

Tuesday - August 22, 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 (arrived at meeting at 5:20 p.m.) and Councilman Herbert J. Watts; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Peterson gave the invocation.

Mayor Martin asked for a moment of silent prayer for Lonnie and Lucille Burton who died in an airplane crash on August 21, 1995.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 25-27, 1995, AS "GOOMBAY! DAYS IN ASHEVILLE"

Mayor Martin proclaimed Friday, August 25 - Sunday, August 27, 1995, as "GOOMBAY! Days in Asheville". He presented the proclamation to a representative of the YMI Cultural Center who briefed the Council on activities that would take place during the Festival.

B. PRESENTATION OF AWARDS TO ROXIE WYNN, BOB WILSON AND SHAWN McANDREW

Mayor Martin presented awards to Ms. Roxie Wynn, Assistant Personnel Director, Mr. Bob Wilson, Summer Youth Counselor, and Mr. Shawn McAndrew, Summer Youth Counselor, for their outstanding work on the 1995 City of Asheville's Summer Youth Program.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING THE CHARTER AND RELATED LAWS OF THE CITY OF ASHEVILLE TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS FOR CITY COUNCIL

Mayor Martin opened the public hearing at 5:15 p.m.

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

At 5:20 p.m., Councilman Swicegood arrived at the meeting.

City Attorney Slawter said that the North Carolina General Statutes authorize the City Council to modify the form of city government in several ways by following the same procedure that was followed last year for the change to non-partisan elections. Any such change enacted by the Council may be made subject to a referendum if the Council desires. When the Council previously discussed a change to four-year staggered terms, the Council expressed a desire to place that issue on the November 1995 ballot. A resolution scheduling a public hearing in order to initiate the process was adopted on August 8, 1995, to begin that process. The resolution makes no change regarding the term of the Mayor.

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He then said that in order to begin the staggered terms, the three members of Council elected to the Council in the 1997 election who received the highest number of votes will serve a term of four years and the other three members of Council elected in the 1997 election will serve a term of two years. As of the 1999 election and thereafter, three Council members would be elected for four year terms every two years. The Mayor's term of office would remain two years.

Vice-Mayor Peterson agreed that the issue should be placed on the ballot for the voters to decide, however, he favored a two year term.

Upon inquiry of Councilwoman Field, City Attorney Slawter said that the issue of limiting the number of terms for City Council is not being considered at this time. Vice-Mayor Peterson noted that he had made a motion at one time regarding the term limits of Council, however, the motion was defeated.

Councilwoman Field had no problem in putting this issue on the ballot in November but felt that a two year term is reasonable and adequate.

Mayor Martin felt a four year staggered term was important to ensure that there will always be continuity on the Council. He didn't feel that a four year term is unusual at all in North Carolina.

Councilman Watts spoke favorably of four year staggered terms. He noted that it takes several months for a new Councilmember to become accustomed to many complex City matters, i.e., \$63 Million budget and annexations.

Councilman Swicegood felt that even though stability is needed on the Council, he favored a two year term.

Councilwoman Sitnick said that when Council first discussed this quite some time ago she felt "four year terms were a good idea for the reasons Councilman Watts referred to. You get started with certain projects and certain ideas and the time to implement them can be delayed by various things and you want to see things through and complete your work. Like with everything, there is pluses and minuses, and I guess especially for this issue there are pluses and minuses for me. The idea of having to campaign and raise money every two years is staggering. The money we spend on campaigns is staggering. I think continuity is important but I also think that fresh ideas and fresh faces is important as well. Having an election every two years creates a greater amount of scrutiny of public officials. It gives us the opportunity to speak at forums and state our case to the community. The other thing about two year versus four year, and by the way, I am thoroughly in favor of putting it on the ballot and letting the citizens have an opportunity to decide this - I think the community is sophisticated enough to do that. The other thing is, and it's an issue that I've brought up on a number of occasions to this Council. If you ask a citizen to commit his or herself to serving in this office, the amount of time is staggering, the amount of work is staggering and for a member of the community to be able to give up the time from earning a living to do this job properly is staggering. Most people in the community can't do it. So, as I have said before, not to create professional politicians but to at least offer the per capita income of a resident of Asheville, which is something like \$15,000 or \$17,000 a year. We're not going to make a professional politician out of anybody for that amount, but what you are doing is offering a salary that would allow the plumber or the butcher

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or a working citizen to offer themselves, be it for two years, and especially for four years, to be able to work part-time at their regular job and then do this job adequately. I am in favor of putting this on the ballot. There have

been a couple of issues raised to me by citizens, one of them is here today and I hope he will address the question that was raised to me. I say let the people decide."

Mr. Andy Reed questioned what happens to an open seat if Council goes to four year terms. Currently if there is an open seat on Council, the rest of Council are allowed to appoint a successor to fill out the balance of that term. He understands that it has happened once or twice over the past several years. Since the amount of time that it generally happens for is less than a year, it has not ever really presented a problem that he knew of. With the change to four year terms, it seems that a sitting Council member in the middle of a four year term will be able to run for Mayor and if that Councilman wins, then the rest of the Council gets to appoint a successor for the remaining two years of that term. First of all, a Council member who runs for Mayor and wins has a voice in the selection of his successor on the Council. Secondly, the people would feel disenfranchised by that situation because the successor Councilmember would serve a full two years on the Council until that seat is up for re-election. According to Mr. Slawter, because this is not one of the things that Council itself is authorized to address, any change in that situation has to come from a change by the State legislature. Mr. Reed suggested two possible ways to avoid that problem if the four year staggered terms are put into effect. One is to require a Council member, in the middle of a term who decides to run for Mayor, to vacate his Council seat for the balance of the two years. The problem he finds with that is that it disenfranchises the voters who elected that person to a four year term because if he doesn't win the Mayoral election he still loses his seat. The other possibility is to allow that Council member to retain his seat while running for Mayor and have the replacement, if he should win, have the balance of his term filled not by the appointment of the rest of Council but by the voters. There are two ways to do that. One is to hold a special election a few months later to fill the two year balance of that term. The drawback to that is that it would cost approximately \$30,000, according to the Board of Elections, and special elections have even lower turnout than primary elections, general elections, and school board elections. Another possibility is that the legislature be asked to change the law to allow for this - that if a sitting Councilmember in the middle of a four year term runs for Mayor, if he loses, he can keep his seat for the next two years. If he wins the Mayoral election, then instead of having a special election, whoever comes in fourth among the field of candidates running for the four year terms in that year gets the two year term. The first three winners in the Council race would get the four year terms that are open and if the Councilman wins, the fourth place finisher would get the two year term. This would have to be presented to the legislature and would require legislative change. This would keep the voters from feeling disenfranchised if their Council member had to give up a seat in order to run for Mayor.

At the request of Mayor Martin, City Attorney Slawter said that Asheville, by Charter, fills vacancies on the Council by the other Council members voting to fill that vacancy. That is the most common method, but he would be happy to survey other cities to see how other cities do handle that. He did not recall seeing any provision like that in any of the City Charters that he has reviewed during the times they looked into how to make these changes that are before the Council. He noted that the point raised by Mr. Reed is not something that the -
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Council has control over. Although Council can make changes with regard to certain provisions of the Charter, including going to four year staggered terms, they cannot make the Charter changes that Mr. Reed has suggested. The Council can't dictate how that seat will be filled if somebody resigns, dies or is elected Mayor. That is all done by the legislature. If you want to address

any of these points, Council would have to request special legislation from the local delegation to the legislature asking that it be done however Council would like for it to be done. If the legislature will adopt a bill authorizing it, it can be done in either of the ways suggested by Mr. Reed.

Councilwoman Sitnick spoke in favor of looking into the issue of replacing by election rather than replacing by appointment. Not that she would want to spend more of the taxpayers money for another election, but it is the democratic way and it is the way everybody else on Council would have been seated. "Certainly not with this wonderful Council, but you never know with others, there may be an opportunity to chose a buddy or somebody one owed a favor to and not necessarily find the best person for the job." She asked for more information on replacement by election rather than appointment by the Council.

Mayor Martin noted that in 1988 when Walt Boland resigned in the middle of his term. He was replaced by Bob York who was not re-elected the next time. But, it had to be with the approval of Council and they searched long and hard before they came up with Mr. York's name.

Councilman Watts noted that it also happened back in the early 1980's when Rev. H. C. Wilkes resigned. Council replaced him with Wilhelmina Bratton.

Upon inquiry of Councilman McClure if there was a 3/3 vote between the Council on who should be the replacement, City Attorney Slawter said that Council would continue to serve with six people until they found someone acceptable to the majority of Council. The replacement requires a simple majority vote.

Mr. Philip Smith was concerned that it would take a new Councilmember several months to know about what's happening in our City and what needs to be done. He felt a new Councilmember should already know what needs to be done before taking office - that being on Council is not on-the-job training. He was also concerned that a four year time span would be great if we could elect some honest and trustworthy politicians on City Council. However, spoke against the four year staggered terms. He hasn't seen anything that Asheville has truly done that has been positive in the total community, especially in the African-American community.

Councilman Watts defended his statement about how long it takes a Councilmember to become familiar with his position. He said that a member has to learn how to deal with and get some education on the many complex issues in City government. A person cannot just walk in and make arbitrary decisions.

Mr. H. K. Edgerton stressed that the lack of citizen participation by citizens in enforcing the decisions of Council.

Mayor Martin closed the public hearing at 5:47 p.m.

Mayor Martin said the adoption of the ordinance amending the Charter and Related Laws will be considered on September 12, 1995.

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B. PUBLIC HEARING RELATIVE TO A VARIANCE REQUEST FROM BILTMORE AREA DEVELOPMENT COMPANY TO PERMIT A REDUCTION IN RIGHT-OF-WAY WIDTH FROM 50 FEET TO 40 FEET AT STONEBRIDGE SUBDIVISION LOCATED AT THE INTERSECTION OF OLD HAW CREEK ROAD AND MIDDLEBROOK ROAD

Mayor Martin opened the public hearing at 5:47 p.m.

City Clerk Burleson presented the notice to the public setting the time and

date of the public hearing.

Mr. Carl Ownbey, Transportation Planner, said that Biltmore Area Development Company, developer of Stonebridge Subdivision, is requesting a variance to permit a reduction in the subdivision's street right-of-way width from the required 50 feet to 40 feet. The preliminary plat for the 68 lot subdivision, located on Old Haw Creek Road near its intersection with Middlebrook Road, was approved by the Planning and Zoning Commission on February 15, 1995. The request for the street right-of-way reduction is based upon the topography of the site. Grading currently underway to develop the site will require that many of the proposed homes be located at the toe of the slope if the 50 foot street right-of-way is maintained. With a 40 foot right-of-way, an area for drainage and building maintenance will be provided at the rear of each home. The design of the proposed street will not change if the right-of-way is reduced. The streets will be built to city standards with curb and gutter and there will be adequate room in the right-of-way for utilities.

The request for a variance from the city's street right-of-way requirements was heard by the Planning and Zoning Commission at their August 2, 1995, meeting. After hearing the request, the Commission unanimously voted to recommend approval of the variance to permit a reduction in the street right-of-way width from 50 feet to 40 feet.

Councilwoman Field was concerned that this 68 unit subdivision has a cul-de-sac which entrance/exit is on one feeder street. She felt cul-de-sacs do not encourage a pedestrian environment.

Mr. George Jensen, engineer for the project, said that cul-de-sacs are a way to provide frontage on a corner piece of property. He stated that people like to live in a cul-de-sac because it is a quiet area, has no through traffic, and the street area is a good place for children to play.

When Councilwoman Sitnick asked if the cul-de-sac was wide enough for a fire truck to turn around, Mr. Jensen said that there is more than adequate room. He stressed that the street width will not change, only the right-of-way width on the grassy areas.

Mayor Martin closed the public hearing at 5:56 p.m.

Vice-Mayor Peterson moved to approve the variance to permit a reduction in the street right-of-way width from 50 feet to 40 feet for the streets in the Stonebridge Subdivision. This motion was seconded by Councilman McClure and carried unanimously.

C. PUBLIC HEARING TO CONSIDER ASSISTING IN THE EXTENSION OF A SEWER LINE TO SERVE THE EXPANSION OF A PRIVATELY-OWNED INDUSTRIAL FACILITY KNOWN AS CARE-FREE WINDOWS, KINCO DIVISION, LOCATED AT 150 WESTSIDE DRIVE

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RESOLUTION NO. 95-121 - RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ASHEVILLE TO ENTER INTO AN AGREEMENT WITH CARE-FREE WINDOWS, KINCO DIVISION, TO PARTICIPATE IN SEWER LINE IMPROVEMENTS

Mayor Martin opened the public hearing at 5:56 p.m.

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

Ms. Julia Cogburn, Planning & Development Director, said that Care-Free

Windows, Kinco Division, (manufacturer of vinyl windows and doors) is looking to significantly expand the production capacity of their Buncombe County plant over the next three years. In order to carry out this expansion, a sanitary sewer system connection is needed as the present septic system at the plant will not allow for employment growth. The sewer line within the city limits from which any sewer extension to that area would come is undersized and in poor condition at present. This agreement will improve the sewer line within the corporate limits. In addition, the Mayor will need to sign an agreement concerning City participation in upgrading the existing sewer line. This agreement would contain criteria and requirements which must be met by Care-Free including annexation of the Care-Free Windows property (by petition) into the City. Care-Free Windows, Kinco Division, would agree to petition for annexation into the City should the City agree to make this public improvement.

Council may decide to fund up to one half (MSD will fund half) of the upgrading of the existing sanitary sewer line within the existing City limits which is necessary to bring about an extension of sewer service to Westside Industrial Park. It is recommended that Council's funding be limited to no more than \$127,445, and a budget ordinance amendment will be necessary to appropriate the funding. The extension outside the City limits will be paid for by other parties.

Upon inquiry of Councilman Swicegood, Ms. Cogburn said that the line will go up into the industrial park so the upgrade will open up that entire area to sewer service. The upgrade will improve service all along the existing sewer line. Councilman Swicegood then suggested that the area businesses be contacted to inform them of this project.

Mayor Martin asked the City Attorney to compare this project with a case recently in Winston-Salem, N.C. City Attorney Slawter said that the Superior Court Judge in Winston-Salem held unconstitutional a relatively new State statute that authorizes economic incentives to be provided by local governments to industrial developers in order to entice them to the area or keep them in the area once they are there. The statute in question is fairly broad and authorizes expenditure of public funds for the improvement of private property and it authorizes, at least in some counties in the State, the sale of property to private developers without going through the normal upset bid process that the cities and counties normally have to follow. The incentives that were provided by Winston-Salem in the case that was challenged took full advantage of the authority of that legislation and went far beyond what Asheville is talking about doing here. The only reason we ever talked about this economic development policy statute is because once the State statute was passed which authorizes these types of incentives, the Council enacted an economic development policy to set up a procedure to be followed when Council is going to become involved in economic development matters, such as this. This public hearing was scheduled to comply with a procedure in our economic development policy. Ordinarily -7-

a public hearing would not need to be scheduled to put in a sewer line. All that is being considered by Asheville in this project is the public expenditure of funds for public improvements that will not only benefit this industrial facility, but also other property owners of the City and will lead to the opening up of a basin on the fringe of the City for additional tie-ins to the sewer line. The expenditure of public funds for putting in water and sewer lines is a long recognized public expenditure that the City has authority to engage in apart from the economic development policy. There is really no true comparison of this case to the Winston-Salem case.

Councilwoman Sitnick asked what our economic development policy's language is on wage levels to be provided by the companies that the City helps. City

Attorney Slawter said that our policy reads "special consideration will be given to engaging in economic development activities where the manufacturing and non-manufacturing companies that pay employees at least the average North Carolina weekly manufacturing rate plus 10%." He said the North Carolina rate plus 10% for the year 1995 is \$593.03 weekly or approximately \$14.75 an hour.

Councilwoman Sitnick also "commended this Council for developing the economic development policy that we did which keeps a tighter control and more accountability on the money that we give to companies and businesses in order to have them expand or locate here. I would have a major problem giving public funds, as they did in Winston-Salem. But that's not what we do here. We only give public funds for infrastructure improvements so that a company can expand or locate. But, according to the material that we have, this company is going to be paying a salary range of \$6.00 to \$10.00 an hour, depending on the skill, level of positions filled. What they did in Winston-Salem, I would call corporate bribery rather than incentive. I think the most thing a municipality can do for proper economic growth is to provide infrastructure and that includes all infrastructure, including schools, housing, and all of the other things that allow things to flush and flow. I think the other a municipality can do is to make sure the business that already exists in your community is happy and attended to and has it's needs met. Another thing you can do is to make sure that you do a lot of PR, if you've got a happy business community then other businesses will want to locate within your community. I've got a little problem with the wage level as set here in being in conflict with what is in our economic development policy, which I think is an excellent one that this Council adopted. We were very specific on where we were going to spend our money. \$127,000 is quite a bit and I know that there is a pay-back schedule and I know that they will annex voluntarily, but I've got a problem with the wage schedule."

Mayor Martin noted that with regard to the wage schedule, our policy says "special consideration" - it doesn't exclude "any consideration" for those who do not meet that criteria. Even though the City would be most eager to have jobs that are 10% above, to withhold infrastructure improvements just because the company's wage schedule is not as high as we would like for it to be, would be a mistake.

Vice-Mayor Peterson spoke in favor of this project. The City will be spending \$127,445 for infrastructure improvements and in return the company will annex, they will be spending \$3.4 Million in construction and equipment, and they will be employing 250 people by December 31, 1999. He, too, was concerned about the \$6-10.00 wage schedule, but hopefully those figures will increase by 1999. He feels there are a number of safeguards in the agreement to protect the City should the corporation fail to meet the schedule in the contract. -8-

Councilman McClure said that this is a needed upgrade for the whole area, not only for Kinco. He said that since this is an existing industrial park, not only will we be giving jobs to Kinco, but also potential future jobs in the other businesses in that industrial park. He said the average mean income in Buncombe County is \$17,400, which is below the State average. If you take the \$10.00/hour wage, that puts this income at \$20,800 - plus benefits, which is an additional 33%, the job value would be roughly \$26-27,000. Even going to the lower end wage of \$6.00/hour, it puts us at about what an average income is in the County. This is not only a decision about the current Kinco situation, it's also about a decision for the future industrial growth in that area.

Councilwoman Field was pleased about this because we are bringing some industrial land into our City, through their voluntary annexation. Industrial land in Asheville is very low. We are also putting dollars into the local community and investing in existing small businesses - not small by Asheville's

standards, but small by Federal standards.

Councilwoman Sitnick was concerned that we do have a policy that this Council adopted that considered higher salaries than these. However, she had no problem in supporting this especially since it involves voluntary annexation and especially because the system needed to be upgraded and will benefit others. "I feel that when we're giving \$127,000 for a good cause, as this is, it's incumbent upon us to ask the questions, the reason is that we have so much money that we can direct for infrastructure improvements for economic growth. And we need to make sure that we are directly those monies as best and as effectively as we can."

When Councilwoman Sitnick asked how many employees Kinco presently has out there, Mr. Mike Eisenlohn, representative of Care-Free Windows, replied that they presently employ 108 people.

Upon inquiry of Mr. Andy Reed, Mr. Eisenlohn said that Kinco's benefits to it's employees include health insurance, a short and long term disability plan and life insurance.

Mr. Ray Burrows, Industrial Specialist for the Department of Commerce in Asheville, said that there aren't too many opportunities for cities to help businesses like this. He has enjoyed working with the City on this very complex matter. He said the CDBG program that will be used for the extension requires that 60% of the people hired will be low and moderate income. He felt that with programs like this, the salary averages will rise.

Councilwoman Field clarified that the City's participation is not coming from Asheville's CDBG funds.

Vice-Mayor Peterson hoped that minorities are considered for these industry jobs. Mr. Burrows said that all industries have an equal employment policy and hiring low and moderate income residents should show some increase in that area.

Mr. George Jensen felt this was a very good program.

Mayor Martin closed the public hearing at 6:26 p.m.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it will not be read. -9-

Councilman McClure moved to adopt Resolution No. 95-121. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 347

D. PUBLIC HEARING RELATIVE TO REZONING THAT PORTION OF THE LOT LOCATED AT THE END OF GRANADA STREET FROM R-3 RESIDENTIAL DISTRICT TO LI LIGHT INDUSTRIAL DISTRICT

ORDINANCE NO. 2230 - ORDINANCE TO REZONE THAT PORTION OF THE LOT LOCATED AT THE END OF GRANADA STREET FROM R-3 RESIDENTIAL DISTRICT TO LI LIGHT INDUSTRIAL DISTRICT

Mayor Martin opened the public hearing at 6:26 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that the portion of the lot requesting to be rezoned is 7500 square feet. The lot is at the end of Granada Street, but the access to the entire lot will be from Amboy Road. The subject property is currently vacant. The subject property is surrounded by R-3 Medium Density Residential and abuts LI Light Industrial on the east side.

At the Planning & Zoning Commission on August 2, 1995, the Commission voted unanimously to rezone the remaining portion to LI Light Industrial District. The Planning staff reviewed and recommend approval also.

Mayor Martin closed the public hearing at 6:29 p.m.

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

Councilman Swicegood moved for the adoption of Ordinance No. 2230. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 7-0, Ordinance No. 2230 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 195

E. PUBLIC HEARING RELATIVE TO REZONING TWO LOTS AT 5 AND 7 JEFFRESS AVENUE FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT

ORDINANCE NO. 2231 - ORDINANCE TO REZONE TWO LOTS AT 5 AND 7 JEFFRESS AVENUE FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT

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

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

Mr. Paul Benson, Urban Planner, said that Asheville Savings Bank has petitioned for rezoning of two lots that it owns located on Jeffress Avenue from R-3 Residential District to CH Commercial Highway District. These lots are adjacent to the former located of the bank at 720 Hendersonville Road. -10-

At the public hearing held on August 2, 1995, by the Planning and Zoning Commission ("Commission") no comments were received.

In accordance with the Hendersonville Road Corridor Plan, both the Planning staff and the Commission recommended that lot 9674-20-82-9474 be rezoned as requested, while lot 9647-20-92-0447 remain zoned R-3 Residential District.

Upon inquiry of Vice-Mayor Peterson, Ms. Julia Cogburn, Planning & Development Director, said that the buffering ordinance would need to be complied with, but how much would depend on the size of the lot rezoned.

Mayor Martin closed the public hearing at 6:35 p.m.

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

Councilwoman Sitnick moved for the adoption of Ordinance No. 2231, to rezone PIN No. 9674-20-82-9474 to CH Commercial Highway (and leave PIN No. 9647-20-92-0447 remained zoned R-3 Residential District). This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2231 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 197

III. UNFINISHED BUSINESS:

IV. NEW BUSINESS:

At 6:42 p.m., Mayor Martin announced a five minute break.

A. RESOLUTION NO. 95-122 - RESOLUTION APPROVING THE GENERAL CONCURRENCE POINTS FOR THE ASHEVILLE URBAN AREA PHASE I ENVIRONMENTAL ANALYSIS

Mr. Ron Fuller, Transportation Planner, said that NC Department of Transportation (NC DOT), in conjunction with the local Metropolitan Planning Organization (MPO) have been working on a new approach to the planning, public input and selection of transportation improvements. NC DOT has requested that each of the participating member of the MPO review the document and, hopefully, concur with the findings by resolution.

The three main goals of this new planning process are (1) to place more of the public input up front rather than after a corridor or improvement has been selected, (2) involve the various local, state and federal agencies charged with reviewing plans earlier than in the past, and (3) identify corridors that need to be protected from encroaching development. The document identifies five problem areas within the Asheville Urban Area and offers preferred alternatives for each. The five areas are (1) Smokey Park Bridge/Patton Avenue Area and Northwest Connector, (2) Central Business District, (3) Biltmore Village Area, (4) Merrimon Avenue Area, and (5) US 25 in Fletcher. The only corridors upon which concurrence is being requested are (1), (3) and (5) since these involve new locations of improvements.

This analysis is an initial environmental screening of alternative alignments to thoroughfare plan improvements. The result is the -11-

selection of preferred corridors for each problem area. Once the project becomes programmed for funding, more detailed documentation will be completed according to National Environmental Policy Act of 1969 (NEPA) guidelines in the Phase II Environmental Analysis: Project Planning. It is also at this stage that decisions regarding mitigation, if necessary, will be made. Both the additional documentation and the mitigation decisions will be conducted on the preferred corridor.

Councilwoman Field, member on the Transportation Advisory Committee ("TAC"), commended the people who worked on these plans for trying to make them have minimal effect on the least number of people, housing, etc. These have been approved by the TAC and she recommended Council's approval to ensure these areas for preservation in the future for right-of-way needs.

Councilwoman Sitnick said that she had no problem with the Biltmore Village area and the US 25 in Fletcher area, however, I have some questions about the Smokey Park Bridge/Patton Avenue Area and Northwest Connector. "As you know I was at the TAC meeting and I thought there were a lot of important points brought up and I noticed that one of the main goals of this new planning process is to place more of the public input up front rather than after a corridor or an improvement has been selected. I commend that new policy. It's not just putting public input up front, although that is crucial. It's also about listening to the public and valuing their input as a resource, rather than just allowing them to speak and then hoping they'll go away. I certainly

commend that new direction. I also know that at that meeting there were a number of excellent questions asked about problem area (1), Alternative (a). I know the Smokey Park Bridge has been impacted by traffic, but there are, I don't know how many millions of dollars are being spent to direct people to the west of it and then to widen I-240. I-240, I don't know how old that road is, it's not been that long. We are either the only, or one of the few cities of our size, that have an interstate traversing through our downtown. A lot of the people who were at that meeting had great concerns about not widening Broadway, not improving Broadway, but widening Broadway to 74 feet. And that has always been the opposition. I don't know anybody who has opposed the widening of Broadway who has opposed the widening of Broadway period. They have only opposed widening Broadway to 10 feet wider than the Hendersonville Road Corridor. Basically a five lane expressway, and one of my main concerns about that project, is the fact that eventually, that Blake Norwood from the DOT said himself, the funneling from that road is going to become a problem for the City taxpayer, to accommodate the County's travel convenience, out of state travel convenience, etc. And so, as a representative of the taxpayers of Asheville, it's my duty to find out how are we going to accommodate that road when it funnels into Lexington. Be that as it may, there's no doubt the intersection needs work, and again, that was a DOT plan and it's not that old. The intersection's only been there a few years. Will the widening of I-240 need to be done again in a few years? Will Connector A be sufficient? I've just got a problem with that whole area. What are we spending on it? \$35, \$45 Million, \$100 Million? To rush people through our community. Congressman Taylor made a very good point a couple of months ago when he addressed the Western North Carolina Regional Economic Development Commission when he said what we ought to be doing for economic growth is create points of destination in our community where people meander through a community and stop and shop and slow down and spend their money. I don't see that these kinds of major highways that we are circumventing, transecting our community with, are necessarily good for the economy and we're beginning to look like just another hilly city. We're beginning to look like so many of -12-

the metropolitan areas that people are leaving to come here for. So, while I think that road improvements are fine and getting trucks around Biltmore Village so that they can access their point of destination better is important. But I have a real problem with problem area 1."

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

Councilman Swicegood moved for the adoption of Resolution No. 95-122. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilwoman Sitnick voting "no".

RESOLUTION BOOK NO. 22 - PAGE 349

B. RESOLUTION NO. 94-123 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE TOWN OF BILTMORE FOREST FOR DELIVERY OF FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES TO THE TOWN OF BILTMORE FOREST

Fire Chief John Rukavina said that during the summer of 1994, the City of Asheville submitted a proposal to the Town of Biltmore Forest for delivery of fire protection and emergency medical services to the Town by the Asheville Fire Department. At that time, the Town chose not to pursue this offer. But in April of 1995, Town representatives asked that the City review the possibility of such a fire protection/emergency medical service agreement.

The agreement provides for delivery of fire protection and emergency medical service delivery to Biltmore Forest by Asheville "to the same extent and in the

same manner as the City provides such fire and emergency medical services" to persons and property in the City. In return, Biltmore Forest agrees to reimburse Asheville in the amount of \$245,247.31 for the service period September 1, 1995, through August 31, 1996. In subsequent service periods, that reimbursement would increase by the estimated annual increase in real and personal property valuation in Biltmore Forest, but never less than \$250,000 per service period.

The agreement would be for a term through August 31, 2008. This term includes a three year notice period for Biltmore Forest to re-establish its own fire protection EMS capabilities, should either Biltmore Forest or Asheville choose not to maintain or renew the agreement.

If they choose, Biltmore Forest's five present firefighters could join the Asheville Fire Department, subject to personnel and Civil Service provisions of Asheville's Code of Ordinances, Personnel Policy and Civil Service rules. These firefighters could fill five present vacancies; execution of this agreement would not require an expansion of the Asheville Fire Department's firefighting forces.

The City would assume responsibility for service delivery, including minimum staffing at Station 5 (Hendersonville Road and Caribou Road, the station that would be the primary responder for Biltmore Forest emergencies), firefighter training, fire response and maintenance of Asheville's present ISO rating.

Biltmore Forest would retain responsibility for fire protection water supplies, water system maintenance, provision of accurate maps to City firefighters and notice of new construction in Biltmore Forest to enable Asheville firefighters to "pre-plan" emergency actions at such new structures.

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

Councilwoman Field moved for the adoption of Resolution No. 95-123. This motion was seconded by Councilwoman Sitnick and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 351

C. ORDINANCE NO. 2232 - BUDGET AMENDMENT REGARDING CITY'S PARTICIPATION IN EXPANSION PROJECT OF CARE-FREE WINDOWS, KINCO DIVISION

Ms. Julia Cogburn, Planning & Development Director, said that this budget amendment, in the amount of \$127,445, is for City' participation of the sewer line upgrade to facilitate the industrial expansion of Care-Free Windows Inc., Kinco Division.

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. 2232. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2232 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE 199

V. CONSENT:

At the request of Councilman McClure, the resolution approving underwriters for the issuance of water revenue bonds was pulled off the Consent Agenda for discussion.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 8, 1995, AND THE WORKSESSION HELD ON AUGUST 15, 1995

B. RESOLUTION NO. 95-124 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH DAVID M. GRIFFITH & ASSOCIATES LTD. TO CONDUCT A CITY-WIDE CLASSIFICATION STUDY

Summary: The City's classification plan is six years old. Given the numerous reorganizations, reductions in staff and increases/changes in City services over the past several years, a significant portion of the City's workforce is misclassified. This is causing management and employee morale problems. There are also legal risks if the plan is not updated; specifically that the City may not be in compliance with the Equal Pay Act, Fair Labor Standards Act and the Americans with Disabilities Act.

A request for proposals to conduct a comprehensive City-wide pay and classification study was sent out in late 1994. After reviewing the proposals received, staff recommended that an agreement be executed between the City and David M. Griffith & Associates Ltd ("DMG") to conduct a comprehensive City-wide pay and classification study. At that time, staff negotiated with DMG to conduct the study at a reduced cost by utilizing a committee of City employees to help conduct interviews. Funding was not available and the study was not approved.

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Funding for a City-wide classification study is included in the Fiscal Year 1995-96 budget. To reduce costs the pay study will be done by Personnel staff. DMG is agreeable to conduct the classification study using the employee committee at its 1994 price.

RESOLUTION BOOK NO. 22 - PAGE 352

C. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 12, 1995, TO REZONE 46 BAIRD STREET FROM R-3 RESIDENTIAL DISTRICT TO R-4 RESIDENTIAL DISTRICT

D. RESOLUTION NO. 95-125 - RESOLUTION OF INTENT TO CLOSE AN ALLEY OFF LODGE STREET AT McDOWELL STREET AND SETTING A PUBLIC HEARING ON SEPTEMBER 26, 1995

RESOLUTION BOOK NO. 22 - PAGE 353

E. RESOLUTION NO. 95-125 - RESOLUTION APPOINTING MEMBERS TO THE MINORITY BUSINESS COMMISSION

Summary: This resolution will reappoint Laura Todd to serve as the representative of the American Institute of Architects for a three year term, term to expire August 1, 1998; appoint Barbara Biddix to serve as the representative of the Asheville Area Chamber of Commerce for a three year term, term to expire August 1, 1998; appoint Bonnie Habel to serve as the representative of the Asheville-Buncombe Community Relations Council for a two year term, term to expire August 1, 1997; reappoint Ronald Blythe as the representative of the Asheville Business Development Center to serve a two year term, term to expire August 1, 1997; appoint Thomas Alexander as the representative of the Associated General Contractors of America, to serve a

three year term, term to expire August 1, 1998; appoint Sharon Arrington as the representative of the Black Business and Professional League to serve a three year term, term to expire August 1, 1998; appoint Gene Presley as the representative of the Council of Independent Business Owners to serve a three year term, term to expire August 1, 1998; appoint Lynn Staton as the representative of the National Association of Women in Construction to serve a three year term, term to expire August 1, 1998; and appoint Robbie Williams as representative of the YMI Cultural Center to serve a two year term, term to expire August 1, 1997. All terms are until their successors have been appointed and qualified.

RESOLUTION BOOK NO. 22 - PAGE 355

F. RESOLUTION NO. 95-127 - RESOLUTION REAPPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Summary: This resolution will reappoint Loyd Kirk as a member of the Tourism Development Authority to serve an additional three year term, term to expire August 30, 1998, or until his successor has been appointed.

RESOLUTION BOOK NO. 22 - PAGE 356

G. RESOLUTION NO. 95-128 - RESOLUTION ESTABLISHING TERMS AND APPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: This resolution will appoint Herbert J. Watts, Francis Black, Margie T. Liverman, Steven Blanco and Glenda McDowell. Each member shall serve a term of two years; provided, however, that three -15-

(3) members of the Committee shall be initially appointed to three (3) year terms so as to prevent the expiration of all terms on the same date each two (2) years. After the expiration of the initial terms appointed hereunder, members of the Committee shall all be appointed to two (2) year terms or until their successors have been appointed.

RESOLUTION BOOK NO. 22 - PAGE 357

H. RESOLUTION NO. 95-129 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE TREE/GREENWAY COMMISSION

Summary: This resolution will appoint Adina Goodwin to the Asheville Tree/Greenway Commission. Her term will expire August 1, 1998, or until her successor is appointed.

RESOLUTION BOOK NO. 22 - PAGE 358

I. RESOLUTION NO. 95-130 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: This resolution will appoint Brian Peterson to the Asheville-Buncombe Historic Resources Commission. His term will expire July 1, 1998, or until his successor is appointed.

RESOLUTION BOOK NO. 22 - PAGE 359

J. RESOLUTION NO. 95-131 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Summary: Wanda Hawthorne has expired as a member of the Recreation Board. This resolution will appoint Thomas McMahon to serve the unexpired term of Ms.

Hawthorne. His term will expire on June 30, 1997, or until his successor has been appointed.

RESOLUTION BOOK NO. 22 - PAGE 360

Councilwoman Field moved for the adoption of the Resolutions and Motions Consent Agenda. This motion was seconded by Councilwoman Leni and carried unanimously.

Ordinances:

A. ORDINANCE NO. 2233 - ORDINANCE AMENDING THE MINIMUM HOUSING CODE TO (1) COMPLY WITH THE STATE LAW REGARDING SMOKE DETECTORS IN RENTAL PROPERTY; (2) AUTHORITY TO ADOPT AN ORDINANCE PROVIDING FOR A 30-DAY DEMOLITION PERIOD FOR DILAPIDATED HOUSES MEETING CERTAIN CRITERIA; AND (3) CLARIFICATION OF RESPONSIBILITY OF THE OWNER OF A CONDOMINIUM-TYPE DWELLING

Summary: During the 1995 session of the General Assembly, two laws were passed that require amendment of Asheville's Minimum Housing Code.

The first, N. C. General Statute sec. 143-138 contains provisions for smoke detectors in rental property that are different from the smoke detector provisions of the Minimum Housing Code. Amendment of the Minimum Housing Code is required, so that rental property owners aren't asked to comply with two different standards.

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The second, N. C. General Statute Chapter 113, provides authorization for the City to adopt an ordinance providing for a 30-day demolition period for dilapidated houses meeting certain criteria. This authority was requested of the Buncombe County legislative delegation by the City Council as part of its 1995 legislative request package.

Finally, questions have been raised about the responsibility of the owner of a condominium-type dwelling for Minimum Housing Code violations in that part of the dwelling owned by a homeowner's association. The Minimum Housing Code is not clear with regard to this issue; an amendment is recommended to clarify responsibility.

ORDINANCE BOOK NO. 15 - PAGE 201

Councilwoman Sitnick moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilwoman Field.

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

ITEM PULLED OFF CONSENT AGENDA FOR DISCUSSION

A. RESOLUTION NO. 95-132 - RESOLUTION APPROVING UNDERWRITERS FOR THE ISSUANCE OF WATER REVENUE BONDS

Mr. Larry Fisher, Finance Director, said that at the Council's annual retreat on January 14 and 15, 1995, Council approved the issuance of Water Revenue Bonds to construct new water intake facilities on the Mills River.

Mr. George A. Raftelis of Raftelis Environmental Consulting Group, Inc., has already been engaged by the Water Authority to provide the Financial Feasibility Study that will be required in order to market these bonds. At

Council's worksession on March 28, 1995, Council authorized the engagement of Mr. Donald P. Ubell, Esquire, for municipal bond counsel services related to this sale. At that time, it was reported that this sale will also require the engagement of underwriters. At that meeting Council authorized selection of underwriters utilizing a request for proposal process. That process has been completed. The purpose of this report is to recommend to Council as underwriters the firms that ranked highest in the selection process.

The RFP was mailed to 16 firms, 14 responded. All responses were reviewed independently by Mr. Raftelis, Mr. Ubell and Mr. Larry Fisher. Each of these evaluators selected, independently, the same seven firms for a "short list" of oral interview candidates. Oral interviews were conducted with representatives of each of the seven firms in Charlotte, N.C., on July 17, 1995. Mr. Raftelis, Mr. William Schaefer, the City's Capital Projects Coordinator, and Mr. Larry Fisher, conducted and evaluated the oral presentations (Mr. Ubell did not participate in the oral interviews because he did business with them all). Pre-prepared evaluation forms containing evaluation criteria were used by each evaluator. The consensus recommendation of all three evaluators, with concurrence of the municipal bond counsel, is: Alex. Brown & Sons Inc., NationsBank Capital Markets Inc., The Robinson-Humphrey Company Inc.

There was a lot of discussion regarding the recommendation by the evaluators of Alex. Brown & Sons Inc. being designated as the senior manager. Mr. Fisher went into detail of how each firm was selected and their fee structures.

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Councilman McClure felt that after reviewing the all information, The Robinson-Humphrey Company Inc. should be designated as the senior manager because it had no management fee and records show that they have managed more transactions in North Carolina than Alex. Brown & Sons Inc.

Mr. Fisher stated that the consensus recommendation was what he felt was best for the City of Asheville.

It was determined that there was no problem with the three companies, only concerns with who would be the senior manager. Thus, in an effort to sell the bonds in November, a decision would have to be made today to approve the underwriters.

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

Councilman Swicegood moved for the adoption of Resolution No. 95-132, noting that the senior manager would be Alex. Brown & Sons, Inc., with instructions to provide Council with additional information for future reference. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilman McClure voting "no".

City Manager Westbrook stated that the water fund revenue would be paying for these fees, which money is generated from water fees.

Councilwoman Sitnick then moved to reconsider Councilman Swicegood's motion. This motion was seconded by Vice-Mayor Peterson and carried on a 5-2 vote, with Mayor Martin and Councilwoman Field voting "no".

Councilman Swicegood then moved for the adoption of Resolution No. 95-132, approving the three underwriters; however, the senior manager is yet to be determined. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

It was the consensus of Council for Mr. Fisher to meet with them individually, explain the evaluators' recommended consensus and get a consensus on who would be the senior manager for the issuance of the water revenue bonds.

RESOLUTION BOOK NO. 22 - PAGE 361

VI. OTHER BUSINESS:

A. FUTURE WORKSESSION ITEMS; METROPOLITAN SEWERAGE DISTRICT TRIP

Councilwoman Sitnick asked that time be set aside at the next agenda for open discussion of her list of worksession items.

Councilwoman Sitnick called Councilmembers attention to a trip being considered by MSD board members and staff to Miami, Florida. She suggested it be determined what the cost of the trip would be. Councilwoman Field said that she was Council's liaison to the MSD Board and would find out the details of the trip.

B. CLAIMS

The following claims were received by the City of Asheville during the week of August 3-9, 1995: Matthew Davis (Streets), Mary Julian (Sanitation), Daisy White (Sanitation), John Elkin (Streets), and Deloris Smith (Water). -18-

The following claims were received by the City of Asheville during the week of August 10-16, 1995: Fae VanArsdale (Streets), Vicki Sharpe (Water), Bell South (Water) and Marc H. Nishino (Parks & Recreation).

These claims were referred to Asheville Claims Corporation for investigation.

C. LAWSUIT

The following lawsuit was received by the City of Asheville on August 22, 1995: Matter - County of Buncombe v. Heirs of James Frank Talford (Tedford), et al., Nature of Proceeding - tax foreclosure.

This has been referred to the appropriate legal counsel for action.

D. CLOSED SESSION

At 8:10 p.m., Councilwoman Field moved to go into closed session to hear a report concerning investigation of alleged criminal misconduct, as authorized by N. C. General Statute sec. 143-318.11 (a) (7). This motion was seconded by Vice-Mayor Peterson and carried unanimously.

At 9:20 p.m., Councilwoman Field moved to come out of closed session. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 9:20 p.m.

CITY CLERK MAYOR
