Rick Wood, Ronny Mundy and Dennis Presley - involved more than 125 rescuers, and lasted from 8:52 that Saturday evening until well after midnight Sunday morning. Wood and Thompson were carried more than six miles by a fast flowing flood swollen French Broad River before they were rescued less than a mile upstream of the old Asheville Power Company dam.

As a result of those efforts, there were no lives lost and no serious injuries from the flash floods in Asheville.

He then presented Certificates of Appreciation and Honor to the Asheville Police Department, Asheville Public Works Department, Asheville Water Resources Department, Asheville Fire Department, Sheriff Bobby Medford and his deputies, Bill Cecil and his Biltmore Estate staff, Jeff Cook, Dan O'Kelley, John Butler, John Rukavina, Thomas Freck, Rodney Metcalf, Ronnie Davis, Robin Lyles, Reiley Bennett, Bill Saunders, Barbara Sawyer, Buddy Duckett, Skip Myers, Gene Gladden, Asheville Area Rescue Squad, Woodfin Fire Department, Weaverville Fire Department, French Broad Fire Department, Reems Creek Fire Department, West Buncombe Fire Department, Skyland Fire Department, Buncombe County EMS, Dennis Presley, Buddy Thompson, Ronny Mundy, Rick Wood, Dennis Ball, Shawn Haynes, Chris Morgan, John Riesebeck, and Jim Shope.

D. PROCLAMATION PROCLAIMING FEBRUARY 5-11, 1995, AS "BURN AWARENESS WEEK"

Mayor Martin proclaimed February 5-11, 1995, as "Burn Awareness Week" in the City of Asheville and presented the proclamation to Mr. Harold Holbert from the Land-of-Sky Shriners Club.

E. PROCLAMATION PROCLAIMING FEBRUARY 1995 AS "BLACK HISTORY MONTH"

Councilman Watts read the proclamation proclaiming February 1995 as "Black History Month" in the City of Asheville.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE SUBDIVISION REGULATIONS RELATIVE TO APPROVAL OF A PRELIMINARY PLAT

ORDINANCE NO. 2181 - ORDINANCE AMENDING SECTION 17-46 OF THE CODE OF ORDINANCES (SUBDIVISION REGULATIONS)

Mayor Martin opened the public hearing at 4:43 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Julia Cogburn said that this amendment would provide for appeal to the City Council when the Planning and Zoning Commission denies approval of a preliminary plat for a subdivision.

The Planning and Zoning Commission and Planning staff recommend adoption of this ordinance.

Mayor Martin closed the public hearing at 4:44 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read. -3-

Councilman Swicegood moved for the adoption of Ordinance No. 2181. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2181 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 1

B. PUBLIC HEARING TO AMEND THE ZONING ORDINANCE TO PROHIBIT PARKING OF LARGE MOTOR VEHICLES IN RESIDENTIAL DISTRICTS

ORDINANCE NO. 2182 - ORDINANCE AMENDING SECTION 30-3-11 OF APPENDIX A OF THE CODE OF ORDINANCES (REGULATIONS OF OFF-STREET PARKING AND LOADING)

Mayor Martin opened the public hearing at 4:45 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Paul Benson, Urban Planner, said that this ordinance would prohibit parking of large motor vehicles, such as, but not limited to truck tractors, trucks, semitrailers and buses, on property located in a residential district.

Deliveries and services provided by large motor vehicles are permitted. The ordinance allows recreational vehicles, subject to existing standards.

This ordinance was previously recommended by the Planning and Zoning Commission ("Commission") after an initial public hearing on September 1, 1993. It was considered by the City Council on September 28, 1993, and tabled with the request that the City Manager report on how other cities in North Carolina regulate trucks in residential areas, and why recreational vehicles are permitted by the proposed ordinance.

On January 4, 1995, the Commission held its second public hearing and again recommended its adoption unanimously.

Ms. Mary Jo Brezny, resident of Montford area, urged Council to pass this ordinance.

Mr. Gordon Lucks, 174 Montford Avenue, felt that passing this ordinance would be an infringement on his rights as a property owner to determine what he can or cannot park on his property.

Mayor Martin closed the public hearing at 4:52 p.m.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2182. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2182 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 3 -4-

C. PUBLIC HEARING TO ZONE THE WEST II ANNEXATION AREA AND TWO EXTRA-TERRITORIAL JURISDICTION LOTS

- ORDINANCE NO. 2183 - ORDINANCE PROVIDING FOR THE ZONING IN THE WEST II ANNEXATION AREA

- ORDINANCE NO. 2184 - ORDINANCE AMENDING SECTION 30-1-3 OF THE CODE OF

ORDINANCES (TERRITORIAL AND EXTRATERRITORIAL JURISDICTION ZONING ORDINANCE)

Mayor Martin opened the public hearing at 4:52 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Patty Joyce, Senior Planner, said that this ordinance would establish zoning for the approximate 600 acre area of the West II annexation (effective August 31, 1994) not previously zoned. The area under consideration lies between I-40 and US 19-23 and is bordered on the west side by Moody Avenue and east side by Asbury Road. It includes the Woodside Hills Subdivision, BASF, Westridge Market Place and several residential areas.

A community meeting to discuss the zoning proposal was held on November 21, 1994. Input from that meeting and workshops held by the Planning and Zoning Commission ("Commission") was incorporated into the staff recommendations. The Commission held a public hearing to discuss the West II area zoning on January 4, 1995. Notice of the Commission meeting was mailed to 516 property owners and there were no comments made. The Commission voted unanimously to approve the Planning staff recommendations.

The second ordinance would extend the extraterritorial jurisdiction to include the two lots which are adjacent to the West II annexation area.

Councilwoman Sitnick was amazed at the over \$2,600 it cost to print the notice to the public in the Citizen-Times. She encouraged the Planning staff to look into other ways, that are within the legal bounds, for us to advertise this kind of zoning in an annexed area.

City Attorney Slawter said that the purpose for identifying each lot in this legal notice was to make all property owners aware what their lots were being zoned. He said a map could be used, but it is quite difficult in delineating the property lines, and a map for this particular area would have had to be at least a full page.

Mayor Martin closed the public hearing at 4:58 p.m.

Mayor Martin said that members of Council have previously received copies of the ordinances and they would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2183. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2183 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 6 -5-

Councilwoman Field moved for the adoption of Ordinance No. 2184. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2184 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 18

D. PUBLIC HEARING TO ZONE ONE LOT ON ROCKY RIDGE ROAD FROM CH COMMERCIAL HIGHWAY

ORDINANCE NO. 2185 - ORDINANCE TO ZONE ON LOT ON ROCKY RIDGE ROAD

Mayor Martin opened the public hearing at 5:00 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Paul Benson, Urban Planner, said that this ordinance would establish zoning for one lot (PIN No. 9626.08-78-7720) within the Brevard Road annexation area. Although an ordinance was adopted by the City Council on December 20, 1994, zoning the rest of the approximately 300 acre annexation area, this lot was inadvertently excluded from the public notice maps. The proposed zoning for this property is Commercial Highway.

On January 4, 1995, the Planning and Zoning Commission ("Commission") held a public hearing. Notice of the public hearing was mailed to 28 surrounding property owners and one neighboring property owner spoke with concern that commercial development may devalue the residential properties along Rocky Ridge Road to the west of the site.

The Commission and the Planning staff recommend that this property be zoned Commercial Highway.

Mayor Martin closed the public hearing at 5:01 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2185. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 7-0, Ordinance No. 2185 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 20

E. PUBLIC HEARING TO REZONE A PORTION OF A LOT NEAR THE CORNER OF MARTIN LUTHER KING JR. DRIVE AND HAZZARD STREET FROM R-3 RESIDENTIAL DISTRICT TO CG COMMERCIAL GENERAL

Mayor Martin opened the public hearing at 5:02 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Tony Nicholson, Urban Planner, reported that the Planning Department initiated a request to rezone a portion of a lot on Martin -6-

Luther King Jr. Drive from R-3 Residential to Commercial General (hereinafter "CG").

On December 21, 1994, a notice was sent by the Planning Department to 78 property owners making them aware of the rezoning request and the public hearing.

On January 4, 1995, a public hearing was held by the Planning and Zoning Commission ("Commission") and approximately six residents spoke, all who opposed the rezoning for the following reasons:

1. Afraid of impact on neighborhood of commercial encroachment.

2. Claims that ulterior motives were involved in the original rezoning request.
3. Concerned that existing driveway access through subject property to an adjacent house will be cut off.
4. Residents want more input into what is built in the neighborhood.

The Commission initially reviewed the rezoning request at their January 4 meeting and tabled it in order for staff to take the following actions:

1. Submit copy of East End/Valley Street Redevelopment Plan to members of the Commission for their review.
2. Organize an informational meeting in the neighborhood to discuss the rezoning request and a proposed medical office for the site.
3. Collect information regarding covenants and development restrictions on the property.
4. Find out the legal status of the existing driveway on the property.

Prior to February 1, 1995, Planning staff provided all the requested information to the Commission. At the Commission's February 1, 1995, meeting, approximately 12 people spoke in opposition to the rezoning and the Commission voted to deny the request with a vote of 5-2.

Furthermore, the Commission voted unanimously to recommend to City Council that the process be started to re-evaluate the current zoning of the lot and for the process to include reactivation of the Citizens Advisory Committee.

At the request of the current property owner and the potential buyer of the property, the Planning Department has formally appealed the Commission's decision to City Council.

Assistant City Attorney Patsy Meldrum said that the East End/Valley Street Redevelopment Plan, adopted in 1978, showed that this particular piece of property (which constituted many tax lots at the time) was to be zoned for a retail store to be built. In 1978, the Commercial General designation was the closest designation for implementing that type of use. When portions of this property were rezoned by Ordinance Nos. 1253 and 1297 in 1981 and 1982, clerical errors were made with regard to some of the lots. As a result, portions of this tax lot were not clearly rezoned from R-3 Residential District to CG Commercial General District. This proposed ordinance would clear up the clerical errors made in 1981 and 1982.

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In response to a question from Councilman McClure, Ms. Meldrum stated that the law in North Carolina clearly allows the City to rezone a lot due to clerical errors.

Councilwoman Sitnick asked if this whole property were rezoned today from R-3 to CG, remembering that it's surrounded by single family houses, would that be considered spot zoning. Ms. Meldrum responded that action proposed today would not be because there are small portions of this whole two acres that are in question. However, if we were to start all over today and consider it, we would have to look at that question separately. As the rezoning was done in 1981 and 1982, the statute of limitations has expired on that question.

Councilwoman Sitnick asked if it would constitute spot zoning if the property

would be rezoned from CG to R-3. Ms. Meldrum stated that it would not, however, there might be a question as to whether or not that constitutes a substantial change in the East End/Valley Street Redevelopment Plan.

Councilwoman Sitnick then asked if it was stipulated in the Redevelopment Plan that this property in question was originally intended for African-American retail use. Ms. Brison responded that she was not aware of any language specifically stating the type of ownership and she not sure if we could do that by a zoning ordinance. We might be able to do it through other means, for example, if there were grants or something like that and the sale of the property were based on some federal grant that was related to some minority class. The Redevelopment Plan itself says that it would allow one neighborhood store area in the approximate center of the community. At the time the Redevelopment Plan was adopted, CG was the closest zoning designation that would allow a neighborhood retail store. When City Council adopted the CG designation in 1981 and 1982, then the rezoning itself meant that all of the uses then permitted, or thereafter permitted, in the CG zoning district would be permitted on that lot. The zoning ordinance itself did not restrict it to neighborhood retail.

Councilman Watts said that the neighborhood said they were promised by previous Councils that this property would remain residential.

Ms. Elizabeth Graham, Chair of the Planning and Zoning Commission, related to Council how difficult a decision this rezoning request was, however, the Commission sided with the residents in the area and denied the rezoning request.

Ms. Sharon Barrett, attorney representing the Community Family Practice, urged Council to correct these clerical errors and allow her clients to be the good neighbors that they are willing and capable of being. She stated that this piece of property needs to be rezoned in order to use the property for commercial purposes, as was originally intended. She felt these doctors have been negotiating for this property in good faith since October of 1994 and on December 20, 1994, City Council authorized the Housing Authority to sell this disposal parcel to them. She felt the office would blend in well with the community with a single story building. The Commission requested the doctors meet with the neighborhood. They went door-to-door to the adjacent property owners and attempted to attend two community meetings, however, they were asked not to attend. She said these doctors would be an asset to the community, not an eyesore. -8-

Upon inquiry of Vice-Mayor Peterson, it was determined that the doctors could get any deposit money they have paid towards the purchase if this property was not rezoned.

Councilwoman Sitnick said that the calls and letters she has received expressed no opposition to these particular doctors, just that they did not want the property rezoned to a commercial zone. She felt that the CG uses permitted are inappropriate for this neighborhood and that the initial rezoning to the CG district was a mistake.

Councilman McClure felt that even though the property is zoned CG, this is a good opportunity for the neighborhood to have control over what is built in that area. He said that this is a very good organization and community oriented.

Dr. Martha Salyers, Community Family Practice, said that in looking for an area in which to relocate, they looked at an area that had access to the hospitals, was close to downtown, came within their budget and had a good surrounding

neighborhood. This particular piece of property met all their needs. She hoped Council would correct these clerical errors and would allow them to provide a valuable service to this community.

The following people spoke in opposition to the rezoning for various reasons, including, but not limited to the surrounding property would be devalued, the neighborhood is close enough to a hospital, the residents in the area already have doctors, the property should be rezoned to allow single-family houses to be built, they do not want government dictating what should go into their community, the CG zone will invite crime, the rezoning would be spot rezoning, the property should be rezoned entirely to residential, the mistake was made back in 1978 when the Redevelopment Plan showed this should be a commercial lot, the Redevelopment Plan should be re-visited, and the neighborhood might be more acceptable to an African-American building something commercial on the property:

Ms. Edith Webb

Ms. Mary Young, 18 Martin Luther King Jr. Drive

Mr. Halliburton

Ms. J. Lake, property owner facing the property in question

Mr. Ricky Morgan

Ms. Mary Gilchrist, 27 Hazzard Street

Ms. Virginia Summey, 74 Mountain Street

Rev. Ronald Knight, Pastor of St. James AME Church on Martin Luther King Jr. Drive and Hildebrand

Mr. William Young, Vice-President of the East End Community Area

Ms. Glenda McDowell, President of the East End/Valley Street Association

Mr. H.K. Edgerton

Mayor Martin said that Ms. Emma Morgan, 13 Ridge Street, called his office to express her opposition to the rezoning by stating that the neighborhood does not want a doctors office.

Mr. Nicholson stated that Mr. Sidney Shorter, resident in the area, called in to express his opposition.

Ms. Jane Gianvito Mathews, member on the Planning and Zoning Commission, explained to Council the need to have participation of -9-

the community again in the redevelopment plan process and the need to look at it continually. She was not sure if the community completely understands what the zoning in the community is and what the zoning allows and this would be a good opportunity to inform them. She noted that the vote of the Planning and Zoning Commission was 4-3, rather than 5-2 as eported by Mr. Nicholson.

Councilman Swicegood felt the property should be rezoned completely to residential and allow houses to be built.

Councilwoman Sitnick read some of the uses allowed in the CG zone and felt that the lot could have commercial development on it that would be much more

intrusive than the doctors office.

Councilwoman Sitnick asked if there has been a attempt on the part of the neighbors to rezone the lot to residential. Mr. Young stated that the neighborhood has asked the Housing Authority to rezone the property to residential but those requests have been denied.

When Councilwoman Field inquired about the doctors contacting the neighborhood, Mr. Halliburton felt the doctors only contacted residents that were in favor of the rezoning. Ms. McDowell stated that the doctors did, in fact, request to attend two community meetings, however, the doctors submitted a map and letter clearly outlining their proposal and the community felt they understood the rezoning request and it was not necessary for the doctors to attend their meeting.

Upon inquiry of Councilwoman Sitnick about why the doctors were not told about the problem with zoning when they initially looked at the property, Mr. Larry Holt, representative of the Housing Authority, explained that the Housing Authority requested the property be rezoned CG in 1981, in accordance with the Redevelopment Plan. The Housing Authority was under the impression that the property was rezoned CG - even the maps at the Housing Authority indicated that this property was zoned CG. The Housing Authority was not made aware of the zoning irregularity until Community Development Director Marvin Vierra contacted them which was after Council had approved the sale of the disposal parcel pm December 20, 1994. At that time, City staff started the process of trying to correct the clerical errors. He felt the Housing Authority's role is to make the land available to commercial development, which it did in this instance.

Councilwoman Sitnick was very concerned that the City Council was not made aware of this zoning irregularity when this matter was before them on December 20, 1994, for authority to sell a disposal parcel to the Community Family Practice.

Mayor Martin closed the public hearing at 6:30 p.m.

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

Councilman Watts moved to deny the rezoning request. This motion was seconded Vice-Mayor Peterson.

Upon inquiry of Councilman McClure as to a possible conflict of interest since the company he works for will be dealing with the doctors, but he will not be, City Attorney Slawter said that it was his opinion, under the circumstances, that he would not have a conflict of interest. -10-

Upon inquiry of Councilwoman Field as to some perceived conflict of interest since her firm does work with the Housing Authority, City Attorney Slawter felt her relationship was too remote and therefore, under the circumstances, felt she would not have a conflict of interest.

On a roll call vote of 4-3, the motion to deny the rezoning request passed, with Councilwoman Sitnick, Councilman McClure and Mayor Martin voting "no".

Vice-Mayor Peterson moved to instruct the Planning staff to start the process to re-evaluate the current zoning of the lot for possible residential designation and for the process to include reactivation of the Citizens Advisory Committee. This motion was seconded by Councilman Swicegood and carried unanimously.

Councilwoman Sitnick stated that the Community Family Practice group acted in good faith and offered a formal apology to them because they were not fully informed about the specifics of the real estate they were looking at. She said this Council should come up with either a policy or a process that prevents this kind of unfair behavior in the future.

At this time, 6:40 p.m., Mayor Martin announced a recess until 7:00 p.m.

At 7:00 p.m. the meeting reconvened.

III. UNFINISHED BUSINESS: None

IV. NEW BUSINESS:

A. RESOLUTION AMENDING THE STORMWATER SPECIFICATIONS MANUAL

At the request of staff, this item was deleted from the agenda.

B. RESOLUTION NO. 95-15 - RESOLUTION ESTABLISHING A STEERING COMMITTEE ON THE REEVALUATION PROCESS FOR THE HEAD OF MONTFORD REDEVELOPMENT PLAN

Ms. Julia Cogburn, Planning Director, said that Planning staff is requesting that a steering committee be named by Council to work with staff on the reevaluation of the Head of Montford Redevelopment Plan.

At Council's direction, staff has begun work on a reevaluation of the Head of Montford Redevelopment Plan adopted in 1987. This reevaluation was initiated following a rezoning application which came before Council last year. Staff has already conducted one neighborhood meeting on this reevaluation process and plans a second in February. Following these larger community meetings, staff proposes that a steering committee continue working on recommendations with the staff leading up to another neighborhood meeting and finally the presentation of any recommendations to Council. Staff feels that Council should appoint this steering committee -- selecting from among interested Montford residents and property owners or others important to the redevelopment process.

Staff recommends that Council adopt a resolution establishing a Steering Committee for the Head of Montford Redevelopment Plan Reevaluation Process. Staff proposes that this Committee be comprised of 13 individuals, two of whom shall represent the Planning and Zoning -11-

Commission and one of whom shall represent the Historic Resources Commission. Two members of the Planning and Zoning Commission have requested that they be appointed to the committee, as have several people involved in the neighborhood.

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

Vice-Mayor Peterson moved for the adoption of Resolution No. 95-15. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 186

C. MOTION TO APPROVE THE COMMUNITY DEVELOPMENT BLOCK GRANT PRIORITY RATING SYSTEM FOR FISCAL YEAR 1995

Mr. Marvin Vierra, Community Development Director, said that during February, 1995, the City will be receiving applications from agencies desiring to receive CDBG funding for the coming year. As we have done in the years past, the

Housing and Community Development Committee has again recommended to Council approval of the priority rating system to be used. This system places the highest priority on activities designed to improve or expand the affordable housing stock of the City. The priority rating system is not a federal requirement. The rating system notifies the public of the City's priorities in reviewing agency applications.

Vice-Mayor Peterson wondered how adopting this rating system would affect the decision to bring the Housing and Community Development Committee in-house.

Mayor Martin suggested each project be reviewed on its own merit and have the rating system as a guideline to review each project.

Mr. Vierra did state that the rating system is not the only basis which we evaluate projects - the most emphasis being placed on the merit of each project.

Councilwoman Field moved to approve the priority rating system for the Community Development Block Grant applications for Fiscal Year 1995 that has been recommended by the Housing and Community Development Committee of City Council as guidelines and that each application be reviewed on its own merit. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

D. ORDINANCE NO. 2186 - BUDGET AMENDMENT RELATIVE TO CONSULTING SERVICES ASSOCIATED WITH THE RENEGOTIATION OF A FRANCHISE AGREEMENT WITH TCI CABLEVISION OF ASHEVILLE

RESOLUTION NO. 95-16 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH RICE, WILLIAMS ASSOCIATES FOR CONSULTING SERVICES TO THE CITY OF ASHEVILLE IN THE RENEGOTIATION OF A FRANCHISE AGREEMENT WITH TCI CABLEVISION OF ASHEVILLE

Ms. Patsy Meldrum, Assistant City Attorney II, said that a budget amendment, in the amount of \$75,000, is needed to secure a consultant to -12-

assist the City of Asheville in the renegotiation of a franchise agreement with TCI Cablevision of Asheville. The accompanying resolution will authorize the City Manager to sign an agreement with Rice, Williams Associates for consulting services to the City of Asheville in renegotiation of a franchise agreement with TCI Cablevision of Asheville.

The City Council previously authorized the City Manager to secure a consultant to assist the City of Asheville in the renegotiation of a franchise agreement with TCI Cablevision of Asheville. The North Carolina League of Municipalities has published a resource list showing cable television consultants with local government experience in North Carolina. Proposals were solicited from three of those consultants: Rice, Williams Associates; Charles Gramlich & Associates (who prepares the proposal as a subcontractor to a Minnesota law firm - Fredrikson & Byron); and McNair & Sanford, a regional law firm with offices in Raleigh, North Carolina.

The proposal by McNair & Sanford is mostly for assistance with negotiations of the franchise agreement and drafting the documents. The proposal by Fredrikson & Byron, with Charles Gramlich & Associates, provides for a wider range of services, but does not include engineers as part of the staff team who would perform the technical analysis of the local cablevision system. Rice, Williams Associates offers technical review (including two staff engineers), financial review and legal review. The firm of Rice, Williams Associates is, therefore, recommended.

Rice, Williams Associates has provided services to a number of cities in North Carolina. Telephone calls were made to the cities of Charlotte, Greensboro and Rocky Mount to review their experience with Rice, Williams Associates. The firm is highly recommended. In addition, Assistant City Attorney Patsy Meldrum reviewed the documents prepared for the City of Greensboro as a result of the work of Rice, Williams Associates and she found them to be exemplary documents. Rice, Williams Associates is also a corporation which is 50% women-owned.

Mayor Martin said that members of Council have previously received a copy of the ordinance and the resolution and they would not be read.

Councilman Swicegood moved for the adoption of Ordinance No. 2186. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2186 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 22

Vice-Mayor Peterson moved for the adoption of Resolution No. 95-16. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 187

E. ORDINANCE NO. 2187 - BUDGET AMENDMENT RELATIVE TO FUNDING TWO RECYCLING CENTERS

Mr. Bob Wurst, Audit/Budget Director, said that several weeks ago the City Council asked staff to consider alternatives to fund the cost for up to two additional recycling drop centers. Since the Buncombe -13-

County Commissioners announced that they would no longer support recycling drop centers in the community, the Council is concerned about how Asheville's citizens will be able to continue to recycle. At Council's request, City staff solicited proposals from four recycling companies in the area. Two responded. The estimated net cost per month for each recycling center, based on ABC Recycling's low bid, is approximately \$1,770 a month. This amount includes an estimated return on recyclables of approximately \$250 a month per site.

This budget amendment, in the amount of \$25,500 supports the total cost of these two additional City-sponsored recycling drop centers for up to six months. The revenues for this amendment include an estimated \$3,000 return to the City from the sale of recyclables and \$22,500 from the General Fund Capital Contingency.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2187. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2187 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 24

V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 24, 1995, AND THE WORKSESSION HELD ON JANUARY 31, 1995

B. CONSIDERATION OF AN APPLICATION FOR A LICENSE FOR A MASSAGE THERAPIST - ERIN SCHONE

Summary: Ms. Erin Schone seeks approval of her application to practice the profession of a massage therapist from City Council, consistent with Article III of Chapter 9 of the City Code. City staff has reviewed Ms. Schone's application and all pertinent requirements have been met.

C. RESOLUTION NO. 95-17 - RESOLUTION FIXING THE DATE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION OF PROPERTY LOCATED WEST OF OVERLOOK ROAD (THE HOLT AT BILTMORE PARK AND GLEN OAKS AT BILTMORE PARK) FOR FEBRUARY 21, 1995

RESOLUTION BOOK NO. 22 - PAGE 188

D. RESOLUTION NO. 95-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MOSER MAYER PHOENIX ASSOCIATES, P.A., FOR SCHEMATIC DESIGNS AND WITH DNA DESIGN ASSOCIATES INC. FOR SURVEYING SERVICES ON THE TRANSIT FACILITY SUSPENDING FURTHER PLANNING ON PRITCHARD PARK

Summary: The conflict with neighboring property owners concerning the Transit Authority's proposed bus facility on Aston Street is having adverse effects on the planning and execution of the bus facility and the redevelopment of Pritchard Park.

RESOLUTION BOOK NO. 22 - PAGE 192 -14-

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Watts and carried unanimously.

VI. OTHER BUSINESS:

A. CLAIMS

City Manager Westbrook said that the following claims were received by the City of Asheville during the week of January 19-25, 1995: Raymond Bolden (Streets), Neil Battle (Streets), Clydell Johnson (Water) and Paul and Janice McClurry (Inspections).

He said the following claims were received during the week of January 26-February 1, 1995: Luoise Conley (Streets), CP&L (Fire), Ross Perkinson (Water), National Linen (Water), Joel Edwards (Fire), Jerry Jones (Water), Hubert Mosley (Streets) and BellSouth (Streets).

He said that these claims would be referred to the appropriate insurers for investigation.

- PUBLIC HEARING RELATIVE TO AMENDING THE ZONING ORDINANCE REGARDING NONCONFORMING SIGNS

ORDINANCE NO. 2188 - ORDINANCE AMENDING APPENDIX A OF THE CODE OF ORDINANCES REGARDING NONCONFORMING SIGNS

Mayor Martin opened the public hearing at 7:20 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Julia Cogburn, Planning Director, said that at the direction of the previous City Council, the Planning and Zoning Commission and Planning staff have been reviewing a draft wording amendment which addresses nonconforming

signs.

On December 7, 1994, the Planning and Zoning Commission reviewed and approved with a vote of 4-3 a proposed wording amendment to the Zoning Ordinance regarding nonconforming signs. This wording amendment was prepared by staff at the request of the Asheville City Council. The wording amendment grandfathers in all nonconforming signs which comply with the regulation of the City's Sign Ordinance which was adopted in October of 1977. Currently, these signs are subject to coming into compliance ("amortization") in 1997.

The draft approved by the Planning and Zoning Commission also recommends that language be added which allows for repainting, changing the message, or changing the panels on all nonconforming signs. Currently, signs must come into compliance when such changes or alterations are made. The Planning and Zoning Commission voted 4-3 to recommend the ordinance to you.

She noted another change in the draft ordinance which basically suggests a means for dealing with signs which either come into the City through expansion of extra-territorial jurisdiction or annexation or which become non-confirming by a subsequent amendment to the sign ordinance. Basically for signs that fit in those categories and which do not conform with the 1977 ordinance, they are required under this particular provision to come into compliance or be removed within five years of the effective date of whatever amendment or extension brings -15-

them into nonconformance. Under the current ordinance there is a provision for seven years. The reason staff has suggested changing that to five years is because we feel that equates with the five years that is given to anyone else that doesn't comply with the 1977 ordinance.

She also called to Council's attention to a portion which has been added recently, which basically has a provision for dealing with signs which had obtained a variance. What this provision states is that "any on-premise or off-premise signs (and their sign structures) which did not conform with requirements of the sign regulations adopted in Article 9 of Chapter 30 of the Code of Ordinances on October 21, 1977, but which have been granted a permit as a result of a variance granted by the Board of Adjustment shall be allowed to remain in accordance with the terms of the variance granted."

After updating some figures since the worksession on January 31, 1995, the draft ordinance before the Council would grandfather 74 off-premise signs, 733 on-premise establishments, and 50 billboards.

She noted that signs that are on federal-aid primary highways are not subject to having to come into compliance so the numbers may be reduced by a small amount.

The following individuals spoke in favor of grandfathering all nonconforming signs which comply with the regulation of the City's Sign Ordinance which was adopted in October of 1977, and some individuals felt that all nonconforming signs should be grandfathered:

Mr. Robert Gresham, Vice-President of Service Distributing Company out of Albemarle, N.C.

Mr. Chris Moutos, resident of 155 Tunnel Road

Mr. Carl Ricker, born and raised in Asheville

Mr. Loyd Kirk, owner and operator of the Forest Manor Inn on Hendersonville

Road

Mr. and Mrs. Wilbur Miller, Miller Jewelers in the South Forest Shopping Center at 780 Hendersonville Road

Mr. Bill Fishburne

Rev. Wendell Walley, Zephyr Hills Free Will Baptist Church on Shelburne Road in West Asheville

Mr. Bob Lawrence, Bob Lawrence Power Equipment

Mr. Reynolds Calvert, owner of Antique Train and Toy

Mr. Dennis Michael, resident of Fairview, but general manager for a mini-storage facility

Mr. Ron Dame

Ms. Kathy Deblaker, Manager of Stow-Away Storage in West Asheville

Mr. Jeff Nolan, employee of Fairway Outdoor

Mr. Tony Robertson, Asheville Lock and Key

Mr. Darrell Merchant, General Manager of Fairway Outdoor Advertising of Asheville

Mr. Charles Worley, native of Asheville

Mr. Gerald Dean, real estate broker in Asheville

Dr. Earl Sunderhaus, has office building on Tunnel Road

Mr. Robert Peterson, owner of Bob and Denise's Classie Car Wash on Merrimon Avenue

Mr. Albert Sneed

Mr. Bob Selby, speaking on behalf of the Council of Independent Business Owners

Mr. Lloyd Layman, owner of two signs in Asheville

Mr. Jim Reeves, employee of Fairway Outdoor Advertising

A representative of Ryans Family Steakhouse Restaurant

Mr. Pete Hall, Fairway Outdoor

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The following individuals spoke in opposition to grandfathering the nonconforming signs:

Ms. Jane Bingham, resident of Biltmore Forest, but born in the City of Asheville

Ms. Katheryn Gallagher, resident of Asheville

A native of Asheville

Ms. Marie Colton

Mr. Leo Beauregard, resident of Asheville

Mr. Dennis Hodgson, private citizen

Mr. Jack Brooke, resident of Swannanoa

Mr. Jack McEwan, owner and manager of Cedar Crest Victorian Inn

Mr. Hiram Cody

Mr. Frank Martin, resident of Asheville and speaking on behalf of
the Coalition for Scenic Beauty

Mr. Frank Martin read a letter from Shirley Berdie

Mr. Paul Endry

Councilwoman Sitnick asked to address some comments made by some speakers relative to growth, the economy, jobs, young people leaving, etc. The population of Asheville is up by 14%, the County is up by 24%, employment levels have grown here by 21% as compared to the State average which is 9.3%, the service sector is up 38%, manufacturing is up 11-1/2%, and construction is up 7%. We've had a number of new factory jobs come in, we have many large retailers who have located here - Montgomery Ward, Home Depot, a number of large national franchises - Office Depot, Sams, we have a 12-plex, we're going to have another 12-plex. Our sign ordinance so far does not seem to have kept a number of national businesses from coming into beautiful Asheville and locating here. Retail sales are up, building sales are up, development is up, business is up, traffic is up, litter is up, garbage is up, crime is up - all of it, that goes along with growth in the economy. A couple of headlines in the paper recently read "merchants faith in City justified," "Asheville prospering more than most believed," "plant targets world market locating in Asheville," "City zoning considered orderly growth," "commercial building surges," etc. She didn't want anybody leaving here with a depressing picture of this wonderful community. In part it's due to our wonderful business community, both small and large business, and in part it's due to those folks who want to maintain a certain spiritual beauty that I don't think can be equaled anywhere else in this country. This is a very special place visually. I just wanted to mention those few things and I have ten or 12 pages of similar facts that have been very well researched and documented. I have some documentation of developments that have been requested and granted - only one denied. I have a complete listing of all the sign variances that have been requested - 98% of those have been granted. So I would say Asheville is doing pretty good as far as a community and an economy and a vital growth center.

Councilman Swicegood felt we have a beautiful City and obviously the signs that we have up now did not distract the businesses or the retired people that we have heard speak today. He felt that we are not changing the sign ordinance - but grandfathering the signs that this City and the people that do business in this City put up legally and now the City is asking the community and the business people to take their signs down without any compensation. He supported grandfathering the signs stating that the sign ordinance in place now will not change, other than grandfathering if it passes.

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Councilman Watts spoke in support of grandfathering the signs.

Councilman McClure agreed with Councilman Swicegood stated about not changing our sign ordinance. He felt the sign ordinance is working because we started with 374 and we're down to 234. He stated that Council does re-visit things constantly, such as the 2010 Plan, the East End/Valley Street Redevelopment Plan, the Head of Montford Redevelopment Plan, etc. He felt that the City didn't need to change the sign ordinance because he felt this was more of a basic argument on property rights and the principle of taking someone's property without just compensation. He felt there were a lot of valid points on both sides of this issue and he feels that grandfathering is the correct way to go.

Mayor Martin closed the public hearing at 9:00 p.m.

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

Vice-Mayor Peterson moved for the adoption of Ordinance No. 2188. This motion was seconded by Councilman Swicegood.

Councilwoman Sitnick proposed an amendment to the ordinance in reference to small business people. She moved to amend the motion to grandfather all on and off-premise signs except all non-conforming off-premise signs and their sign structures that exceed 150 square feet in size. This motion was seconded by Councilwoman Field.

Councilwoman Sitnick clarified her motion by saying that this means all on and off-premise business identification signs would be grandfathered.

Councilman McClure asked if we had any indication what that affects, how many signs that affects and what the impact would be.

Ms. Cogburn questioned if size would be the only stipulation. She felt it would be easier from an administrative standpoint if you would look to compliance with a particular ordinance.

City Attorney Slawter was concerned about expanding the grandfathering provision in terms of what's been advertised and what's been studied by the Planning and Zoning Commission and recommended to the City Council. He stated that the recommendation that has come to the Council relates to those signs that conform to the 1977 ordinance; if the motion is intended to go beyond that and grandfather all on-premise signs and all off-premise signs except those in excess of 150 square feet, the motion would probably go beyond what has been noticed for consideration by the Planning and Zoning Commission and by the City Council. If Council is going to go in that direction, he recommended Council adopt the motion before you today and instruct the Planning staff to come back to you with an additional ordinance to further grandfather whatever additional signs you want to.

Councilwoman Sitnick then asked to amend her prior motion to grandfather all on and off-premise signs and their sign structures which complied with the 1977 ordinance except all nonconforming off-premise signs and their sign structures that exceed 150 square feet in size. Councilwoman Field accepted the amendment to the prior motion. -18-

Mr. Slawter felt that could be done tonight under what has been advertised because you would be grandfathering fewer signs than the ordinance you have before you. He felt that perhaps the ordinance could be amended by adding a sentence in the existing proposed ordinance which reads: All nonconforming on-premises and off-premises signs (and their sign structures) which conform as of August 28, 1990, with the requirements of the sign regulations adopted in

Article 9 of Chapter 30 (this Appendix) of the Code of Ordinance on October 21, 1977, shall be allowed to remain in accordance with the provisions set forth herein, except for those off-premises signs and sign structures in excess of 150 square feet." (underlining denotes amendment)

A vote on the amendment to the motion was taken and motion failed on a 3-4 vote with Vice-Mayor Peterson and Councilmen McClure, Swicegood and Watts voting "no".

On a roll call vote of 4-3, Ordinance No. 2188 passed on its first reading, with Councilwoman Field, Councilwoman Sitnick and Mayor Martin voting "no".

City Attorney Slawter said that under the Charter provisions unless it carries by at least a 2/3's majority, a second vote is required.

Vice-Mayor Peterson moved to suspend the rules and proceed to the second and final reading of Ordinance No. 2188. This motion was seconded by Councilman Swicegood and carried unanimously.

On a roll call vote of 4-3, Ordinance No. 2188 passed on its second and reading, with Councilwoman Field, Councilwoman Sitnick and Mayor Martin voting "no".

City Attorney Slawter apologized and stated that under the State law a second reading would need to be held at the next formal meeting of the Council.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 9:30 p.m.

CITY CLERK MAYOR
