

Tuesday - June 13, 1995 - 5:00 p.m.

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 Deputy City Clerk Phyllis Corns

Absent: None

INVOCATION

Councilman Watts gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 95-86 - RESOLUTION TO RETIRING EMPLOYEE CHARLES W. JOHNSON JR.

City Manager Westbrook read the resolution stating that Charles W. Johnson Jr. has been an employee for 11-1/2 years and has requested retirement from his position as Firefighter Senior in the Asheville Fire Department. He expressed City Council's appreciation to Charles for his service to the City of Asheville and its citizens.

Councilwoman Field moved for the adoption of Resolution No. 95-86. This motion was seconded by Councilman Watts and carried unanimously.

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B. RESOLUTION NO. 95-85 - RESOLUTION TO RETIRING EMPLOYEE WILLIAM H. WHITE

City Manager Westbrook read the resolution stating that William H. White has been an employee for over 26 years and has requested retirement from his position as Custodian in the Public Works Department. He expressed City Council's appreciation to William for his service to the City of Asheville and its citizens.

Councilman Swicegood moved for the adoption of Resolution No. 95-85. This motion was seconded by Vice-Mayor Peterson and carried unanimously. .

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C. RESOLUTION NO. 95-84 - RESOLUTION TO RETIRING EMPLOYEE ROBERT THOMPSON

City Manager Westbrook read the resolution stating that Robert Thompson has been an employee for 39 years and has requested retirement from his position as Assistant Fire Marshal in the Asheville Fire Department. He expressed City Council's appreciation to Robert for his service to the City of Asheville and its citizens.

Councilwoman Field moved for the adoption of Resolution No. 95-84. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

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D. PROCLAMATION DESIGNATING THURSDAY, JUNE 15, 1995, AT 7:00 P.M. AS THE HOLOCAUST MEMORIAL SERVICE AT TRINITY BAPTIST CHURCH

Mayor Martin designated Thursday, June 15, 1995, at 7:00 p.m. as the Holocaust Memorial Service at Trinity Baptist Church. He presented the proclamation to Reverend Tim Brady. Reverend Brady briefed the Council on the service.

E. PROCLAMATION PROCLAIMING JUNE 16, 1995, AS "DAY OF THE AFRICAN CHILD"

Mayor Martin read the proclamation proclaiming June 16, 1995, as "Day of the African Child" in the City of Asheville and presented it to Mr. Fobes. Mr. Fobes spoke in support of the proclamation.

II. PUBLIC HEARINGS: None.

III. UNFINISHED BUSINESS: None.

IV. NEW BUSINESS:

A. RESOLUTION NO. 95-87 - RESOLUTION REQUESTING THE NORTH CAROLINA BOARD OF TRANSPORTATION TO NAME INTERSTATE 240 AS "BILLY GRAHAM EXPRESSWAY"

Mayor Martin explained that the City and County previously discussed a joint request to the State Board of Transportation that Interstate 240 in Asheville and Buncombe County be named the "Billy Graham Expressway."

Councilwoman Sitnick said that she was very supportive of this request and that it would be a great honor for Rev. Graham.

Mayor Martin answered several questions raised by Ms. Mary Jo Brezny who felt no one deserved the honor more than Rev. Graham.

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

Councilman Watts moved for the adoption of Resolution No. 95-87. This motion was seconded by Councilman Swicegood and carried unanimously.

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B. ORDINANCE NO. 2218 - AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 9 (MASSAGE PARLORS AND HEALTH STUDIOS) OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

Ms. Deborah Crowder, Revenue Collector, said that the City's current massage parlors and health studios ordinance requires all requests for a privilege license to operate as a massage therapist to be approved by City Council before the Finance Director can issue same. Additionally, the current ordinance prohibits massage therapists from treating members of the opposite sex.

This ordinance sets forth specific educational standards that massage therapists must meet in order to be licensed as massage

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therapists in the City of Asheville. It also replaces the language "massage parlors and health studios" with "massage therapy regulations." The amendment does not include the restriction prohibiting massage therapists from treating members of the opposite sex; however, it does prohibit the massage of private parts for hire. Massage therapists must continue to provide certain data to the City of Asheville so that proper regulation of this profession can be maintained. A major new provision in this amended ordinance provides for

appointment, by the City Manager, of a three member City staff Massage Therapy Appeals Board. That Board will hear various appeals. The Board's decision will be final and further appeal must be taken to the Buncombe County Superior Court. The City department responsible for gathering all of the necessary data in order to determine whether to issue a privilege license is the Finance Department. The City department responsible for enforcing the ordinance is the Police Department.

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

Councilwoman Sitnick moved for the adoption of Ordinance No. 2218. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2218 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 113

C. RESOLUTION NO. 95-88 - RESOLUTION AMENDING THE RULES OF PROCEDURE FOR THE ASHEVILLE CITY COUNCIL

City Attorney Slawter said that this draft provides for (1) an amendment to Rule 1 regarding the meeting time (change from 4:00 p.m. to 5:00 p.m., consistent with Council's recent change) and also concerning meeting times in order to be consistent with the change discussed on June 6, 1995, with regard to public address to the Council (the Rules had not previously distinguished between worksessions and formal meetings); (2) an amendment to Rule 25 so as to reference "closed" sessions, rather than "executive" sessions (consistent with the recent change in the Open Meetings Law); and (3) an amendment to Rule 7 regarding public address to the Council addresses the distinctions between the types of public comments taken at the formal meetings and the worksessions.

At the request of Mayor Martin, City Attorney Slawter read Rule Nos. 1 and 7 as follows:

Rule No. 1 - Meeting Times

The council has established the time and place of its regular meetings at 5:00 p.m. on Tuesday of each week in the Council Chamber on the second floor of the City Building. Meetings may be held at alternate times and locations as deemed appropriate by the council, upon the giving of notice as required by law. It is the intent of the council to ordinarily begin "regular" meetings of the council at 5:00 p.m. on at least two Tuesdays of each month. The council intends to conduct meetings which will primarily consist of "worksessions" which will generally begin at 2:00 p.m. on the other Tuesdays of the month. On the Tuesdays that "regular" meetings are conducted, the "regular" meeting may be preceded by a "worksession."

The primary purpose of the "worksessions," whether they precede the "regular" meetings or are conducted solely as "worksessions" is for -4-

the purpose of informing the council of matters over which the council has concern, including upcoming agenda items. The focus of the "worksessions" will be for the purpose of receiving reports from the staff and other professionals reporting to the council; meeting with representatives of other governmental bodies, including boards and commissions appointed by the council; and receiving such additional information as the council may deem appropriate in carrying out its duties.

## Rule No. 7 - Public Address to the Council

Citizens desiring to address the council shall be given the opportunity to do so as follows:

- (a) Any individual or group who wishes to address the council may make a request to be on the agenda to the city clerk. The mayor and city manager shall determine when preparing the agenda for the meeting whether the matter will be placed on the agenda.
- (b) Subject to the time limitations set forth hereinafter, the public shall be allowed to comment on matters under consideration by the council prior to a final vote on the matter by the council. Public comment shall generally be taken regarding such matters under consideration by the council during the "regular" 5:00 p.m. meetings of the council as referenced in Rule 1. Public comment will not be taken during the "worksession" discussions of the council except in those instances where a final vote of the council is being taken during a worksession. In such instances, public comment shall be allowed in accordance with the time limits set forth hereinafter.
- (c) At each "regular" meeting and each "worksession" of the council, at the conclusion of regularly scheduled business, any group or person wishing to address the council on any matter may do so, subject to the time limits set forth hereinafter.
- (d) Any person addressing the council shall be limited to a three minute presentation except that any group making a presentation to the council may have a single spokesperson who will be allowed ten minutes to address the council. The council will receive written information from any individuals or groups that cannot conclude their presentations within these time limitations.
- (e) The mayor (or the vice mayor, in the absence of the mayor) shall be authorized to allow additional comments and time for comments as he or she may deem appropriate for the orderly conduct of business.

Councilwoman Sitnick asked how one could make a procedural motion to divide a complex motion and consider it by paragraph. City Attorney Slawter explained that if someone makes an expansive, lengthy motion that would include more than one bottom line, he felt that Council would ask that the motion be broken down into multiple parts so that each part could be considered separately.

Mayor Martin said that this amendment is certainly not to stifle or restrict public comment. The amendment only sets forth the time of -5-

when it is appropriate to make public comment. In addition to public hearings, the public will still be given an opportunity to comment on matters under consideration by the council prior to a final vote on the matter.

Councilwoman Field asked if Rule 1 should be further amended to differentiate between the 5:00 p.m. regular meeting time and the 2:00 p.m. worksession time.

After a short discussion, it was the consensus of Council to further amend Rule 1 to read "... The Council intends to conduct meetings which will primarily consist of "worksessions" which will generally begin at 2:00 p.m. on the other Tuesdays of the month. ..." (underlining denotes addition)

Councilman McClure pointed out that the term "generally" is only a target time and not a specific time regarding worksessions.

Upon inquiry of Mr. Ralph Bishop about if the amendment to Rule 7 in anyway

supersedes Section 9 of the City Charter, City Attorney Slawter said that this amendment does not supersede the Charter provision. Mr. Bishop went on further to express his opinion that it is a flagrant insult to ask for public comment in formal meetings when all decisions are made at worksessions.

Vice-Mayor Peterson said that at the worksessions Council does discuss matters but they vote on those matters at the formal meetings. He agreed that a lot of discussion does take place during the worksessions, but the public is allowed in worksessions and they are allowed to make public comments when appropriate.

Mr. H. K. Edgerton understood there has to be a procedure in place to conduct business; however, when a professional group is allowed to come before Council and give a report, Council must allow the community to be heard to challenge the report, if they feel the report is not accurate. People are encouraged to get involved in community politics and lead others and the Council should have to listen to the voice of the people at some point in time.

Mr. Daniel Breen stated that Mr. Bishop and Mr. Edgerton both raised valid points. He felt that worksessions and pre-councils needed to be opened up for more than staff reports. He also felt that Council only wants to listen to "yes" people and if they want to hear the "real stuff" that goes on in the community, public comment should be heard throughout the meeting and not at the end when most people are gone and the news media have left.

Mayor Martin responded to Mr. Breen by stating that this Council is very conscious about listening to the input of our citizens, but, as in every government, perimeters need to be set.

Mr. Elizabeth Simpson was alarmed by this amendment if it meant curtailing spontaneous comments from the citizenry. She felt people will feel stifled.

At the request of Ms. Valerie Larrea, Mayor Martin and Councilwoman Sitnick clarified the amendment regarding public address to the Council in worksessions. Ms. Larrea felt very strongly that communication about issues that effect our economic livelihood and the quality of life are extremely important for everyone to know about and for Council to know about.

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Ms. Laura Gordon said that she was troubled at Council's attempt to limit public comment at worksessions. She felt that it was at the worksessions where the real discussion goes on and decisions are made. Even though there is not a formal vote, there is a vote of intent. She feels that limiting public comment also diminishes the value of citizen input in the decision-making of the process of City Council. For public comment to be meaningful, it needs to be heard when the issue is being discussed, not at the end of a worksession.

Ms. Mary Jo Brezny agreed with Ms. Gordon's comments. She too was concerned with limiting public comment at worksessions. She did not consider the time at the end of the worksession adequate opportunity for public input. She asked Council give this amendment further consideration.

After listening to Ms. Brezny's comment about her attendance at a specific worksession, Mayor Martin encouraged the public to let him know ahead of time about specific circumstances in order that he can make provisions for their comments to be heard.

Mr. Fobes felt Council should re-examine the amendment of allowing public input.

At the request of Dr. John Grant, Mayor Martin clarified the amendment regarding public input at regular meetings vs. worksessions.

Mr. Jim Skalski, resident of Kenilworth, asked if any member of Council had the right to recognize someone at any time. Mayor Martin said it would be up to the presiding officer; however, any Council member could request the presiding officer for someone to be heard and the request is generally permitted.

Vice-Mayor Peterson said that Mayor Martin has always been agreeable to him when he has asked the Mayor to recognize someone in the audience who wished to speak on a specific topic.

Councilwoman Sitnick felt that if she recognized everyone in the audience and knew who was there for what issue, that might work, but she doesn't know everyone. She stated there is an inconsistency in the language and here's where it occurs. "Under Rule 1, it reads 'The focus of the worksessions will be for the purpose of receiving reports from the staff and other professionals reporting to the Council; meeting with representatives of other governmental bodies, including boards and commissions appointed by the Council; and receiving such additional information as the Council may deem appropriate in carrying out its duties.' That last portion 'and receiving such additional information as the Council may deem appropriate in carryout out its duties' sounds great and I'm sure the Mayor wouldn't object if I looked out and I saw Tony Ponder here and I knew he knew about how to put trees on the right-of-way and I asked Tony to come up and give us some of his expertise. However, in Rule 7, under public address to the Council, Section (e), it says 'the mayor (or the vice-mayor in the absence of the mayor) shall be authorized to allow additional time for comments as he or she may deem appropriate for the orderly conduct of business.' So that really gives the authority of the right to recognize members of the public to the Mayor and the Vice-Mayor. Now, as I said, I don't know that the Mayor would necessarily stop me. But the truth is that the reason this is on the agenda is because I wanted it on the agenda because the Charter was not consistent with the action. The fact remains that the public was not always recognized to speak at worksessions. So, that inconsistency is in the language and we need to talk about that and who really has the -7-

authority to address people in the public. And, should a member of Council have the burden of knowing everybody in the public and what issue they are at Council for. The other fact is that there are times that there are people like Dan Breen. Dan Breen participates on a number of issues. If we have two or three of those issues that Dan is interested in and has knowledge about, I don't know which one he is there at the meeting for. I shouldn't have to have the responsibility to know whose at the meeting about what."

Mr. Skalski suggested putting time limits on different sections of the agenda to allow for public speaking. He supported Council allowing public comment at worksessions.

Councilwoman Field said that it is important to recognize that when Council invites someone or a group to come to their worksessions to give Council information, respect needs to be given to that person or group. Many of them spend a lot of time gathering that information and many of them are volunteers. They come to educate the Council. What Council is trying to do with this amendment is to set some guidelines and if these rules don't work, they can be amended. There was a time when there was no public comment at worksessions, so this has opened the process up and allows more flexibility.

Mr. Edgerton was concerned that if a presentation is made at the beginning of a worksession, by the end of the meeting when the public is allowed to make

comments about that presentation, the group who made the presentation has left and cannot respond.

Mr. Bishop stated that if Council doesn't have time to conduct the public's business, they shouldn't run. Mayor Martin stated that the Council puts in countless hours that the public is not aware of in attending meetings as early as 7:00 a.m. They also need time to attend their regular business of earning a living.

Councilwoman Sitnick moved to vote on the amendments separately, with the amendments to Rule 1, related to meeting times, and Rule 25, related to closed sessions, being considered together and the amendments to Rule 7, related to public address to the Council, being considered separately. Councilwoman Field seconded the motion. By a show of hands, the motion failed on a 3-4 vote, with Councilwoman Field, Councilwoman Sitnick and Councilman Watts voting "aye" and Mayor Martin, Vice-Mayor Peterson, Councilman McClure and Councilman Swicegood voting "no."

Councilman Swicegood moved for the adoption of Resolution No. 95-88, amending Rule 1 as read by City Attorney Slawter earlier (with the amendment in Rule 1 about worksessions generally beginning at 2:00 p.m.); amending Rule 25 so as to reference "closed" sessions rather than "executive" sessions; and Rule 7 as read by City Attorney Slawter earlier. This motion was seconded by Councilman McClure.

Councilwoman Sitnick said "members of the public who referred to the Charter are absolutely correct. The Charter did state that the Council was to meet no less than once a week and provide reasonable opportunity for public comment on issues under consideration on the agenda that day. And the reason I challenge the Council to reconsider that Charter is because our actions were different than the Charter spoke, in my mind. It is my opinion that by having worksessions every other week, we have undermined an opportunity for public participation and we have diminished it. We have two formal meetings a month at which time we vote on issues before us. Not everybody in the public can come - 8-

to those formal meetings. We have a situation described earlier by Councilwoman Field where she said at the end of four or five or six hours we're kind of brain dead. But that's my point exactly. We had a worksession last week that was seven hours long. If we're brain dead at the end of seven hours, how are we supposed to be impressed or inspired or influenced by somebody in the public who comes and speaks to us for three minutes about an issue that we heard five, six or seven hours previously. My feeling is that this is supposed to be of, by and for. This is about representative government. We are not up here charged with representing official committees that come before us or staff members who come before us or experts who come before us. We are charged with representing them and everybody else in the public. It's very nice that you applaud us for opening up worksessions for public comment, but don't applaud us for what we're supposed to do. This is representative government. We don't know how to represent the public unless we hear from them. In worksessions, we take straw votes. We raise our hands showing our intention of how we're going to vote the following week in a formal session. So, if we hear from people during a worksession who are invited to speak with us and then we hear from members of the public at the end of the worksession, or maybe not at all because somebody couldn't get there at 2:00 or 3:00 or 4:00, but we have to wait a week and then hear from them. The truth is that we're hearing from them well after the fact. Often times the Mayor will say the Council has been previously made aware of a certain resolution or a certain amendment and that's true. We're made aware of those at the worksessions. If members of the public come to speak to us at a formal Council meeting and weren't at the worksession,

they don't know what transpired. They don't know what influenced us. Often times when a member of the public speaks at the end of the worksession, the folks who addressed us officially on that issue have left the meeting already and don't hear anything. And so, if a member of the public, for instance, falsely accuses someone - that person isn't there to defend themselves. If that person makes a misstatement or gives false information, the original testifier is not there to refute that information. Allowing public participation isn't complex at all. You either do or you don't. The national trend is to allow more public participation, to hear more from the public, to challenge the public to be responsible for the government they get. Democracy may be an inconvenience, but I thank God for it. Since we were not able to divide the three rules under consideration for a vote, I'll have to vote against this, although I have no objection to voting for a 5:00 p.m. meeting time. I was one of the people who supported that, so that we could make it later and allow people to come after work. As a previous speaker said if somebody takes off work and puts a quarter in the meter and comes into this building at 2:00 or 3:00 in the afternoon and they are so motivated to do that because they're interested or concerned or have something to say about an issue before this representative body of government, then I think that person should be allowed to speak at the time the issue is being dealt with - not five hours or six hours or seven hours later when everybody is gone, maybe that person had to go, and when the Council has really been tired by everything they've heard."

Mayor Martin clarified that the reason he states that everyone on Council has received a copy of the resolution or ordinance previously is because Council receives a copy of the resolution or ordinance in their package ahead of time - it's not because it was something done at a worksession. He also said that if someone has taken off work and has made a special effort to come, if they will let him know ahead of time he will make sure they are heard on their specific issue.

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Councilwoman Sitnick appreciated the Mayor making the special effort to make sure people are heard and hoped that the announcement at each worksession. She said that "the inconsistency she referred to earlier in Rule 1 where it said 'receiving such additional information as the Council may deem appropriate' there have been times at worksessions where I have wanted to hear from people in the public and I have not been allowed. In Rule 7 (e) where it gives you or the Vice-Mayor authority to call on someone from the public, can we clarify, or at least firm up that inconsistency and can we say that the Mayor, Vice-Mayor or any member of Council is allowed to ask members of the public, during the worksession, if they feel that there is information that should be forthcoming."

Mayor Martin responded by saying that he sees no inconsistencies in the sentence in Rule 1. He said that does not preclude recognizing a member of the public at any time.

Councilwoman Sitnick said that she just wanted to clear up who is authorized to recognize that member. She has tried and she has not been permitted to.

Mayor Martin said the final decision on these has to rely on the person conducting the meeting - whether it's him, whether it's the Vice-Mayor or a member of Council in our absence.

Councilwoman Sitnick said she is just asking for consistency in the language. If the Mayor is going to be the authority that allows public comment, then she recommended in Rule 1, paragraph two, where it says "an receiving such additional information as the council may deem appropriate in carrying out its



duties" should be changed to read "... as the Mayor or Vice-Mayor may deem appropriate ..." so that it's consistent with Rule 7 (e). She didn't agree with it and she won't vote for it but at least our laws will be consistent.

City Attorney Slawter said that the distinction is that in Rule 1 we were addressing what the focus of the worksessions would be and he tried to include within the categories all the types of things that Council takes up during its worksessions. This is really talking about setting up a worksession agenda and this is intended to cover what gets on that worksession agenda. In Rule 7, it addresses who gets to speak and when and it would be the Mayor or Vice-Mayor who is authorized to recognize someone for additional time or additional input during the meeting.

Councilwoman Sitnick said that this is just one more lack of recognizing democracy.

Mayor Martin didn't recognize that at all.

On a voice vote, Councilman Swicegood motion as previously stated passed on a 6-1 vote, with Councilwoman Sitnick voting "no."

RESOLUTION BOOK NO. 22 - PAGE 288

D. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AND EASEMENT AGREEMENT BY AND BETWEEN CLIMBMAX INC. WITH THE CITY OF ASHEVILLE FOR AN OUTDOOR CLIMBING WALL TO BE LOCATED ON THE EXTERIOR WALL OF THE WALL STREET PARKING GARAGE

Mr. Chip Scott, Festivals Director, introduced Mr. Stewart Cowles, owner of ClimbMax Inc., to brief the Council on the project. He said -10-

that Mr. Cowles has presented his project before the Streetscape Committee of the Downtown Commission and received approval. He has complied with the Downtown Design Review guidelines. Sutton, Kennerly Engineers, the same firm used when the deck was built, have reviewed and approved the project. Channel bolts will be used to connect the stainless steel form to the deck. John Miall, Risk Manager, has approved the project and his suggestions have been incorporated. Legal staff has worked with Mr. Cowles' attorney concerning the lease and easement.

He said the design has been modified slightly since the merchants, City staff and streetscape volunteer have worked together on it.

Mr. Scott said that staff is requesting approval of this resolution pending consent of the Trustee on the wall, which is Wachovia Bank.

Mr. Stewart Cowles reported on the project by saying that he is requesting permission to erect a climbing wall (approximately 36') on the exterior of the Wall St. parking deck. The site is located in the plaza along Wall St. near the elevator. Mr. Cowles leases retail space within the first floor of the deck for a climbing gym. The new wall would not only add a more challenging wall for visitors to ClimbMax, it would add an attraction to the downtown and Wall St. A wall of this type could be used for international climbing competition. Climbing will be an event in the 1996 Olympics and is rapidly gaining in popularity.

Mr. Cowles said that a grant has been received through Quality Forward in the amount of \$20,000 for the planned park which would be in front of the wall. No City money is projected to be needed. The project will be a partnership between Wall St. merchants, Quality Forward, youth groups and the City.

Upon inquiry of Councilman Swicegood, Mr. Scott said this is a lease which includes a monthly payment of \$10 a month for 12 months for a total yearly lease of \$120.00. This is in addition to the current lease that Mr. Cowles already has through the Wall Street Limited Partnership, which is approximately \$800 a month for his current indoor space. The lease is through August 31, 1999.

When Councilman Swicegood questioned the charge, Mr. Cowles said that it would be an extension of the current services they provide indoors. There might be a supplemental \$1.50-\$2.50 for people who chose to use the indoor and outdoor facility. However, Bele Chere might be a different situation.

Councilman Swicegood said that since the City is always looking at new income streams, he wondered if the lease payment is fair enough. When he asked about the cost of the wall, Mr. Cowles responded the wall would cost approximately \$30,000.

Councilman Swicegood also asked about security of the wall at night. Mr. Scott said that great lengths of details have been gone through to make sure that this is secure after hours by fencing and removing the hand holds. Literally there would be no way to climb the wall once it has been closed.

Vice-Mayor Peterson stated his concerns about the lease payment.

Upon inquiry of Councilwoman Field, Mr. Scott said that they have looked at the issue of the City's mobile stage to make sure that public space for staging, festivals and other events was not lost. -11-

When Councilwoman Field asked about possible permanent damage to the parking deck from the drilling to put the bolts in, Mr. Cowles said that they are now building a free standing structure. The structure will, however, need some lateral support from the deck and they anticipate approximately 15-20 drill holes will be needed for that lateral support.

Councilwoman Field said that the Asheville Downtown Commission should have been more involved in this project because they could have possibly been helpful in resolving some of these issues.

Councilwoman Field questioned the fence around the structure. She felt it didn't reflect Asheville's heritage. Mr. Cowles said that they are still trying to make the fence appealing to fit into the scheme that is already there.

Risk Manager John Miall answered questions from Councilman McClure when he asked if \$1 Million in liability coverage was adequate.

Upon inquiry of Councilman McClure, Mr. Cowles responded to questions about the annual maintenance of the wall. He said that in terms of the repair of the facade of the parking deck, he would like to set up a fund for the maintenance of repairing the bolt holes that might be placed into the deck.

Mr. Cowles, when responding to Councilman McClure, explained the standards for the climbing wall.

Councilman Swicegood said that he feels this is a great idea, but didn't feel he could support it for such a low monthly lease payment.

Vice-Mayor Peterson agreed with Councilman Swicegood and also expressed concern over the City's liability.

Mr. Miall briefed the Council on why he felt the City was adequately protected

regarding liability insurance.

Mr. Bill Schaefer, Capital Projects Coordinator, explained that the City is limited in revenues it can obtain from taxable entities. Councilman Swicegood asked exactly what the limit is on the monthly lease payments.

Councilwoman Sitnick asked Mr. Cowles about if he had any injuries with his indoor climbing wall. Mr. Cowles said that in his 1-1/2 years of operation, out of 4,000 participants only one person hurt their ankle when they jumped off the wall.

Councilwoman Sitnick said that this Council is always looking for ways to provide positive recreational, sport and social activities in the City for young people and this is one opportunity. She liked the idea of a park area on Wall Street, given the fact that Wall Street has a lot of hard surfaces.

Mr. Mark Rosenstein, business operator and property owner on Wall Street, spoke in favor of this project and felt it would be a great benefit for the City.

Upon inquiry of Councilwoman Sitnick, Mr. Cowles said that he hoped to have the wall built for this year's Bele Chere Festival.

Mr. Daniel Breen spoke in favor of the project.

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Councilman Swicegood moved to express Council's intent to adopt the resolution at the next Council worksession on June 20, 1995, subject to the dollar amount being worked out. This motion was seconded by Councilwoman Sitnick and carried unanimously.

#### V. CONSENT:

Councilman Swicegood inquired about a possible conflict of interest on the resolution approving the sale of the \$3,000,000 General Obligation Water Bonds. He asked if there be any conflict of interest on Wachovia receiving the award for the business and the head of the Water Authority working for Wachovia. After some discussion on conflict of interest, City Attorney Slawter stated that he saw no problem with City Council voting on the approval of the sale of the Water Bonds.

Mr. Ralph Bishop said that he was denied the opportunity to read the draft minutes of the June 6, 1995, City Council worksession until after they were approved by Council. He pointed out that the minutes are only drafts and that changes should be made before final approval. As a result, Mayor Martin moved to pull the June 6, 1995, minutes off the agenda to be considered at the next meeting. This motion was seconded by Councilman McClure and carried unanimously.

Councilwoman Field asked that the resolution reappointing Johnny Lloyd to the Civil Service Board be pulled off the Consent Agenda in order that it be voted on separately.

#### RESOLUTIONS & MOTIONS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 23, 1995

B. RESOLUTION NO. 95-89 - RESOLUTION TO AWARD BID FOR A SKID STEER LOADER WITH CONCRETE PLANER AND TRANSPORT TRAILER

Summary: Staff recommends that award be made to the low bidder, E.F. Craver Company, Asheville, N.C., in the amount of \$28,912 for a 'Case' Model 1845C Skid Steer Loader with an 'Alitec' Model CP16 Concrete Planer and a 'Hudson' Model HSE 14 Transport Trailer. The following bids were opened on April 25, 1995:

Vendor Net Cost

E.F. Craven Co., Asheville, NC \$28,912.00

Viking Equipment, Asheville, NC \$31,650.34

Jones Tractor Co., Spartanburg, SC \$39,897.00

Corriher Tractor Inc., Lenoir, NC \$45,657.00

RESOLUTION BOOK NO. 22 - PAGE 303

C. RESOLUTION NO. 95-90 - RESOLUTION DESIGNATING THE SIGN KNOWN AS THE BROOKS-HOWELL HOME AND LOCATED ON SPEARS AVENUE AS A LANDMARK SIGN

Summary: Brooks-Howell Home is requesting landmark sign designation for their Spears Avenue arched entrance sign.

At the Historic Resources Commission meeting on May 12, 1995, the Commission voted 12-1 to recommend to City Council that the Brooks-Howell Home arched entrance sign be designated a landmark sign. They determined that the sign meets criteria A and B as set forth in the sign -13-

ordinance for the following reasons: Criteria A - due to the number of tourists who come to Asheville to visit relatives and friends at the Brooks-Howell Home; Criteria B - it is a unique sign within the City of Asheville.

RESOLUTION BOOK NO. 22 - PAGE 305

D. RESOLUTION NO. 95-91 - RESOLUTION OF THE CITY OF ASHEVILLE, NORTH CAROLINA, ESTABLISHING THE INTEREST RATES TO BE BORNE BY THE CITY'S \$3,000,000 GENERAL OBLIGATION WATER BONDS, SERIES 1995

Summary: This resolution approves the issuance of \$3,000,000 General Obligation Water Bonds, Series 1995. The bonds were sold on June 6, 1995. The award of the Bonds to Wachovia Bank of North Carolina, N.A., is confirmed.

RESOLUTION BOOK NO. 22 - PAGE 307

E. RESOLUTION NO. 95-92 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO AN AGREEMENT WITH WILLIAM B. FARRIS FOR REVIEW OF THE DRAFT UNIFIED DEVELOPMENT ORDINANCE

Summary: The City has previously entered into an agreement dated March 22, 1995, with William B. Farris for consulting services in the review of the draft Unified Development Ordinance. That agreement provides that all services shall be completed by Mr. Farris on or before June 30, 1995. The parties have agreed to extend that deadline to July 31, 1995.

RESOLUTION BOOK NO. 22 - PAGE 309

F. RESOLUTION NO. 95-93 - RESOLUTION FIXING DATE OF PUBLIC HEARING FOR JUNE 27, 1995, ON THE QUESTION OF ANNEXATION OF PROPERTY LOCATED NORTH OF BEAVERDAM ROAD, PURSUANT TO N. C. GEN. STAT. SEC. 160A-31, AND BEING THAT PART OF THE

BEAVERDAM RUN PROPERTY NOT INCLUDED IN THE ANNEXATION AREA DESCRIBED IN ORDINANCE NO. 2038

Summary: Beaverdam Run Homeowner's Association has submitted a petition for the annexation of all that portion of Beaverdam Run not previously annexed into the City of Asheville. The area petitioned for annexation consists of 34 acres and is adjacent to the existing corporate limits.

RESOLUTION BOOK NO. 22 - PAGE 310

G. RESOLUTION NO. 95-94 - RESOLUTION FIXING DATE OF PUBLIC HEARING FOR JUNE 27, 1995, ON THE QUESTION OF ANNEXATION OF PROPERTY LOCATED AT BILTMORE PARK, PURSUANT TO PART 4 OF ARTICLE 4 OF CHAPTER 160A OF THE NORTH CAROLINA GENERAL STATUTES (GLEN OAKS 2 AT BILTMORE PARK)

Summary: Biltmore Farms Inc. has submitted a petition for the annexation of an area located west of Overlook Road - Biltmore Park, Section 6. The area petitioned for annexation consists of 19 acres. This annexation is adjacent to Section 5 of Biltmore Park, but will not be contiguous to the City until the annexation of Section 5 becomes effective on August 21. Therefore, this petition will be handled as a satellite annexation.

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RESOLUTION BOOK NO. 22 - PAGE 312

H. RESOLUTION NO. 95-95 - RESOLUTION CALLING FOR A PUBLIC HEARING ON JUNE 27, 1995, FOR THE ADOPTION OF AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH THE DWELLING LOCATED AT 25 RIDGE STREET

RESOLUTION BOOK NO. 22 - PAGE 314

I. RESOLUTION NO. 95-96 - RESOLUTION APPOINT HAROLD ENLOE TO THE ASHEVILLE-BUNCOMBE WATER AUTHORITY

Summary: Roy Harris has resigned as a member on the Asheville-Buncombe Water Authority leaving an unexpired term. This resolution will appoint Mr. Harold Enloe to fill Mr. Harris' unexpired term, term to expire September 30, 1997, or until his successor has been appointed and qualified.

RESOLUTION BOOK NO. 22 - PAGE 315

J. RESOLUTION NO. 95-97 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SUBSTITUTION OF TRUSTEE DOCUMENT AND THE CITY ATTORNEY OR ASSISTANT CITY ATTORNEY II TO EXECUTE A TRUSTEE ACKNOWLEDGMENT OF SATISFACTION REGARDING A 1938 DEED OF TRUST WHICH SECURED A NOTE FOR THE PURCHASE OF PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF TAMPA AVENUE AND PATTON AVENUE

Summary: This resolution would authorize the substitution of a trustee in a 1938 deed of trust and authorize execution of an acknowledgment of satisfaction of the debt secured by the deed of trust.

On August 18, 1938, the City of Asheville conveyed to Walter C. Wilson and wife, Kelly L. Wilson, and G. Wilbur Morris and wife, Lillian Morris, a small tract of property located at or near the intersection of Tampa Avenue and Patton Avenue, which deed was recorded in Deed Book 509 at Page 467 on August 26, 1938 in the Office of the Register of Deeds for Buncombe County.

Walter C. Wilson and wife, Kelly L. Wilson, and G. Wilbur Morris and wife, Lillian Morris, executed a deed of trust on August 25, 1938, which was recorded

in Deed of Trust Book 367 at Page 194 on June 21, 1939, in the Office of the Register of Deeds for Buncombe County, wherein they conveyed an interest in the property located at or near the intersection of Tampa Avenue and Patton Avenue to Phillip C. Cocke, Jr., as Trustee, to secure a note in the amount of \$250.00 given to the City of Asheville, with the City of Asheville being a third-party beneficiary under said Deed of Trust.

The City of Asheville has received a request from attorney Janese M. Baliles to substitute the City Attorney or Assistant City Attorney II for the trustee named in the Deed of Trust referred to above and for the substitute trustee to execute a Trustee Acknowledgment of Satisfaction for the deed of trust referred to above.

No record has been found of whether or not the note in the amount of \$250.00 has been paid and satisfied in full. N. C. Gen. Stat. sec. 45-37(b) provides, however, that it shall be conclusively presumed that the conditions of any deed of trust securing the payment of money have been complied with or the debt secured thereby paid or obligations -15-

performed from and after the expiration of fifteen (15) years from either the date when the conditions of the deed of trust were required by its terms to have been performed or from the date of maturity of the last installment of the debt or interest secured thereby.

RESOLUTION BOOK NO. 22 - PAGE 316

K. APPLICATION FOR A MASSAGE THERAPIST LICENSE FOR JOAN MARY HELD

Summary: Joan Mary Held 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's Code. City staff has reviewed Ms. Held's application and all pertinent requirements have been met.

L. APPLICATION FOR A MASSAGE THERAPIST LICENSE FOR MARY WORRELL

Summary: Mary Worrell 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's Code. City staff has reviewed Ms. Worrell's application and all pertinent requirements have been met.

Councilwoman Field moved for the adoption of the Resolution & Motion Consent Agenda. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

ORDINANCES:

A. ORDINANCE NO. 2219 - BUDGET AMENDMENT RELATIVE TO THE VISIONING PROCESS

Summary: This budget amendment, in the amount of \$5,000, appropriates the City's share of the visioning process. There is a \$29,259 of uncommitted General Fund contingency available, leaving a balance after this action of \$24,259.

Councilwoman Sitnick said that she appreciated the presentation by Mr. Luke last week and she wanted to make sure that the results of this visioning process is customized for Asheville. She wanted to make sure that the 150 people who are appointed to the Task Force represent a balance and represent the diversity in our community. Also making sure that the Task Force represents all interests. She requested that this consensus document, if it needs to have more than two public hearings and more than two or four or six days of Mr.

Luke's time, that we are able to have that time in order to make the process right. This is \$30,000 for a 6-15 page document. She would like to make sure that the result represents the diversity in Asheville.

ORDINANCE BOOK NO. 15 - PAGE 122

Vice-Mayor Peterson moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, the Ordinance Consent Agenda passed on its first and final reading.

ITEM TO BE CONSIDERED SEPARATELY FROM THE CONSENT AGENDA:

A. RESOLUTION NO. 95-98 - RESOLUTION REAPPOINTING JOHNNY LLOYD TO THE CIVIL SERVICE BOARD

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Summary: The term of Mr. Johnny Lloyd expired on May 21, 1995. This resolution will reappoint Mr. Lloyd to a two year term, term to expire May 21, 1997, or until his successor has been appointed and qualified.

Mayor Martin said that there were two very qualified candidates for this appointment and the vote was not unanimous at the Pre-Council meeting when this item was discussed.

Vice-Mayor Peterson moved for the adoption of Resolution No. 95-98. This motion was seconded by Councilman Watts and by a show of hands carried on a 5-2 vote, with Councilwoman Field and Councilman McClure voting "no".

RESOLUTION BOOK NO. 22 - PAGE 317

VI. OTHER BUSINESS:

A. TUB GRINDERS

Councilwoman Sitnick requested the City Manager look into the cost and possibility of the City of Asheville purchasing tub grinders for sanitation vehicles.

Mayor Martin said that he previously has asked staff to look into this and he was told that it was not economical or advisable that the City purchase this.

City Manager Westbrook said that he have someone look into this for her.

B. CLARENCE BENTON - ASHEVILLE ADVOCATE

Mr. Clarence Benton spoke to Council about some erroneous information. He said that the Asheville Advocate has no intention in going out of business and they are not out of business. He said they have never shut their doors nor have they ever stopped the presses. He said the Asheville Advocate has been in operation for 9-1/2 years. He said the proposal Council considered relative to CityWorks and letting other papers be able to do some advertising was initiated by him some two years ago. He said that none of the other papers, including the Asheville Advocate, can run legal notices at this time. He also said that no for-free paper can carry legal advertising. He said that he is the only paper close to getting certified to handle legal notices. He said that he hoped to have his certification by December.

He hoped that the City would consider using the Asheville Advocate as one of the vehicles in getting public service announcements around.

C. BRADY BLACKBURN - SALE OF CITY DEVELOPMENT OFFICE

Mr. Brady Blackburn, Chairman of the Downtown Commission and Chairman of the Asheville Business District Coalition, presented Council with a Resolution to Asheville City Council concerning City Development activities from the Business District Coalition and 11 letters opposing the sale of the City Development office.

D. DANIEL BREEN

Mr. Daniel Breen commented on specific items from a list prepared by Councilwoman Sitnick.

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E. RALPH BISHOP

Mr. Ralph Bishop, resident of the City of Asheville, stated that the Constitution of the United States gives him the right of redress from his elected representatives and that is his purpose for attending the Council meetings.

He said the more insults directed at him makes him only more determined to attend the meetings.

F. CLAIMS

City Manager Westbrook said that the following claims were received by the City of Asheville during the week of May 18-31, 1995: Betty Boyd (Sanitation), Tim Hensley (Water) and Linda Tighe (Public Works).

He also said the following claims have been received during the week of June 1-7, 1995: Kevin Childers (Finance), Debbie Chaney (Streets) and Annie L. Jackson (Water).

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

B. LAWSUIT

The City Manager said that the following lawsuit has been received by the City of Asheville on June 1, 1995: Haw Creek Community Association v. City of Asheville. The nature of the suit is a Petition for Writ of Certiorari and Complaint regarding site plan approval for Haw Creek Mews - Phase III.

He said the following lawsuit has been received by the City on June 9, 1995: In the Matter of the Foreclosure of the Deed of Trust of Pack Plaza Associates Limited Partnership. The nature of the suit is foreclosure.

He said these suits have been referred to the appropriate legal counsel for action.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:56 p.m.

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CITY CLERK MAYOR

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