

Tuesday - November 5, 1996 - 3:00 p.m.

Worksession

Present: Vice-Mayor Barbara Field, Presiding; 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: Mayor Russell M. Martin

CONSENT AGENDA:

Budget Amendment re: First Floor Security Partitions

Summary: The consideration of the purchase and installation of security partitions for the first floor of the City Hall Building.

On June 18, 1996, City Staff met to review recommendations presented by Officer Allen Dunlap of the Crime Prevention Unit and Police Chief Will Annarino, both of the Asheville Police Department, concerning City employee security and interaction with the public in the first floor area of the City Hall Building.

Security measures warrant the relocation of existing office partitions and the addition of new ones that are designed for a public-friendly and safe separation of worker and public areas.

The manufacturer of the existing office partitions and counters has been contacted, design meetings held, and a cost proposal received covering the recommended security changes. The proposed price for these changes is \$28,072.17.

The changes to the first-floor office partitions include:

- Four aluminum assemblies (including a total of 4 laminated tops, 2 electric strikes, 1 combination lock, 1 one-piece manual gate package with self closure, 2 signs, and all necessary plywood inserts and fabric installation);
- Eight Allsteel panels with connectors;
- Thirty-five yards fabric with backing to be applied to the plywood inserts;
- Minor painting and patching, where required;

All labor, materials, permits and insurance included.

Funds for this expenditure were not budgeted and therefore a request to City Council is needed for a budget amendment. Staff recommends a budget amendment from the Contingency Fund to cover this new budget expenditure.

Staff requests approval of budget amendment by City Council to obtain additional funding, and requests that Council direct the City Manager to enter into a contract with the security partitions supplier for the addition of first-floor security partitions in the City Hall Building.

Councilman Hay wanted to make sure that these partitions would be customer friendly.

Budget Amendment re: Fair Housing Assistance Program

Summary: The consideration of a budget amendment in the amount of \$16,900 to be appropriated for additional Fair Housing Assistance program grant funds.

On April 28, 1987 the City of Asheville was recognized by HUD as having a fair housing enforcement program which is substantially equivalent to those of the Federal Fair Housing Act. The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988. This action will continue federal funding for the program.

The City has received approval from HUD for funds in the amount of \$16,900 for the Fair Housing Assistance Program. This will be the tenth year of funding through this program. The funding represents \$11,900 for complaint processing and \$5,000 for mandatory training of staff. The program is administered under contract by the Asheville-Buncombe Community Relations Council which provides staff support to the Asheville-Buncombe Fair Housing Commission. The City Community Development Division serves as Lead Entity and monitors the program.

Community Development staff recommends adoption of the budget amendment.

Recycling - Ordinance Amendment

Summary: In order to authorize the Public Works Department to implement a residential curbside recycling service, Chapter 15 (Solid Waste Management) of the Code of Ordinances of the City of Asheville must be amended.

Due to the waste reduction goals set by the State of North Carolina and great public interest in preserving the environment by reducing the amount of municipal solid waste sent to landfills, the City of Asheville should expand recycling services. The amendment to Chapter 15 of the Code of Ordinances sets forth the administration and regulations pertaining to the expansion of residential recycling services offered by the City of Asheville.

Under the Ordinance, the implementation of recycling services will fall under the jurisdiction of the Office of the Waste Management Coordinator. The Office will be responsible for coordinating a curbside residential recycling program for household customers and providing assistance to businesses, commercial establishments, and multi-family dwellings in setting-up recycling programs.

In order to amend the Fees and Charges Manual of the City of Asheville to set fees for residential recycling services, Chapter 15 of the Code of Ordinances of the City of Asheville must be amended to authorize the City to provide curbside residential recycling services. On June 25th, City Council awarded a contract for curbside recycling services for approximately 24,000 households to Curbside Management, Inc. In conjunction with this action, the Code of Ordinances must be amended.

The Public Works Department recommends the adoption of the Ordinance amending Chapter 15 (Solid Waste Management) of the Code of Ordinances of the City of Asheville.

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Recycling - Fees

Summary: In order to implement the curbside residential recycling program, starting January 6, 1997, the Fees and Charges Manual must be amended to allow for the charging of recycling services.

On June 25, 1996, the City Council unanimously approved the awarding of the residential curbside recycling contract to Curbside Management, Inc. The cost for the curbside program is \$1.51 per household. Fifty percent of the cost of the collection program are to be charged to the citizens of Asheville as part of the utility bill statement. At present, the rate set forth will be \$0.75 per month. The rate per household per month may be adjusted annually in the amount not to exceed the Consumer Price Index published by the Bureau of Labor Statistics.

The Fees and Charges Manual must be amended in accordance with the Recycling Ordinance which requires the delivery of residential recycling services. This amendment will allow for the billing of services in addition to monthly water and wastewater charges.

The Public Works Department recommends the adoption of the Resolution amending the Fees and Charges Manual of the City of Asheville to establish fees related to residential recycling services.

Vice-Mayor Field asked that the record show that City Council has received this information and instructs the City Manager to place these Consent Agenda items on the next formal City Council agenda.

#### STORMWATER CONCERNS - PINNACLES AT PARK AVENUE

Mr. Tony Lewis, Technical Services Director of the Engineering Department, said that staff is providing information regarding the development of The Pinnacle at Park Avenue, Phase 2.

The City Council received letters from Mr. Richard Green, President of the Coalition of South Asheville Neighborhoods dated October 15, 1996, and October 23, 1996. As a part of Mr. Green's letters, he raises concerns involving the development of The Pinnacle at Park Avenue, Phase 2. The issues pertain to stormwater runoff, erosion control and vested development rights. The Engineering Department and the Planning and Development Department are providing information to address these concerns. Additionally, staff has requested the developer, Mr. Ralph Kiger with CBI, attend the work session as a part of the discussion of this project. Staff will review each of the issues individually in this report.

#### Project Description:

Development of The Pinnacle at Park Avenue, Phase 2, involves the construction of 22 residential units on a 13.34 acre site. The site is steeply sloping, with an average gradient of about 30%. Because of an increase in the impervious surface, a stormwater collection system was required including on-site detention.

#### Erosion Control:

Enderle Engineering developed the Stormwater/Erosion Control plan and submitted it to the Engineering Department in March, 1996. During the construction phase of the development, sediment control was achieved by a 1500 LF of silt fence along the north and west perimeters of the site. Within the site, sediment basins were installed at all stormwater drainage inlet structures and check dams were constructed in the major

cross-slope drainage ditches. A mud mat was installed on the road leaving the site. Water leaving the site at the lowest point is filtered through a rock

dam.

#### Stormwater System:

A stormwater drainage system has been proposed for the development which will discharge the 50 year storm. Pipe locations and identifiers are shown in Drawing 032795-2D. The design included the required pipe diameters and lengths, with upstream and downstream elevations, and shows the water velocity at normal depth at the peak flow during the 10 year storm.

The storm drainage pipe material for this project will be high-density polyethylene. Its superior performance in wet-dry cycling conditions recommends it for use in the stormwater detention environment. Its annular corrugations promote pipe stability in the steep installations required in this site.

An integral part of the drainage system is a number of ditches that cross the site with minimum slope. They have been designed to ensure that the velocity of peak flows in the 10 year storm do not exceed the permissible value of 5.00 FPS (ref.: City of Asheville Stormwater Manual, Sec. VIII, Open Channel Design Standard, Note 1).

During construction and before grass becomes established, the ditches will be lined with an erosion control fabric. This has been shown to be stable for 10 year storm flows.

Staff has made frequent inspections of this project during its development. The measures were properly installed per the design and were maintained after rainfall events.

On September 30, 1996, the storm which occurred in the South Asheville area placed the site in a non-compliance status with the City's erosion control ordinance. Staff viewed the site and issued a "Notice of Violation" to owner/developer, Ralph Kiger.

Staff outlined the following erosion control measures be done:

- 1) Divert drainage ditch along Park Avenue to discharge at the large detention basin.
- 2) Check all silt fences, repair or replace as needed.
- 3) Repair gravel, mudmat at entrance to construction site.

In addition to these corrective actions; the project engineer directed the contractor to:

- 1) Construct 3 sediment ponds on-site upstream of the detention site.
- 2) Drain all cross ditches to sediment ponds for stormwater discharge.
- 3) Place rock check drain in all cross ditches.

The notice allowed the owner six days to meet compliance before levy of a civil penalty. The project site was returned to compliance within the required time.

#### Maintenance of Stormwater System:

Staff has spoken with Mr. Ralph Kiger about maintenance after project completion. In addition to provisions outlined in the stormwater

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ordinance with regard to the detention pond, CBI Homes will draft restrictive covenants requiring payment of homeowner fees to, among other things, provide for collection system maintenance for the project. Once a copy of the document has been provided, it will be incorporated into the project file. This is consistent with the requirements of the Asheville Stormwater Manual.

#### Diversion of Natural Channel:

Recently, homeowners in Ballentree Subdivision stated that they felt stormwater had been diverted from a prior route onto their subdivision. After reviewing the site in the field and discussions with the project engineer, staff has found no evidence that the any diversion of stormwater runoff has occurred. Blockage from an existing pipe was removed in order to allow the stormwater to flow through the previous channel. Based on staff review, it appears this culvert has always existed in the development but has not been properly maintained and kept free of debris.

#### Changes to Ordinance:

During the discussion of this item at the October 22, 1996, Council meeting, staff was requested to outline any items of the Stormwater Ordinance that may need to be revised to protect against similar problems in the future. The circumstances of these stormwater and erosion control problems for this project stem for the terrain conditions of this site. With steep slope excavation and storms which exceed the design factor of a 10 year frequency, it is highly unlikely that any measures would adequately satisfy all conditions during the construction phase of the project. The current stormwater ordinance does allow for the Engineering Department to request additional stormwater and erosion control appurtenances if a site becomes non-compliant with the ordinance. This occurred and the owner/developer was more than receptive to providing the additional measures.

Staff is currently working with the Planning and Development Department on stormwater issues as part of the Unified Development Ordinance. Possible changes to be incorporated to limit this event from reoccurring would be to:

- 1) Limit construction for disturbed area of project sites that have slopes greater than 20 to 25%. This would reduce the amount of exposed surface area during excavation. An example would be that if the proposed disturbed area (actual development area) in total is 25 or more acres, then the developer would only be allowed to excavate 5 acres at a time and would be required to establish a permanent groundcover before the next 5 acres could be excavated. This requirement is being recommended for inclusion in the Unified Development Ordinance ("UDO").
- 2) Require the Project Engineer to submit an Erosion Control Study based on a 25 year or 50 year storm for project sites that have slopes greater than 20 to 25%. This would analyze the need of sedimentation ponds and other measures required to retain sediment on site in the event of a torrential rainfall event. Based on that analysis, sediment retention measures could be placed at the beginning of construction thereby minimizing effects of high rainfall intensity storms. Likewise, staff has coordinated the inclusion of this item in the UDO.

#### Vested Rights:

Ms. Julia Cogburn, Planning & Development Director, said that in the October 15, 1996, letter, Mr. Green requested a "full scale

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investigation into the granting of vested development rights" for The Pinnacle at Park Avenue, Phase 2 development. Staff has reviewed file information on this question and completed the investigation.

On June 5, 1990, the Western North Carolina Service Corporation, a subsidiary of Clyde Savings Bank, requested issuance of a City zoning permit based upon approval of a conditional use permit by the Board of Adjustment of the Limestone Planning Council of Buncombe County for Phase II of the development known as Park Avenue. The approval by the Buncombe County Board of Adjustment was for 41 condominium units. At the time the request was made, 12 of those units had been either commenced or completed and the property owner desired to proceed with construction of the remaining 29 condominium units.

The Buncombe County Board of Adjustment had approved a revised site plan and a conditional use permit for the 41 units on April 8, 1987. A larger area which included the Park Avenue property was annexed by the City of Asheville in 1989. At the time of that annexation, N. C. Gen. Stat. sec. 160A-360(i) provided that a person who had acquired vested rights under a permit issued by Buncombe County could exercise the rights allowed under that permit as if no change in zoning jurisdiction had occurred. When the property owner made its request to the City for approval in 1990, North Carolina law allowed a developer to establish vested rights to proceed with or continue a phased development

by one of two methods: (1) showing that a valid outstanding building permit had been issued by either the city or county with jurisdiction at the time; or (2) showing that the developer had made substantial expenditures in good faith reliance on a valid governmental approval with resulting detriment if the developer was required to comply with new regulations.

In the case of Phase II of the Park Avenue development, building permits had been issued for 12 of the 41 units which had been approved by the Buncombe County Board of Adjustment, but not for the remaining 29 units. From information provided to the City by the property owner in 1990, the property owner showed it had made substantial expenditures in reliance upon the approval by the Buncombe County Board of Adjustment. Those expenditures included payment of professional services fees to architects, engineers, and surveyors as well as completion of the rough grading for the road and installation of culverts in the road for the remainder of the Phase II area. Based upon that evidence of substantial expenditures made by the developer in good faith reliance and upon the approval by the Buncombe County Board of Adjustment, it was determined that the developer might be successful in a North Carolina court in it showing that it had "common law vested rights." As a result, the developer was given a permit to proceed with the remaining 29 units of Phase II.

Prior to the request by Western North Carolina Service Corporation for authority to proceed with the remaining 29 units of the Phase II development, the Corporation had submitted on February 7, 1990, a new plan to the Planning and Zoning Commission, requesting approval of 60 units on remaining property then owned by the Corporation. The Planning and Zoning Commission recommended denial based upon "crowding of the development on the site", a question about whether or not fire protection could be provided due to the steep grades and steep switchbacks on the proposed road and the probability that the grading required for the development might not comply with the City's "Hillside Ordinance." The City Council took no action on this project and so the decision of the Planning and Zoning Commission became final.

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On May 2, 1990, the Planning and Zoning Commission considered a revised site plan submitted by the developer. That proposal called for 50 units. Again, the Commission recommended denial based upon the grading not being in compliance with the City's Hillside Ordinance and due to the number of variances which would be required for street grades, rights-of-way width, pavement width and building set-backs. At a May, 1990, meeting, the City Council remanded the group development to the Planning and Zoning Commission for further consideration, as requested by the developer. It was after that date that the developer made the request for the authority to proceed based upon the conditional use approval by the Buncombe County Board of Adjustment.

The October 14, 1996, letter from James H. Coman, Zoning Administrator, Buncombe County, is accurate in that the Board of Adjustment for Buncombe County did not grant vested rights under a new statute which was adopted by the General Assembly in 1990, with an effective date of October 1, 1991. This is a third method of a developer establishing vested rights, by requesting a public hearing before the body with approval to grant a permit for the project. At that time, however, two other methods for establishing vested rights were in effect, with one being the case law method set forth above. It was under that method that the developer was able to show that he might be successful in establishing vested rights under North Carolina case law and under that method that he was authorized to proceed.

Ms. Cogburn said that Mr. Richard Green, President of the Coalition of South Asheville Neighborhoods, raised an additional issue earlier today and she is in the process of researching that concern.

Mr. Lewis and Ms. Cogburn then answered various questions from City Council and the audience, some being, what is the normal inspection frequency for construction on steep sites; what recourse would the City have if the developer did not comply with the erosion control ordinance; how could the project been in compliance prior to the September storm if there were several complaints from residents on Gardenwood Lane; what will happen to the homes in Ballantree if a 10 or a 25 year storm occurs; if a thorough investigation occurred by City staff, why did no one contact Planning Director Jim Coman; since Asheville has a ridge law, why is that not being enforced; and, can the vested rights be rescinded.

Upon inquiry of Councilman Cloninger, City Attorney Slawter said that we can amend our ordinances to be stricter than what the State requires.

With regard to the penalty provisions for non-compliance, Councilman Hay suggested that the Council Fees and Charges Committee and/or the Council UDO Committee review the penalty provisions and see if they needed to be raised.

There was some discussion about if the 10 year design requirements were adequate.

Mr. Joseph J. Enderle, Project Engineer, responded to questions from Council about plans for additional protection. He also stated a concern about the proposed change to only excavate 5 acres at a time.

When City Attorney Slawter explained that the City does not have the right to regulate the cutting of trees on private property, Ms. Carol Hyde urged Council to try to obtain legislation that would allow the City to regulate this. Councilman Cloninger agreed that the City should once again ask our legislative delegation for that authority.

Upon inquiry of Ms. Carol Hyde, City Attorney Slawter said that there are remedies through the court system for property owners who feel they have been damaged by private developers.

Mr. Kiger spoke about his being receptive in complying with corrective actions.

Councilman Cloninger felt that Asheville does need to have stricter requirements in our UDO regarding steep slopes. He asked, and it was the consensus of Council, that the Council UDO Committee review the two changes outlined above by staff as quickly as possible for inclusion in the UDO.

#### BURTON STREET TRAFFIC STUDY

##### Burton Street No Through Truck Traffic Study

Mr. James Cheeks, Traffic Engineer, said that he has performed the necessary traffic analyses on Burton Street and is seeking authorization from City Council to prohibit truck traffic along Burton Street, beginning at a point 603 feet north of the intersection of Haywood Road and Burton Street, continuing northward for the entirety of Burton Street.

The appropriate vehicle axle classification analyses were conducted and found that Burton Street is a residential roadway in West Asheville. The vehicle axle classification study was performed per the request of residents of this area. Substantial truck traffic was detected, however, there exists alternate non-residential roadways to accommodate truck traffic.

The Public Works Department recommends the approval of this no-truck route and the posting of necessary signing to advise motorists of this prohibition.

Vice-Mayor Field asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

##### Trucks on Residential Streets

Mr. James Cheeks, Traffic Engineer, said that he has reviewed the City Ordinances concerning trucks on residential streets and has determined that some of the truck prohibition exceptions are redundant. We are requesting permission to remove these exceptions.

The Public Works Department receives many complaints from citizens and motorists who utilize the City and State roadway system. We utilize the City Ordinances to provide information concerning truck traffic prohibition. In order to provide the best information to our customer, we believe that the following exception to trucks being prohibited on residential streets is redundant:

d (1) Trucks are hereby allowed to travel upon any street which abuts their point of destination.

The other exceptions listed within this section of the ordinance provide the necessary guidance for the commercial trucking community, governmental authorities, residents of the City, and enforcement personnel.

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We have discussed this matter with the City's legal staff and the Asheville Police Department, which is responsible for the enforcement of this ordinance, and they are in support of this minor clarification change.



The Public Works Department, with support from the Asheville Police Department, recommends the approval of this revision in the Truck Traffic Prohibited Ordinance.

Vice-Mayor Field asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

#### BILTMORE DAIRY SEWER LINE

Mr. Robert Wurst, Audit/Budget Director, said that this resolution will authorize the Mayor to sign an agreement providing for an additional contribution by the City of \$18,333.34 toward the sewer interceptor running along Ducker Creek.

In 1994 the City Council authorized an agreement between the City, the County and Biltmore Dairy Farms, Inc. providing for construction of a sanitary sewer interceptor running along Ducker Creek at an estimated cost of \$500,000. Each party agreed to contribute one-third of the cost, not to exceed \$166,666.67. The agreement provides that the City and the County will consider making an additional contribution if the total cost should exceed \$500,000, but that neither the City nor the County would be requested to contribute a total of more than \$185,000.

The total project cost was \$718,404.53, and Biltmore Dairy Farms, Inc. has requested the additional contribution from the City and the County. This resolution will authorize the Mayor to sign an agreement providing for that additional contribution.

Staff recommends approval of the resolution thereby authorizing additional funds for this project up to the maximum approved contribution.

Staff also recommends adoption of the budget amendment for final payment of the Ducker Creek Sewer Project in the amount of \$18,335.

Ms. Margaret Shook, Crowfields' resident, felt that she was being taxed twice for this project and objected to Council action on this.

Vice-Mayor Field asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

#### PARKS AND RECREATION LONG-RANGE PLAN AND ADOPTION OF RECREATION TODAY AND TOMORROW

Mr. Irby Brinson, Director of Parks & Recreation, said that Parks and Recreation Department requests City Council adoption of Recreation Today and Tomorrow and the Long-Range Plan as the comprehensive planning documents for this department.

In 1989, the Parks and Recreation Department completed Recreation Today and Tomorrow as the comprehensive plan for recreation services for the citizens of Asheville. This document is updated annually in an effort to remain current with community trends. In addition, in January of 1996, the Parks and Recreation Department completed a Long-Range Plan for 1996 through 2010 in order to address departmental issues, facility

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improvements, and capital development. In order to meet requirements through

various grants and foundations to secure outside funding, these planning documents need to be officially adopted by the agency's governing body. This adoption of both plans is not an approval of the total recommendations from the findings of the study and is only approval of the basic concepts which are addressed. Both of these documents have been approved by the Parks and Recreation Advisory Board.

The Parks and Recreation Department requests the City Council adoption of Recreation Today and Tomorrow and the Long-Range Plan as the comprehensive planning documents for the department.

Vice-Mayor Field asked that the record show that City Council has received this information and instructs the City Manager to place the item on the next formal City Council agenda.

BOARDS AND COMMISSIONS:

It was the consensus of Council to instruct the City Clerk to arrange interviews for vacancies on the following boards and commissions: (1) Alcoholic Beverage Control Board; and (2) Board of Adjustment.

Upon recommendation of the Council Boards and Commissions Committee, it was the consensus of Council to (1) reappoint Kathryn Liss and Cynthia Janes to the Asheville-Buncombe Community Relations Council; (2) reappoint Victor Trantham, Jim Samsel and Garry Moffitt to the Asheville Downtown Commission; (3) reappoint Jerry VeHaun to the Firemen's Relief Fund; (4) reappoint Mike Holcombe to the Metropolitan Sewerage District Board; and (5) reappoint Grace Dorn and Tom Tomlin to the Asheville Transit Authority.

Even though the entire Council felt that the policy in place for quarterly appointments was good, Councilmen Cloninger, Skalski and Worley felt that City Council should be allowed two more weeks within which to submit names to be considered for the Board of Adjustment seats.

ADJOURNMENT:

Vice-Mayor Field adjourned the meeting at 5:40 p.m.

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CITY CLERK MAYOR

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