

Tuesday - August 20, 1996 - 3:00 p.m.

Worksession

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

BICENTENNIAL UPDATE

Mr. Richard Nantelle and Ms. Leni Sitnick, Co-Chairs of the Bicentennial Committee, updated City Council on the progress already made by the Bicentennial Committee and the progress they plan to make. They passed out a list of possible City events and a news release entitled "Asheville Prepares for Year Long Bicentennial Celebration."

Ms. Sitnick thanked City staff for their help with the Committee and spoke about the enthusiasm and excitement being generated. Their hope is for the kick-off celebration to be on First Night Asheville 1996. She presented council with a proposed Bicentennial budget for 1997-98, in the amount of \$135,550, in which they hope the City will not have to expend any of the funds - they hope to generate the monies from sponsorships in the community. She did note, however, that the Bicentennial Marker and the Yes You Can Come Home Again Home Town Reunion might be projects that the Committee would ask for some City financial assistance with. A lot of the bicentennial ideas will be weaved into events and programs that are already in place, i.e., Bele Chere, Goombay Festival, Christmas parade, Quality Forward, Adopt-A-Street Program, etc. She asked for City Council's concurrence before the Committee starts going to the community for sponsorships.

There was some discussion about how the activities will be sanctioned and the City's liability in some of the activities.

Vice-Mayor Field suggested another name for the "Happy Birthday Asheville - We're Going To Clean You Up" Awareness Program." She didn't want to give the impression that our Public Works Department is not doing a good job.

Ms. Sitnick invited any and all of Council to attend the Bicentennial Committee meetings. The Committee would welcome their suggestions and input.

Upon inquiry of Councilman Worley, Ms. Sitnick said that even though the application deadline is October 1, the Committee wouldn't turn down any event application if they wanted to participate.

On behalf of City Council, Mayor Martin thanked Ms. Sitnick, Mr. Nantelle and the Bicentennial Committee for their hard work so far and strongly supported their efforts into making Asheville's Bicentennial an extra-ordinary event!

PRIVATIZING CONCESSIONS AT CIVIC CENTER

Mr. Jim Scott, Civic Center Director, said that in 1995 City Council designated the concessions at the Civic Center as a possible area for privatization. In September of 1995 staff requested an extension on the time to evaluate privatization due to the dramatic increase in concessions revenue in the 1994-95 fiscal year.

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Examining the cost of sale for concessions for fiscal year 1995-96, concessions operated at 56.62% cost of sales. That is to say after paying all their costs of operation, concessions made \$0.43 of profit for each dollar received. This would be the same as an outside private firm paying the Civic Center 43% of net sales.

This is very good given the facility size, industry standard would be 25% of net. Thus, the Civic Center is making over 18% more than it could expect to receive from privatization. Therefore, staff feels that this is significantly more profitable with the current arrangement as opposed to privatizing concessions.

Staff does not recommend privatizing the concessions operation at this time. Should margins change, it could again be considered. The Civic Center should be encouraged to continue to decrease its expenses and increase income.

City Council concurred with the staff recommendation to not privatize the concessions operation at this time.

MESSAGE THERAPY REGULATIONS AMENDMENT

Mr. Bill Schaefer, Finance Director, said that a request was received by the City to amend the massage therapy ordinance so as to allow an additional provision to satisfy the educational requirements and to reduce the age restrictions under the ordinance.

The City's massage therapy ordinance requires that an applicant satisfy certain educational requirements which include graduation from a massage therapy school which is licensed by the North Carolina State Board of Community Colleges with a minimum curriculum of 500 hours of classroom instruction; or graduation from a school or institute of massage therapy which offers a minimum curriculum of 500 hours of classroom instruction which is licensed by another state or equivalent licensing authority; or graduation from a school or institute of massage therapy which has been certified as a program approved by the American Massage Therapy Association on Massage Training Accreditation/Approval or National Testing Service. The amendment to the ordinance would allow staff to approve the educational requirements of the ordinance as long as the applicant can in the alternative show that they are certified by the National Certification Examination for Therapeutic Massage and Body Work. Such a certification may be obtained by an applicant sitting for a national certification examination with the applicant not necessarily having satisfied the minimum curriculum of 500 hours. However, the National Certification Examination is a very rigorous examination requiring certain minimum standards before an applicant is allowed to sit for the examination as well as certain minimum qualifications in terms of practical experience. Therefore, whenever an applicant is able to show a certificate of certification from the National Certification Examination for Therapeutic Massage and Body Work, there is an assumption that the applicant possess the requisite skill, knowledge and capability to perform the profession of massage therapy.

The items requested for consideration of reducing the age restrictions pertained to: (1) revise the age for individuals able to practice the massage therapy profession from 21 years to 18 years; and (2) revise the age for individual patrols from 21 years to 18 years without requiring adult supervision. Staff is unaware of any major complaints from those impacted by the age restrictions set forth in the current ordinance. Therefore, staff does not support any change to the age restrictions.

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The Asheville Police Department and the Finance Department recommends adoption of the amended ordinance without changes to the age restriction.

It was the consensus of Council to proceed with appropriate action at the next formal meeting.

AMENDMENT TO THE TELECOMMUNICATIONS TOWERS ORDINANCE

Mr. Gerald Green, Senior Planner, said that at the Council meeting on August 13, 1996, City Council requested that staff contact the Blue Ridge Parkway offices concerning the regulations of telecommunications towers along the Parkway corridor within our jurisdiction. A request from Gary Everhardt, Parkway Superintendent, indicates that the Parkway does not ask for restrictions, but rather they request to be notified when permit applications come in within one mile of the road centerline.

Mr. Green said that the current ordinance prohibits towers within the residential districts and makes them a conditional use in all non-residential districts. He showed a map of the Parkway and where the one-mile radius lies. With a conditional use after an application has been made, a public hearing has to be held before the Board of Adjustment. There is a list of conditions which the tower must comply with, for example, height, spacing requirements, etc. In discussing this with Councilman Cloninger, City Manager Westbrook and Blue Ridge Parkway officials, it was felt that an additional condition attached to the current ordinance which would establish a requirement that the towers not detract from the viewshed of the Blue Ridge Parkway would be adequate to meet the Parkway's concern. The Parkway does not want to prohibit towers within a one mile radius of the road centerline on the Blue Ridge Parkway, but would evaluate them on a case by case basis for their impact on the view from the Parkway. The Parkway would be notified of all towers to be located within their viewshed and then would comment at the Board of Adjustment public hearing. Then, the Board of Adjustment would have the authority to set additional conditions or to deny the tower application based on its impact on the viewshed.

This additional condition would require an amendment to the Zoning Ordinance. Planning staff will work with the legal staff and the Parkway to come up with a new condition to meet their needs and that is legally correct. In the interim, Planning staff will start to notify the Parkway of any application received within their viewshed area, although the City does have a limited jurisdiction along the Parkway as shown by the map.

Mayor Martin suggested that once this amendment is adopted by Council that a copy be forwarded to Buncombe County.

Councilman Cloninger said that the reason why the Parkway officials are not asking for a blanket prohibition within a one mile of the road centerline is that there may be some locations along the Parkway within that one mile area that the tower would not be visible.

When Councilman Cloninger asked about having the City Council make the ultimate decision on the conditional use, rather than the Board of Adjustment, Mr. Green said that under the current Zoning Ordinance, all the conditional uses go to the Board of Adjustment. However, in the proposed Unified Development Ordinance, the authority to grant conditional uses will be given to the City Council. As currently proposed in the UDO there are only two conditional uses - the towers and

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the Level III Project approval. With the adoption of the UDO, that authority would come to the City Council.

Councilman Cloninger said that since ultimately (when the UDO gets adopted) the conditional use decision will be made by City Council, that Council revise this proposed ordinance to require that the tower conditional uses be approved by the City Council, even prior to the adoption of the UDO.

Mr. Green said that he would have to check with the legal staff to assure that there is no problem with giving some conditional use approval authority to the Board of Adjustment and reserving one conditional use approval authority for the City Council.

There was some discussion about the City's extraterritorial jurisdiction in the Parkway's one mile radius.

Councilman Cloninger felt this was another excellent way for Asheville to show some leadership, as was shown with the Watershed Conservation Easement.

When Councilman Cloninger asked if our current telecommunications towers ordinance address television towers, Mr. Green responded that the ordinance does not. He said that they have not been a problem to date, however, that is something that staff will look at for future revisions.

Ms. Laura Rotegard and Mr. Gary Johnson, representatives from the Blue Ridge Parkway, thanked Council for their prompt response to their request for assistance.

Mr. Green advised City Council that City Council will need to direct the Planning & Zoning Commission to review this amendment to the Zoning Ordinance. It will come back to City Council with the Commission's recommendation at which time City Council will need to hold a public hearing on adoption of the ordinance.

It was the consensus of Council to proceed with appropriate action at the next formal Council meeting.

CONSENT:

Set Public Hearing for Section 9 Operating Assistance Grant Application

Summary: This will start the process for filing of an application with the Federal Transit Administration for the City of Asheville's annual transit operating assistance grant. This grant will assist in offsetting the operating cost of the Asheville Transit Authority. These funds will be used for operating the fixed route transit system and assists in funding the City's comparable paratransit program operated under "BOOST".

The Planning staff and the Asheville Transit Authority recommend setting a public hearing on September 10, 1996, and then approval of the resolution.

Mr. Ron Fuller, Transportation Planner, responded to some questions raised by Councilman Skalski regarding last year's application. Councilman Skalski then asked for a copy of last year's application.

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Brevard Road Annexation Sewer Contract

Summary: The City Council previously approved a total of 3.2 million dollars for sewer improvements within the annexation area. This project is known as Brevard Road Area Annexation Sewer Improvements - Phase I. These funds were to be used for priority sewer improvements.

The Engineering Department has developed construction plans for the Brevard Road Area Annexation Sewer Improvements - Phase I. The engineer's estimate for this project is in the amount of \$435,020.

The project was advertised for one month. On Tuesday, July 30, 1996, at 9:30 A.M., the Engineering Department received only two bids for the project. This required that the project be re-advertised to receive bids again on August 13, 1996. A tabulation of bids is attached. The construction time for this project is identified as 120 calendar days in the contract documents.

The low bid was received from Buckeye Construction Co. Inc., from Canton, N.C., in the amount of \$477,752.50. The City has previously contracted with this company and feels they are a responsible contractor.

Staff recommends that City Council adopt a resolution awarding the bid for the Brevard Road Area Annexation Sewer Improvements - Phase I to Buckeye Construction Company Inc. of Canton, N.C., in the amount of \$477,752.50.

West Area Annexation Sewer Contract

Summary: The City Council previously approved a total of 3.2 million dollars for sewer improvements within the annexation area. This project is known as West Area Annexation Sewer Improvements - Phase I Woodside Hills Section. These funds were to be used for priority sewer improvements.

The Engineering Department has developed construction plans for the West Area Annexation Sewer Improvements. The engineer's estimate for this project is in the amount of \$632,306.75.

The project was advertised for one month. On Tuesday, July 30, 1996, at 9:00 A.M., the Engineering Department received two bids for the project. This required that the project be re-advertised and bids were received again on August 13, 1996. A tabulation of bids is attached. The construction time for this project is identified as 120 calendar days in the contract documents.

The lowest responsible bid was received from Buckeye Construction Co. Inc., from Canton, N.C., in the amount of \$646,254. The City has previously contracted with this company and feels they are a responsible contractor.

Staff recommends that City Council adopt a resolution awarding the bid for the West Area Annexation Sewer Improvements - Phase I Woodside Hills Section to Buckeye Construction Company Inc. of Canton, N.C., in the amount of \$646,254.

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NORTH LOUISIANA AVENUE SEWER CONTRACT

Summary: The City Council previously approved a total of 3.2 million dollars for sewer improvements within the annexation area. This project is known as North Louisiana Avenue Sewer Improvements. These funds were to be used for priority sewer improvements.

The Engineering Department has developed construction plans for the North Louisiana Sewer Improvements. The engineer's estimate for this project is in the amount of \$89,230.00. The North Carolina Department of Transportation has required that this work be done at night since construction is occurring within the roadway. Therefore, the project cost has significantly increased. Due to existing utilities outside the roadway, and limited right-of-way, the designed

location in the roadway is necessary.

The project was advertised for one month. On Tuesday, July 2, 1996, at 10:00 A.M., the Engineering Department received only one bid for the project. This required that the project be re-advertised bids were received again on July 16, 1996. A tabulation of bids is attached. The construction time for this project is identified as 120 calendar days in the contract documents.

Buckeye Construction Company Inc. of Canton, N.C., is the lowest responsible bidder, with a bid in the amount of \$190,200. The City has previously contracted with this company and feels they are a responsible contractor.

Staff recommends that City Council adopt a resolution awarding the bid for North Louisiana Avenue Sewer Improvements to Buckeye Construction Company Inc. of Canton, N.C., in the amount of \$190,200.

Provisions for Possession and Consumption of Malt Beverages and/or Unfortified Wine at the Goombay Festival

Summary: G.S. 18B-300 (c) authorizes the City, by ordinance, to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code provides that City Council may adopt a resolution making other provisions at special events or community festivals. This 1996 Goombay Festival Board, YMI Cultural Center and the Parks & Recreation Department recommend that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1996 Goombay Festival within the designated festival area and during the times specified.

Intent to Close Elliot Street and a portion of Garfield Street

Summary: This resolution will set a public hearing on September 24, 1996, to permanently close Elliot Street and a portion of Garfield Street.

It was the consensus of Council to proceed with appropriate actions regarding the Consent Agenda at the next formal meeting.

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BOARDS AND COMMISSIONS

It was the consensus of Council to take appropriate action at the next Council meeting to appoint Carol King to the Asheville Downtown Commission.

It was the consensus of Council to reappoint Jane Gianvito Mathews and Jim Torpey to the Planning & Zoning Commission.

Each member of Council then spoke about the excellent qualifications all four candidates had that they interviewed and it was a hard choice to vote on only one for the third vacancy on the Planning & Zoning Commission. It was understood that a vote in favor of a candidate did not mean a vote against another candidate.

Councilman Sellers moved to take appropriate action at the next Council meeting to appoint David Young to the Planning & Zoning Commission. This motion was seconded by Councilman Skalski. This motion failed on a 2-5 vote, with Mayor Martin, Vice-Mayor Field and Councilmen Hay, Cloninger and Worley voting "no".

Vice-Mayor Field then moved to take appropriate action at the next Council meeting to appoint Max Haner to the Planning & Zoning Commission. This motion

was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Skalski voting "no".

When a statement was made concerning the number of registered voters in a particular area of the City, Vice-Mayor Field asked the City Manager to investigate that statement and report back to Council.

Vice-Mayor Field, Chairman of the Council Boards & Commissions Committee, reported on two actions taken by the Committee. One action is that there will be a deadline for people to get their applications in for consideration of the quarterly advertised vacancies. That does not mean that people who submit their applications after the deadline will not be considered for future appointments because vacancies occur for many reasons. The deadline will be six weeks from the date the first advertisement is placed in the newspaper. The deadlines will be noted in all advertisements in addition to City Council worksessions and their formal meetings.

The second matter agreed upon by the Committee was that after the worksession in which City Council makes their choices on who to interview for the vacancies, any additions or deletions to that pool will need to be approved by the Chairman of the Boards & Commissions Committee, which is Vice-Mayor Field.

Vice-Mayor Field noted that City Council does consider letters of recommendations from various groups.

Councilman Cloninger concurred with the recommendations of the Committee but at the same time felt that Council should be able to be flexible in its appointment process.

Councilman Hay, member of the Council's Boards & Commissions Committee, explained that the Committee is trying to make the appointment process predictable and orderly for the community. Even though this is only a policy, Council needs to commit to it.

It was the consensus of Council to adopt the recommendations of the Boards & Commissions Committee.

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ADJOURNMENT:

Mayor Martin adjourned the meeting at 4:15 p.m.

CITY CLERK MAYOR
