

Tuesday - February 13, 1996 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Skalski asked for a moment of silence for his friend and UNC-A professor Dr. Deryl Johnson Howard, who died on February 6, 1996.

I. PROCLAMATIONS:

A. PRESENTATION BY THE ASHEVILLE-BUNCOMBE VISION STEERING COMMITTEE

Mr. Phil Carson, Chairman of the Asheville-Buncombe Vision Steering Committee, briefed the Council on the Asheville-Buncombe Vision and outlined the ten top issues to be addressed in the Vision, those being, Education, Protect and Preserve the Environment (sustainable and diversified economic development), Improve Jobs and Job Training; Improvement Government Operations (Children and Youth services), Improve Physical Infrastructure, Diversity of Community/Community Relations/Race Relations, Health Care and Medical Community Impact, Quality of Life, Crime and Violence/Substance Abuse, and Family Issues. He reviewed the vision for each topic and the strategies.

Mayor Martin stressed that it's imperative that we move forward with the visioning process and offered the use of office space at 29 Haywood Street for the first 100 days.

Vice-Mayor Field moved to adopt the Asheville-Buncombe Vision. This motion was seconded by Councilman Skalski and carried unanimously.

B. HOUSING AUTHORITY PRESENTATION

Ms. Annette Coleman, Chairman of the Housing Authority of the City of Asheville, presented City Council with checks totaling \$58,641.11 for payment in lieu of taxes to help defray part of the cost of providing basic, essential City services. She said that the total to date to the City of Asheville is \$1,049,817.72.

C. TROOP 91 - BOY SCOUTS

Mayor Martin recognized Troop 91 of the Boy Scouts who are working on their citizenship and community merit badges.

II. PUBLIC HEARINGS: None

III. UNFINISHED BUSINESS:

A. MINORITY BUSINESS PROGRAM DISPARITY STUDY

Mr. Larry Fisher, Finance Director, said that allegations have been made that the City's 1993 Disparity Study results were compromised. -2-

He investigated the matter and his investigation revealed that wording changes were made between a September 16, 1993, Executive Summary report and an October 29, 1993, Executive Summary report. His conclusion is that those wording changes were part of a valid process, and that they were "reasonable and enhanced the credibility of the overall report." He found no evidence that the study was compromised. He believes that Dr. Peggy A. Richmond, President and principal owner of Research and Evaluation Associates Inc. (the firm that the City contracted with to perform the study), confirms his conclusion by a letter dated January 17, 1996, which reads in part "I do not believe that our employees would have yielded to pressure to change results if such pressure had been exerted. They tell me that no such pressure was exerted."

Upon inquiry of Councilman Worley, Mr. Fisher said that, in his opinion, the wording changes were not significant nor was there any evidence of statistical changes.

Mr. Clarence Benton, former member of the Minority Business Commission and participant of the disparity study, said that the Minority Business Commission recommended, in its draft, for some changes to be made, particularly as they related to staffing. Some concerns expressed to him by the original consultants were (1) that the program not ever be put in Purchasing; and (2) at least two more people were needed to get the job done. One reason the Commission did not want it to go to Purchasing is because they felt it would not have the power or the clout that it needed to get the job done. MGT's recommendations, the specialists who actually did the study, should have been given more encouragement. He said the MB Program is not representative because there are no African Americans on the Commission. Other groups should have been included that still are not included, such as the NAACP. He felt the whole program is a sham and doesn't want anything to do with it.

Mr. H. K. Edgerton said that the minority community has come to realize that Asheville, in its remedial process, has neither the desire nor the commitment to institute a viable MB plan. The City overlooked the recommendations of MGT Management to provide adequate staff and budget for the MB Program, up to an including placing the program in Purchasing. The majority of the individuals on the MB Commission are representative of white male dominated organizations and there are no African American males on the Commission. There is an inequity of the terms on the Commission - ethnic organizations have a term of one year while the white male organizations have terms of two years. Over the objection of the NAACP and the minority community, the City conducted it's own independent investigation - which is tantamount to a cover-up. He felt there were too many unanswered questions. He said that he has "been told by federal law officials that the statutes that this City has been accused of violating are civil in nature and will probably warrant civil action. I can now only appeal to the decent citizens of this City to now help me in that process by making donations to the H.K. Edgerton Legal Fund, 94 Cumberland Avenue, 28801."

Mayor Martin said that City Council does not make the appointments to the MB Commission noting that the Chair of the Commission is a woman.

Ms. Marilyn Bass, MB Coordinator, read a prepared statement which said that her comments were in reference to the recommendations in the disparity study by REA and MGT rather than about the entire document.

A concerned resident felt that the community at large should have done the study.

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Councilman Hay suggested that a worksession on the MB Plan be conducted, with

maybe a report from the MB Commission, to see what the Council needs to be doing to make the program more effective.

Upon inquiry of Vice-Mayor Field about if the City is required to have a MB Plan, City Attorney Slawter said that State statute directs that local governments adopt goals for participation by minorities in local government contracting. If you have goals, it's difficult to think of moving toward achieving those goals if you don't have some type of plan about how you're going to achieve that goal. The goal is required and the plan is the method of implementing the goal.

Vice-Mayor Field then inquired if the City and County had a joint Plan or a County-wide MB Program, would it fulfill our State requirement? City Attorney Slawter replied that it would fulfill the City's requirement. She then asked that when a worksession was scheduled that a joint Plan be one of the issues the City looks at doing with the County.

City Manager Westbrook said that only last week the County Commissioners authorized County staff to work with the City on the joint issue of minority business and we have been proceeding in that direction.

Vice-Mayor Field said that she understood that the actual disparity study is not under question. She felt the issue is how the plan is administered, where it is located in the scheme of City government, and how much staff is necessary to administer the program. She stated that former Interim City Manager Bill Farris felt strongly that the Program should be moved out of Planning and into Purchasing. Since he was the CEO of the City, it was his job to make those decisions. She felt that some of these issues could well be resolved by dealing with it as a joint City/County plan.

Councilman Worley agreed that the City needed to do a better job with the MB Program and he looked forward to being able to accomplish that. He felt that the revisions to the recommendation section deal primarily with procedures. Since it appears that the study itself was not compromised, he was satisfied with the results of the investigation.

Councilman Cloninger was glad that the results of the study itself were not compromised and agreed that a worksession would be in order. The two issues raised that should be addressed are (1) whether there is adequate staffing for this program; and (2) whether the MB program should be administered under the Purchasing Division.

Vice-Mayor Field moved to accept the investigative report as outlined by Mr. Fisher. This motion was seconded by Councilman Worley and carried unanimously.

#### IV. NEW BUSINESS:

##### A. CONSIDERATION OF A RESOLUTION DIRECTING THE PLANNING & ZONING COMMISSION TO REVIEW THE REQUEST FOR THE REZONING OF 91 LOTS IN THE YORKSHIRE/BROOKSHIRE/REED STREET AREA FROM R-3 MEDIUM DENSITY RESIDENTIAL TO R-1A SINGLE FAMILY, MODERATE DENSITY RESIDENTIAL

Councilman Cloninger said that his firm, that he is a partner in, represents clients who have a financial stake in what the City Council does in this matter. Therefore, he asked that he be allowed to withdraw -4-

from any participation on this issue. Councilman Worley moved to excuse Councilman Cloninger. This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Gerald Green, Senior Planner, said that residents of the Yorkshire/Reed Street neighborhood have petitioned for rezoning of 91 lots in their neighborhood from R-3 to R-1A. Section 30-11-1 (c) of the Zoning Ordinance permits residents of an area to petition for rezoning of the area if the property owners signing the petition comprise a minimum of 51% of property owners in the area and own at least 51% of the property within the area for which the rezoning is requested. The petition meets these minimum requirements. Rezoning is requested to protect the existing character of the neighborhood.

The current R-3 zoning of the neighborhood permits single family development with a minimum lot size of 8,000 square feet and multi-family development of up to 16 units per acre. The requested R-1A zoning permits single family development with a minimum lot size of 5,400 square feet and prohibits multi-family development. Certain non-residential uses, such as churches and schools, are permitted in both districts.

The petition has been reviewed by the Planning staff and meets the requirements for a valid petition. City Council must consider whether to initiate a special zoning study of the area to determine whether a change in the zoning of the area is warranted. If the zoning study is initiated, the request will be forwarded to the Planning & Zoning Commission for review and recommendation. The request will then be presented to City Council, with the recommendation of the Planning & Zoning Commission, for a final decision.

The Planning Department recommends that any zoning study of this area await the completion of the Unified Development Ordinance ("UDO") and be conducted as part of the UDO mapping process.

When Vice-Mayor Field asked if this area was considered when the Hendersonville Road Corridor Study was conducted, Mr. Green replied that it was not. She then remembered that when that Corridor Study was being developed, in the areas that were R-3, there was an opportunity to have transitional zoning that would allow some transition into a single-family neighborhood. When she inquired about if all the lots in this area were zoned R-3, Mr. Green said that they were not - that some of the lots along Hendersonville Road were zoned commercial.

Mr. Green said that one advantage for waiting until the UDO mapping process is complete before initiating a rezoning study is that it would provide staff more tools, e.g., transition zones, to make that transition from Hendersonville Road into the single-family neighborhood.

Councilman Worley was concerned that this area looks very complex to deal with in a rezoning petition, absent the UDO mapping, due to the jagged boundaries and the different zones.

Councilman Skalski asked Mr. Green if manpower was the reason why he was having reservations about doing rezoning studies at this time. Mr. Green said that there is a limited number of man-hours to do all the work that is required and it would divert them from other tasks that need to be done - one of those being the UDO. Mr. Skalski then asked that when a builder or developer comes in if there was a manpower problem now with getting group developments and rezonings through the process. Mr. Green said that in assigning priorities to work projects, -5-

staff's top priority is always dealing with people who come in with either a development project or a rezoning request where the petitioner owns 100% of the property for which the rezoning is requested. Since that is how priorities are assigned, Councilman Skalski felt he had no choice but to support the rezoning study to proceed. His reasoning was since staff has enough manpower to put in new development, it should have enough manpower to protect the property of the

80% of the land which is residentially occupied. He felt it was time Council started protecting the quality of life of our citizens on a very broad base. He also felt another tool for Council was if we are in a position where staff feels they don't have the manpower to do what needs to be done, Council could always call for a moratorium on areas that are asking for protection. He said that someone might argue that we can't afford to do it legally, but the other argument would be can we not afford it legally to give the property owners the protection that they deserve.

Councilman Worley said that Council is concerned about neighborhoods as demonstrated by the rezoning study being done in the Haw Creek area. He said that Council is committed to complete the UDO process as quickly as possible and if a flood of rezoning petitions come in, it will surely affect staff's ability to complete the UDO within the deadline that Council has set. He felt that decisions for studies should be made on a case by case basis and in this case, the complexities of the study are too great to warrant his support. However, the next item coming to Council for their consideration is another rezoning study request and he would support that study. He felt firm that Council should review each request, one by one, keeping in mind what is the best available use of staff time - with the ultimate goal of completing the UDO.

Mr. David Jones, Executive Director of the Housing Authority, felt that this rezoning request was just an attempt to block the building of their apartments in the area. He felt the plan was very reasonable for low to moderate income houses in our community.

Mr. Dick Rice was concerned that the newspaper reported that the Housing Authority's land was divided into two lots so that a certain number of units could be built on one lot and another unit built on the other lot. Because the land was divided, no public hearing was required. He felt that the public has a right to be heard on issues that affect their neighborhood. He felt the money should be used to clean up the Chicken Hill area.

Councilman Skalski moved to initiate a special zoning study of the area. This motion was seconded by Councilman Hay.

Councilman Hay was concerned that we might be overburdening staff and distracting them from the UDO, but since Council has recently adopted the R-1A designation and he felt that we can't adopt the designation designed to protect neighborhoods like this, and then not accommodate their request to rezone.

On a 3-3 vote, with Councilmen Hay, Skalski and Sellers voting "yea" and Mayor Martin, Vice-Mayor Field and Councilman Worley voting "no", the motion failed.

B. MOTION DIRECTING THE PLANNING & ZONING COMMISSION TO REVIEW THE REQUEST FOR THE REZONING OF 105 LOTS IN THE MORNINGSIDE PARK AREA FROM R-3 MEDIUM DENSITY RESIDENTIAL TO R-1A SINGLE FAMILY, MODERATE DENSITY RESIDENTIAL

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Mr. Carl Ownbey, Urban Planner, said that a petition has been received that requests 105 lots in the Morningside Park area off Brevard Road be rezoned from R-3 Medium Density Residential to R-1A Single Family, Moderate Density Residential.

The subject property is approximately 41.75 acres. The 105 lots are located within the area called Morningside Park which is directly west of Brevard Road behind the Laurelwood Condominiums. The 2010 Plan recommends this area to be low density residential.

Of the 105 lots, 72 have single family residential structures and 33 lots are currently vacant with two of these vacant lots being owned by a governmental agency. Of the 105 lots, 103 of them conform to the R-1A standard which is a minimum lot size of 5400 square feet and minimum lot width of 50 feet. The petition contains 74 verified property owner signatures or 70% of the property owners and the 74 lots constitute 66% of the land area.

The Planning staff recommends that the Morningside Park rezoning petition be held aside until the UDO mapping process is completed.

When Mayor Martin asked what the difference was between this rezoning request study and the Yorkshire area just considered by Council, Mr. Ownbey said that there are a lot of mixed uses in the Yorkshire area, whereas, in this request, it is all single family residential - no commercial.

Upon inquiry of Vice-Mayor Field, Mr. Ownbey said that in this rezoning study there would be less work to do than the Yorkshire study.

Councilman Worley spoke in favor of this study noting that the study is not driven by any threat of development, but is a pro active view the neighborhood has.

Mr. Dan Wilder, 52 Morningside Drive, spoke in support of the rezoning study.

Councilman Cloninger moved to initiate a special zoning study of the area. This motion was seconded by Councilman Worley and carried unanimously.

C. RESOLUTION NO. 96-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY FOR THE TRANSFER, TRANSPORTATION AND DISPOSAL OF MUNICIPAL SOLID WASTE

Mr. Mark Combs, Public Works Director, said that Buncombe County seeks a formal agreement with the City for the disposal of the City's residential waste in a County-owned and operated landfill for a period of five years.

Presently the City deposits approximately 25% of the solid waste going into the Buncombe County landfill. With the promulgation of regulations based on Federal legislation passed in the 1980's, and the impending closure of its old landfill, Buncombe County had to choose between the construction of a landfill meeting the new requirements or acquiesce to the private sector for the provision of disposal services for Buncombe County residents.

Analysis has proven that disposal cost economies-of-scale begin at approximately 400 tons per day (to be competitive with privately-

-7- operated landfills). Buncombe County's volume is presently approximately 400 tons. Also, while difficult to quantify, the potential for long-term liability concerning landfill contamination issues can be lessened through stricter local control mechanisms, potentially avoiding millions in future liability costs.

Buncombe County has made the commitment to provide local disposal services for its residents for these reasons. Last year the County purchased property in the Alexander community for \$3.5 million. Facilities, roads, and first phase (lined cell) construction will cost an additional \$8.1 million. This landfill is currently under construction with a projected operation date of late autumn, 1996. The County paid cash for the property but borrowed funds for facilities and cell construction, and thus seeks to guarantee financial mechanisms for the repayment of its debt service for the initial five-year cell phase.

The Service Agreement is summarized as follows: (1) Five-year duration from

opening date of new landfill (with no rate escalators); (2) County will own and operate the landfill under federal and state regulations to exclude out-of-County wastes; (3) per ton disposal fee of \$31; (4) County will operate a transfer station to receive and transport waste to the new landfill for \$3 per ton; (5) County will operate or contract for two (of the current four) drop-off recycling sites located within City limits. The City currently pays for all four sites; (6) County will fund a recycling/reduction education program to include the City; (7) County to accept demolished house debris for reduced rate of \$24 per ton; and (8) County will grant City a \$2 per ton "recycling credit" if City has household recycling program.

The Public Works Department recommends adoption of the transfer, transportation and disposal agreement with Buncombe County. The agreement authorizes the City Manager to sign the agreement. This agreement will be mutually beneficial to each party, and in consideration of the alternatives available today, it is the best long-term solution to the community's solid waste disposal dilemma. The guarantee of a fixed five-year disposal fee in conjunction with local control mechanisms for cost and potential liability are advantageous to each party.

Upon inquiry of Councilman Hay about what happens at the end of the five year contract, Mr. Combs said that the City could elect to renew the contract or seek services elsewhere.

Vice-Mayor Field, having served on the County's Solid Waste Committee, felt that this is a step in the right direction for all concerned.

Councilman Hay said that since the City has recently undertaken the recycling program, it seems like this will work hand-in-hand with that program. There are incentives in this contract that will help the City move forward with the recycling program.

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

Vice-Mayor Field moved for the adoption of Resolution No. 96-20. This motion was seconded by Councilman Worley and carried unanimously.

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D. RESOLUTION NO. 96-21 - RESOLUTION RECOGNIZING AND ENDORSING THE EAGLE/MARKET STREETS DEVELOPMENT CORPORATION -8-

Mr. Marvin Vierra, Community Development Director, said that Eagle/Market Streets Development Corporation is a non-profit Community Development Corporation ("CDC"). The purpose of the CDC is to facilitate the physical redevelopment of the Eagle/Market Street area "The Block." The purpose further is to create an atmosphere conducive to African American entrepreneurship through provision of technical assistance and access to resources.

The Board of Directors of the CDC is composed of property owners, tenants, grassroots and community leaders.

The Eagle/Market Streets Development Corporation has requested a resolution from City Council approving and endorsing the Eagle/Market Streets Development Corporation.

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

Councilman Skalski moved for the adoption of Resolution No. 96-21. This motion

was seconded by Councilman Cloninger and carried unanimously.

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E. RESOLUTION NO. 96-22 - RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT WITH EAGLE/MARKET STREETS DEVELOPMENT CORPORATION FOR ADMINISTRATION SUPPORT

Mr. Marvin Vierra, Community Development Director, said that this contract will provide \$57,517 to the Eagle/Market Streets Development Corporation (CDC) for administrative support.

The CDC has requested CDBG funds in the amount of \$67,400 for administrative cost to hire staff and establish an office to facilitate the redevelopment of the South Pack Square area (Eagle/Market Street area). The current balance of CDBG funds appropriated for the South Pack Square Redevelopment project is \$57,517. This represents 85% of the request from the CDC. This resolution will authorize a contract not to exceed \$57,517 for administrative support for the CDC.

Councilman Hay said that this comes as a recommendation from the Housing & Community Development Committee. They felt that moving forward with this contract will help the Eagle/Market CDC get started.

Vice-Mayor Field said that the firm that she is an employee of, Spaceplan, was hired by F.A. Johnson to do the architectural assessment for part of the Eagle/Market Plan. Spaceplan was paid in full for their services by Mr. Johnson's firm last year. She is a salaried employee of Spaceplan, but she does not participate in any profit-sharing with the firm. She doesn't personally benefit financially from the relationship between Spaceplan and anyone else. Spaceplan has recently been hired to implement the first phase of the renovation of the Mt. Zion Church and the stabilization of the Asheville Foundry Building, which has recently been purchased by Mt. Zion Church. Dr. Grant, who is Chairman of the Eagle/Market CDC, is Pastor of the Mt. Zion Church. She said this particular project is being handled by another architect in her firm and she will not be involved professionally. She has recently been informed by Carroll Hughes, who owns Spaceplan, that he has set up a separate consulting firm and may be considered by the Eagle/Market CDC as their consultant in the future. This work, as she understands it, would not be of an architectural nature. She knows that she is required by law to -9-

vote on every issue and she asked for some guidance on whether she has a conflict of interest or not in this particular situation. City Attorney Slawter explained that the State statute that applies provides that Council members are required to vote on all matters except where there is a statutory conflict of interest - which includes voting upon matters involving either the consideration of Council members own financial interest or official conduct. The official conduct is certainly not involved, therefore, the only question is whether there is any financial interest involved. As Vice-Mayor Field has described it, there would not be financial interest involved. Therefore, if there is no financial interest involved, then there is no conflict of interest and she should vote.

Councilman Cloninger spoke in support of the contract noting the fine leadership of Dr. Grant in this project. He looked forward to the project moving forward and being successful

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

Councilman Skalski read a prepared statement as follows: "Will the community at



large support the Eagle/Market Street neighborhood redevelopment? Yes, the community will. We, as a community, a community of neighborhoods, must take into account the fact that many families on fixed incomes are currently having trouble making ends meet. Family breadwinners are losing their jobs or are taking lower paying jobs. Many small businesses are struggling. The future of our economy is tenuous. The federal government is downsizing. People want a balanced budget. Future federal funding of projects will be less and harder to come by. We as neighbors and tax payers must ask how it is that projects can be done in the most fiscally conservative and socially responsible and humane manner. Our community deserves accountability. To achieve community-wide, neighborhood support we must include the following in this Eagle/Market Street neighborhood redevelopment grant of \$57,517 for administrative assistance: (1) a Mini-Business Plan with goals and measurable objectives and a reasonable time frame (8-12 months), i.e., list number of funding applications that will be made and to which type of institutions. This is a mini-business plan for the \$57K; (2) I like the idea of having an office in the YMI Building. This would help support the YMI; (3) All future requests for CDBG funding shall be on a matching basis. Matching funding could be procured from foundations, local banks, the corporate community and individuals. We must plan for the very near future. The federal government is downsizing. We have to adjust for the fact that there will be less money to go around. We must work together toward what is feasible and humanely possible; and (4) I would encourage our police Chief Annarino to work with this neighborhood. No private investors will put money into a neighborhood, unless we work together to get crime out. Yes, the community does support the Eagle/Market Street neighborhood with these specific, accountability guidelines." He then moved to execute a contract with Eagle/Market Streets Development Corporation for administrative support in the amount of \$57,517, with the inclusion of the above provisions. There being no second, the motion failed.

Councilman Hay then moved for the adoption of Resolution No. 96-22 to execute a contract with Eagle/Market Streets Development Corporation for administrative support in the amount of \$57,517. This motion was seconded by Councilman Worley.

Councilman Hay stated that Councilman Skalski's concerns were legitimate, however, this is basically a planning grant. He felt the fewer limitations we put on them up front, other than accountability, -10-

the better. He didn't think the City would have any problems monitoring the progress and any accountability problems.

Vice-Mayor asked if we could encumber CDBG money by requiring this project to match funds and not requiring all our other projects to match funds. Mr. Vierra responded by saying that basically you can do what you want with CDBG funds; however, in all fairness, you should have to require that of all CDBG recipients.

A resident of Asheville felt that the spirit in which Councilman Skalski brings up accountability is a good one, but accountability comes from the community and the whole point of giving these funds over for planning and development is to have the community plan and develop. She felt it was presumptuous to impose an outline on the way they should plan and develop for their own environment.

Ms. Willie Mae Brown, Eagle/Market Streets Development Corporation Board Member, felt that the Board members did have the intelligence to manage the \$57,517. She felt that comments made by Councilman Skalski regarding matching funds were made because he was not familiar with the plans for the area. She stated that this seed money will allow them to become organized and enable them to begin seeking grants, and asking other organizations, foundations, and

individuals for matching funds. But, that will not keep them from coming back and asking for more CDBG funds. She felt if they needed the support, they are entitled to ask for it. She stressed that they will be accountable to any money they receive. She invited Councilman Skalski to come to the Board meetings and be the City Council representative so there will be no doubts as to what they will do with the money they receive.

Dr. John Grant, Chairman of the Eagle/Market Streets Development Corporation, stressed that this is not only the immediate neighborhood's goal to redevelop the area, but it's a City of Asheville goal.

On a voice vote, Resolution No. 96-22 was adopted on a 6-1 vote, with Councilman Skalski voting "no".

Mr. Larry Linney asked if the recently adopted Resolution No. 96-21 that recognized and endorsed the Eagle/Market Streets Development Corporation limited the Eagle/Market CDC as the only recipient of CDBG funds. City Attorney Slawter responded that it did not.

Mr. Linney asked if he could obtain the City Attorney's legal opinion regarding the conflict of interest question raised by Vice-Mayor Field earlier in the meeting. City Attorney Slawter said that the minutes of this meeting would provide the question and his opinion accurately and he should obtain a copy from City Clerk Burleson. He said if that was not sufficient, Mr. Linney should let him know.

Mr. Linney then asked if that legal opinion applies not only to the present relationship, but whether it also applies to Spaceplan's receipt of CDBG funds from the F.A. Johnson contract last year. City Attorney Slawter said that as far as his legal opinion today, the minutes of this meeting will reflect that. With regard to last year's matters, he recalled very well that more than one time Vice-Mayor Field was excused from voting because of the conflict of interest on the issues that came up related to Mr. Johnson. Vice-Mayor Field then stated that she did not participate.

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V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 23, 1996, AND THE WORKSESSION HELD ON FEBRUARY 6, 1996

B. RESOLUTION NO. 96-23 - RESOLUTION TO AWARD BID FOR TWO TRASH HANDLING SYSTEMS

Summary: Sealed bids were received to furnish two trash handling systems for the Public Works Department, Sanitation Division. Seven bids were received. Staff recommends that the award be made to the low bidder, Cavalier Equipment Corporation, Cloverdale, Virginia, in the amount of \$122,988.32 for the purchase of two 1996 Ford F-800 cab and chassis with Petersen trash handling systems. The following bids were received:

Vendor Net Cost

Cavalier Equipment Corp., Cloverdale VA \$61,494.16

Cavalier Equipment Corp., Cloverdale VA \$68,545.00\*

Carolina Truck Centers, Hickory, NC \$61,921.00

Nu-Life Environmental Inc., Easley, SC \$62,874.00

Nu-Life Environmental Inc., Easley, SC \$69,435.00\*

Amick Equipment Company, Lexington, SC \$65,874.00

Carolina Truck & Body Co., Asheville, NC \$72,000.00

\*Alternate Bid

Funds for this purchase are to be from the Sanitation Division's appropriations.

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C. RESOLUTION NO. 96-24 - RESOLUTION ESTABLISHING THE FAIR REUSE VALUE FOR DISPOSAL PARCEL 6A OF THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Summary: Disposal Parcel 6A has been appraised, the appraisal reviewed and it is necessary to establish Fair Reuse Value in order to market the property.

Disposal Parcel 6A is located at the northeast corner of Montford Avenue and Cherry Street. It is an irregular shaped parcel containing 12,595 square feet. The property has frontage on Montford Avenue in two places and along Cherry Street. Approximately 2,166 square feet in the southeastern corner is encumbered by an access easement and the subject benefits from rights to an approximate 2,017 square feet parking easement which fronts Cherry Street and adjoins the subject. It is zoned CG Commercial General and its highest and best use per the appraisal is commercial. The CG district is intended primarily to serve the surrounding neighborhood, providing goods and services that are day-to-day needs. Businesses which might tend to be a nuisance to the immediately surrounding residential development are excluded. Retail stores may not exceed 30,000 square feet gross floor area.

Disposal Parcel 6A was appraised by David Moore, MAI, at a value of \$69,250. The appraisal was reviewed by Francis Naeger, MAI, who concurred and recommended the appraisal value of \$69,250 as Fair Reuse Value.

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D. RESOLUTION NO. 96-25 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING DISPOSAL PARCEL 6A OF THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Summary: The bid of Montford Partners in the amount of \$69,250 for the purchase of Disposal Parcel 6A in the Head of Montford Redevelopment Project is not less than the established minimum price of \$69,250. Disposal Parcel 6A is a CG Commercial General lot at the corner of Montford Avenue and Cherry Street comprising 12,595 square feet. The bid from Montford Partners for Disposal Parcel 6A includes the proposal to build a two story commercial building containing a total gross building area of 4,610 square feet, for retail and office space at an anticipated cost of \$245,000. Montford Partners consists of Frank S. Smith, Canie B. Smith, and Dr. Charles T. Rowe. This resolution will initiate the sale of the property through the upset bid process.

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E. RESOLUTION NO. 96-26 - RESOLUTION APPROVING AN OPTION TO PURCHASE MURRAY

HILL PARK PROPERTY TENDERED BY OVERVIEW APARTMENTS LIMITED PARTNERSHIP

Summary: David B. Douglas of Douglas Company, on behalf of Overview Apartments Limited Partnership, has tendered an Option to Purchase the Murray Hill Park property.

Murray Hill Park is located off Bartlett Street adjacent to Bartlett Arms elderly housing. The proposed Option will allow David Douglas to explore the feasibility of developing a plan for purchasing the property and constructing 48 units of elderly housing along with a passive recreation park for special populations in the Asheville community.

The stated purchase price in the Option is \$96,000; however, the purchase price shall not be less than the appraised value and is subject to the upset bid process as provided in G.S. 160A-269. The Option is also subject to Overview Apartments Limited Partnership being the successful bidder.

RESOLUTION BOOK NO. 23 - PAGE 109

F. RESOLUTION NO. 96-27 - RESOLUTION OF INTENT TO CLOSE AN UNNAMED ALLEY RUNNING NORTHERLY OFF OF COLEMAN AVENUE AND CALLING FOR A PUBLIC HEARING ON MARCH 12, 1996

RESOLUTION BOOK NO. 23 - PAGE 110

G. RESOLUTION NO. 96-28 - RESOLUTION CONSENTING TO AN AMENDMENT NO. 1 TO THE CLAIM ADMINISTRATION CONTRACT AND THE OPERATING MEMORANDUM TO DELETE THE REQUIREMENT THAT ASHEVILLE CLAIMS CORPORATION ANNUALLY FURNISH TO THE CITY AUDITED FINANCIAL STATEMENTS PREPARED BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Summary: The Claims Administration Contract, dated as of September 1, 1993, between the City and Asheville Claims Corporation includes the Operating Memorandum. These documents, in conjunction with several others, provide the vehicle to allow the City to implement, capitalize and operate our risk management program.

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To finance the capitalization of the risk management program, Asheville Claims Corporation (a non-profit corporation organized to assist the City in risk management and claims administration) issued \$10 million of Certificates of Participation, the net proceeds of which were immediately placed in a trust. In accordance with the terms of the trust indenture, Asheville Claims Corporation also conveyed to the Trustee "all rights, title, and interest in and to the City's Payment Obligations under the Contract ..." and "all moneys and securities from time to time held by the Trustee under this Indenture ...." As a result, the Asheville Claims Corporation has no assets or liabilities. Therefore, the requirement that Asheville Claims Corporation annually furnish the City audited financial statements is unnecessary and wasteful.

The proposed resolution consents to eliminating the requirement for annual audits. The consent of the Trustee (First Union National Bank of North Carolina) and the Credit Provider (Wachovia Bank of North Carolina, N.A.) must also be obtained for the change to take effect.

RESOLUTION BOOK NO. 23 - PAGE 111

H. RESOLUTION NO. 96-29 - RESOLUTION FOR BONDS FOR CITY EMPLOYEES AND AMOUNTS OF BONDS

Summary: This resolution is required by Statute, and City Charter to set not only the amounts for fidelity/honesty bonds, but to establish which employees are required to have bonds.

In 1979, the City Council adopted Resolution 79-267 which placed separate bonds on the Finance Director and all City employees. The amount of the bond was \$50,000 and the amount for all City employees was \$15,000. The statute specifies that the "true accounting and faithful performance" bond for the City's financial officer be separate from all other bonds required.

Since 1979, the amount of the bond has periodically increased, presumably at the recommendation of various agents and brokers providing the City with advice.

Approximately three years ago (after a formal in-house risk management function was established) the amounts of the bonds were reviewed. It was learned that sometime since 1979, a bond was put into effect for \$50,000 on the Finance Director, and a separate bond was in effect for the Deputy Revenue Collector (now Collections Supervisor), and still a third bond was in effect for all other City employees in the amount of \$15,000.

Based on an assessment of the City's needs for surety, and an examination of competing markets, a decision was made to drop the bond for the Deputy Revenue Collector, and place one bond for all City employees. Further, based on minimum premium rules employed by most brokerages in recent years the City was able to increase the limits of the bonds to \$250,000, at no increase in premium.

Several months later when the bond for the Finance Director renewed, it was decided to increase the limits for it to the same \$250,000 limit provided to all other employees.

Since State law and the City Charter require the Council to set the limits for bonds, and to establish exactly who is to be covered by bonds, this resolution will recognize the current status of our fidelity/honesty bonds, and the appropriateness of our coverages.

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RESOLUTION BOOK NO. 23 - PAGE 114

I. RESOLUTION NO. 96-30 - RESOLUTION ACCEPTING A REPORT ON THE DISPOSAL OF CITY-OWNED PERSONAL PROPERTY

Summary: Property disposals for the Fleet Management Division and the Water Resources Department during July 1, 1995, through December 31, 1995.

RESOLUTION BOOK NO. 23 - PAGE 115

J. RESOLUTION NO. 96-31 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH THE NATIONAL DEVELOPMENT COUNCIL TO PROVIDE CONSULTING SERVICES FOR AN AFFORDABLE HOUSING STUDY

Summary: Funds will be transferred from the Employer Assisted Housing program to the Affordable Housing Study contract with the National Development Council.

Funds have not been utilized in the City's Employer Assisted Housing Program account which was created in January 10, 1994. Higher interest rates of bonds issued by the N.C. Housing Finance Agency have caused the Employer Assisted Housing Program not to be able to compete with the private mortgage interest rates. The Affordable Housing Study will survey the City's housing needs and

assess the capability of non-profits to help the City better address its housing needs. Recommendations will be made on how to improve the housing program and increase production.

The Housing and Community Development Committee has reviewed the consultant proposals and recommends adoption of the budget amendment and the contract with the National Development Council.

RESOLUTION BOOK NO. 23 - PAGE 116

K. RESOLUTION NO. 96-32 - RESOLUTION AUTHORIZING MOSER MAYER PHOENIX ASSOCIATES, P.A., TO PROCEED WITH DESIGN, ENGINEERING AND CONTRACT ADMINISTRATION SERVICES FOR TRANSIT TRANSFER CENTER

Summary: This resolution would authorize the architect to proceed with the design, engineering and construction for the new downtown transit transfer center.

City staff recommended contracting with Moser Mayer Phoenix Associates, P.A., to provide the design and engineering of a new downtown transit center. The transit transfer center is to be relocated from Pritchard Park to Aston Street, between Asheland Avenue and Coxe Avenue. As some questions arose from the surrounding property owners, the City Council decided that the architect should proceed only with the schematic design phase for the transfer center. In Resolution No. 95-18, adopted on February 7, 1995, the City Council authorized the City Manager to execute a contract with Moser Mayer Phoenix Associates, P.A., to proceed only with the schematic design phase at that time.

As the issues raised by surrounding property owners have now been addressed, City Council desires to proceed with the remaining design, engineering and construction administration services for this project. In that Resolution No. 95-18 provided limited authority for Moser Mayer Phoenix Associates, P.A., to provide services, it is necessary to provide them with further direction. -15-

RESOLUTION BOOK NO. 23 - PAGE 117

L. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 27, 1996, TO REZONE 21 PARCELS ON MARNE ROAD FROM R-3 RESIDENTIAL TO R-1A RESIDENTIAL DISTRICT

M. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 27, 1996, TO AMEND THE ZONING ORDINANCE TO ALLOW RESIDENCES IN THE COMMERCIAL SERVICE DISTRICT USING R-3 MEDIUM DENSITY RESIDENTIAL STANDARDS

Mayor Martin said that members of Council have been previously furnished with copies of the items on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Vice-Mayor Field and carried unanimously.

Ordinances:

A. ORDINANCE NO. 2257 - BUDGET AMENDMENT FOR A CONTRACT WITH THE NATIONAL DEVELOPMENT COUNCIL FOR AN AFFORDABLE HOUSING STUDY

Summary: This budget amendment, in the amount of \$10,000, is for a contract with the National Development Council for an affordable housing study.

ORDINANCE BOOK NO. 15 - PAGE 267

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance on the Ordinance Consent Agenda and it will not be read.

Vice-Mayor Field moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilman Worley.

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

#### VI. OTHER BUSINESS:

##### A. RESOLUTION NO. 96-33 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

City Clerk Maggie Burleson read the resolution stating that the terms of Bud Taylor and Judy Long (as Regular members) and the term of Jim Hunter (as an Alternate member), on the Board of Adjustment, expired on January 21, 1996.

This resolution will (1) reappoint Bud Taylor, as a Regular member, to serve a three year term, term to expire January 21, 1999; (2) appoint Dennis J.R. Hodgson, as a Regular member, to serve a three year term, term to expire January 21, 1999; and (3) appoint Joseph Brady, as an Alternate member, to serve a three year term, term to expire January 21, 1996. All terms are until their successors have been appointed.

Councilman Worley moved for the adoption of Resolution No. 96-33. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 118 -16-

##### B. RESOLUTION NO. 96-34 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE WATER AUTHORITY

Mayor Martin read a letter from Chris Peterson, dated February 12, 1996. The letter reads: "As of February 12, 1996, I am giving notification that I will be resigning effective immediately from the Water Authority Board. It has been a privilege and honor to have served on this Board but I have found that I must devote more time to my businesses and I would not be an effective member. I feel Mike Holcombe, Ernest Ferguson and the Board have done a tremendous job, especially in securing a new water source and the building of a new water plant. I wish the continued success to this Board and if I can ever be of any service in the future, please feel free to call me."

City Clerk Maggie Burleson said that Mr. Peterson's resignation leaves an unexpired term on the Water Authority.

Vice-Mayor Field moved to appoint Charles R. Worley to fill the unexpired term of Chris Peterson, term to expire September 30, 1996, or until his successor has been appointed. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 119

##### C. REZONING PETITION STUDIES

Vice-Mayor Field said that earlier in the meeting when the rezoning petitions were considered by Council, discussion surrounded how much staff time is involved in a special study. At the retreat, Council's number one goal was to get the UDO mapping process done by the end of the year and the UDO completed, hopefully, within the next 18 months. She suggested a policy letting the

community know that the direction the Council is to move toward completion of the UDO and that they are not inclined to take on any new major rezonings.

Mayor Martin suggested fine-tuning the suggestion to state that even though Council will continue to accept the requests, they will not be inclined to grant those requests due to the ongoing UDO process.

Councilman Worley suggested a policy that the completion of the UDO is Council's number one priority and that any rezoning requests will be judged, not only on their merits, but also in conjunction of that number one priority.

Councilman Cloninger agreed that Council shouldn't bog down the Planning staff, but at the same time, he didn't feel comfortable passing a policy telling future petitioners that Council is disinclined to grant their requests. He didn't think they should be on any different ground than anyone who has come before them now. He then moved to confirm that the completion of the UDO is Council's number one priority; however, when special rezoning petitions are received by the City, City staff will make their recommendations to City Council, who will then review each study on a case by case basis, with the merits of the request being considered, along with what impact the study (staff time included) will have on the UDO process. This motion was seconded by Councilman Worley.

City Manager Westbrook appreciated Council's concern. He proposed that future studies be reviewed by staff with their recommendations bringing brought to Council, along with a recommendation that the study be delayed until the UDO mapping is complete. Obviously he was concerned that the rezoning studies would be coming in little by little -17-

and before you knew it, staff would not be working on Council's number one goal which is to complete the UDO.

Councilman Skalski stated that Council has moral and legal obligation to protect the property and the citizens of Asheville. Therefore, he suggested that if the City gets into a bind where there is not enough staff to protect the neighborhoods, he would be inclined to add that Council put in some limited moratoriums in some of these areas that are requesting it.

Councilman Skalski then made a substantive motion that when special rezoning petitions are received by the City, City staff will make their recommendations to City Council, who will then review each study on a case by case basis, with the merits of the request being considered, along with what impact the study (staff time included) will have on the UDO process. If, however, Council feels that the staff is being overburdened by the special rezoning study, that Council seriously consider using the moratorium method to protect neighborhoods. Due to a lack of a second, this motion died.

On a voice vote of 6-1, with Councilman Skalski voting "no", the motion made by Councilman Cloninger and seconded by Councilman Worley carried.

#### D. CLAIMS

The following claims were received by the City of Asheville during the week of January 19-26, 1996: Wilton Waters (Streets), Clarence Rogers (Streets), Charles E. Smith (Streets), Karen Majors (Streets), Brian Reade (Streets) and Vic Buchanan (Streets).

The following claims were received by the City during the week of January 26-February 2, 1996: David Jordan (Water), Wallace Boston (Police) and Edward A. Gibson (Police).



The following claims were received by the City during February 2-8, 1996: Randy Mahaffey (Water), Ruth Mills (Streets), Jimmy Jaramillo (Water) and James Harrison (Water).

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

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:25 p.m.

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CITY CLERK MAYOR

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