

Tuesday - February 25, 1997 - 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 Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Martin gave the invocation.

CLOSED SESSION

At 5:07 p.m., Councilman Sellers moved to go into closed session (1) to consult with an attorney employed or retained by the City Council in order to preserve the attorney-client privilege between the City and its attorney - statutory authority is G.S. 143-318.11 (a) (3); and (2) to discuss a matter relating to the location or expansion of a business within the area served by the City Council - statutory authority is G.S. 143-318.11 (a) (4). This motion was seconded by Councilman Worley and carried unanimously.

At 5:20 p.m, Councilman Skalski moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

I. PROCLAMATIONS:

II. CONSENT:

At the request of Councilman Hay, Item F. was removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 11, 1997, AND THE WORKSESSION HELD ON FEBRUARY 18, 1997

B. MOTION APPROVING THE 1997 FESTIVALS AND SPECIAL EVENTS SCHEDULE

Summary: The Parks and Recreation Department is recommending the approval of the following festivals and special events:

<u>Event</u>	<u>Date</u>
St. Patrick' Day	March 14,15,16
Oakley Community Day	April 19
Walk America	April 26
Very Special Arts Festival	May 2
Tell it in the mountains	May 3,4,5
Riverlink "A Day At The Races"	June 8
Honda Hoot	June 17,18,19,20,21
Riverlink Bridge Party and Parades	June 28
Riverlink Triathlon	June 28

Fourth of July Celebration	July 4
Shindig on the Green	July 5, 12, 19 & August 2, 16, 23, 30
Riverlink Nature and Environmental Art and Craft Show	July 19, 20
Bele Chere	July 25, 26, 27
Mountain Dance and Folk Festival	August 1, 2, 3
Goombay Festival	August 29, 30, 31
Pops in the Park	August 31
Childrens' Fun Fest	September 13
Greek Festival	October 3, 4, 5
Shiloh Fall Festival	October 11
Riverlink French Broad Park Birthday Party and Volunteer Recognition	October 12
West Fest	October 25
Halloween Fun Fair	October 31
Light up your holidays	November 29
First Night	December 31
Bicentennial Celebration	Year long
City Development co-sponsored festivals and events	
Moonlight Over Downtown, ., Pack Square	May 30, 6 p.m
Honda Hoot Street Party,	June 18
Downtown After Five: (sponsored by Honda Hoot), Pack Square,	June 20, 6 p.m.
Downtown After Five: location TBA	July 11, 6 p.m.
Downtown After Five: location TBA	Aug. 15, 6 p.m
Downtown After Five: .location TBA	Sept. 12, 6 p.m

C. RESOLUTION NO. 97-19 - RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH ELECTRONIC INTERIORS INC. FOR DESIGN SERVICES FOR THE COUNCIL CHAMBER RENOVATION PROJECT IN THE CITY HALL BUILDING

Summary: The Parks and Recreation Department is seeking authorization from City Council to enter into contract with the audio-visual design firm Electronic Interiors Inc., for design services to renovate the Council Chamber in City Hall.

The current layout and equipment utilized in the Council Chamber results in poor audio-visual capabilities. Therefore, staff has determined that it is necessary to upgrade the level of media and data-processing services for City Council meetings, and that in order to make these upgrades, the services of a design firm would be needed.

At the recommendation of City Council, an RFP Committee was formed to solicit and review proposals covering the following three areas:

1. Develop methods and procedures for inspection of existing components while preserving the historic fabric of the structure. Prior to construction, develop plans and written bid specifications for necessary improvements to the Council Chamber, incorporating improvements that will include data terminals, a -3- public address system, video cameras, cable television, overhead projection screens, security monitoring devices, and improved exit routes.
2. The City Hall Building is a designated local historic landmark. The design firm should be sensitive to this in responding to the needs and wishes of the City Council and the direction of the City Manager or his designated representative.
3. Make site inspections, consult with Historic Resources Commission, and obtain a Certificate of Appropriateness for the proposed improvements.

The Committee solicited proposals from approximately 65 firms, including 15 certified minority businesses in the design field that they are registered with the City. Proposal solicitation letters were also sent to the Asheville Business Development Center, the City/County Minority Affairs Office and other similar business resource organizations. Four bid proposals were received, one of which was from a certified minority business. The four bidders are listed below:

Comtec Inc. (Asheville, North Carolina)

Electronic Interiors Inc. (St. Paul, Minnesota)

Mathews & Glazer Architects, P.A. (Asheville, North Carolina)

Camille-Alberice Architects P.A. (Asheville, North Carolina)

After hearing presentations from each of the qualified firms and taking all information into consideration, the Committee recommended that Electronic Interiors Inc. be selected as the prime contractor for the project, with the stipulation that they hire a local architectural firm, if needed. The Committee reviewed this firm's experience with and sensitivity to historic sites and found that Electric Interiors has a proven track record of installation of state-of-the-art audio-visual equipment in historic spaces without destroying their historic fabric.

RESOLUTION BOOK NO. 24 - PAGE 11

D. RESOLUTION NO. 97-20 - RESOLUTION AUTHORIZING THE ADVERTISING OF BIDS FOR THE SALE OF DISPOSAL PARCELS 6B & 6C LOCATED ON MONTFORD AVENUE

Summary: The consideration of adopting a resolution authorizing advertisement for upset bids in response to a bid received from Neighborhood Housing Services of Asheville Inc. (NHS) for Disposal Parcels 6B and 6C.

A bid has been received from Neighborhood Housing Services of Asheville, Inc. (NHS) in the amount of \$248,900 for the purchase of Disposal Parcels 6B and 6C in the Head of Montford Redevelopment Project.

Disposal Parcels 6B & 6C are CG (Commercial General) zoned parcels located on Montford Avenue about 200 feet North of the Billy Graham Freeway comprising 1.2 acres. The combined Fair Reuse Value for both parcels is \$248,900. The proposed land use for the property in the Head of Montford Redevelopment Plan is for neighborhood commercial.

Meals on Wheels of Asheville and Buncombe County, Inc. has requested that the City Council direct the City Attorney to request an Attorney General's opinion pursuant to N. C. Gen. Stat. 160A-279 in order to determine whether Disposal Parcels 6B -4-

and 6C may be conveyed thereby at no cost or at a reduced cost as a site for Meals on Wheels headquarters.

NHS has submitted a bid to purchase Disposal Parcels 6B and 6C in the amount of \$248,900. The proposal includes a plan to build: three two-story mixed use buildings on Montford Avenue for neighborhood retail, office and residential space along with four residential structures on Short Street at an anticipated development cost of \$1,540,000.00.

The Montford Neighborhood Advisory Committee has endorsed the NHS proposal.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in G.S. 160A-269.

Community Development staff recommends denial of the request from Meals on Wheels and adoption of the resolution authorizing advertisement for upset bids.

RESOLUTION BOOK NO. 24 - PAGE 12

E. RESOLUTION NO. 97-21 - RESOLUTION ESTABLISHING FAIR REUSE VALUE FOR DISPOSAL PARCELS 10.1, 10.2 & 10.3 IN THE EAST END/VALLEY STREET PROJECT (CARROLL AVENUE AREA)

Summary: Certain Disposal Parcels in East End/Valley Street have been appraised, the appraisals reviewed and it is necessary to establish the Fair Reuse Value in order to market the property.

Disposal Parcel 10 is located at the intersection of Martin Luther King, Jr. Drive with Edge Hill and Carroll Avenues in East End and due to its size it has been subdivided into three single family home sites to be sold under the Dollar (\$1.00) Lot Program. The sites identified as Disposal Parcels 10.1, 10.2 and 10.3 comprise approximately 10,498, 10,498 and 16,727 square feet respectively and are zoned for residential development.

Each Disposal Parcel was appraised by David Moore, MAI, SRA. The appraisals were reviewed by Francis J. Naeger, MAI, who concurred and recommended the appraised values as the Fair Reuse Values.

Approval of the resolution will establish the Fair Reuse Value for each of the Disposal Parcels.

RESOLUTION BOOK NO. 24 - PAGE 13

F. RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE AREA CIVIC CENTER COMMISSION

This item was removed from the Consent Agenda to be discussed individually.

G. RESOLUTION NO. 97-22 - RESOLUTION AUTHORIZING THE EXECUTION OF AN OFFER TO PURCHASE AND CONTRACT FOR THE PURCHASE OF PROPERTY ON WHICH THE SHILOH COMMUNITY CENTER IS LOCATED AND SETTING A PUBLIC HEARING ON MARCH 11, 1997 -5-

Summary: The Buncombe County Board of Education now owns the property on which the Shiloh Community Center is located and the City has been leasing that property since December 1, 1976. The City of Asheville desires to purchase this property for its continued use for the Shiloh Community Center. The Buncombe

County Board of Education has agreed to sell the property to the City of Asheville for Two Hundred Fifty Thousand Dollars (\$250,000) and has agreed to finance the purchase price for this property over a five (5) year period, beginning in Fiscal Year 97/98.

N. C. Gen. Stat. sec. 160A-20 authorizes cities to purchase real property by installment contract which creates in the property purchased a security interest to secure payment of the purchase price to the seller. N. C. Gen. Stat. sec. 160A-20 requires that the City Council hold a public hearing prior to entering into an installment contract for the purchase of real property.

RESOLUTION BOOK NO. 24 - PAGE 14

H. RESOLUTION NO. 97-23 - RESOLUTION AUTHORIZING THE EXECUTION OF A FOURTH MODIFIED GRANT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE AIRPORT TERMINAL EXPANSION

Summary: Consideration of a Fourth Modified Grant Agreement with the N.C. Dept. of Transportation for matching funds for the (now completed) Asheville Airport Terminal Expansion.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This Fourth Modified Grant Agreement is to allow the Authority to receive additional matching funds from the Dept. of Transportation ("DOT") for the Phase III Terminal Expansion.

Airport Director Jim Parker advises that the Terminal Expansion project was financed almost entirely with bond money, and that it was completed several years ago. The estimated cost of the project was \$3.36 million and DOT's projected commitment under the State Aid to Airports program is approximately half of the estimate. Because of budgetary limitations, this entire amount was not available when the project was completed, and DOT has been making "installment" allocations of \$300,000 or \$200,000 on a yearly basis, as funds become available. In order for these allocations to continue, the Grant Agreement must be extended for another year, even though the project has been completed.

The \$200,000 allocation for this year will still not complete the DOT's program commitment, and Mr. Parker advises that the Grant Agreement will have to be extended at least one more year, depending on the availability of funds from DOT.

RESOLUTION BOOK NO. 24 - PAGE 15

I. RESOLUTION NO. 97-24 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE AGREEMENT WITH RICE, WILLIAMS ASSOCIATES INC. TO INCLUDE REVIEW OF PROPOSED FRANCHISE DOCUMENTS WITH TELECOMMUNICATIONS PROVIDERS

Summary: The City of Asheville entered into an agreement with Rice, Williams Associates, Inc. dated February 7, 1995, wherein Rice, Williams Associates is to perform certain services regarding telecommunications matters for the City of Asheville. The agreement with Rice, Williams Associates was previously amended on December 19, -6-

1995 to expand the scope of those services. The City now desires to expand again the scope of services to be performed by Rice Williams to include review of proposed franchise documents for telecommunications providers.

RESOLUTION BOOK NO. 24 - PAGE 16

J. RESOLUTION NO. 97-25 - RESOLUTION RECOGNIZING IMPROVEMENTS TO STRUCTURE AT 112 BROOKLYN ROAD AND CONTINUING PUBLIC HEARING IN CONTEMPLATION OF DISMISSAL

Summary: 112 Brooklyn Road was a dilapidated residence which the owner (Ransom Rutherford) has taken out appropriate permits and done substantial work to rehabilitate the structure. The structure is no longer a threat to the community.

112 Brooklyn Road was brought to Council on June 25, 1996, with a recommendation for demolition. Mr. Rutherford asked that Council give him time for contract bids to come in on the structure, for which Council granted 60 days continuance. On August 27, 1996, a progress report was provided to Council and 6 months continuance was given to the owner for construction improvements.

As documented by the construction work completed, 112 Brooklyn Road is almost finished and is now an asset to the community. In addition, 110 Brooklyn Road was bought and remodeled and 118 Brooklyn Road is a new home that was constructed since Mr. Rutherford began rehabilitation of his home. Mr. Rutherford's efforts have made a significant positive impact upon the neighborhood.

RESOLUTION BOOK NO. 24 - PAGE 17

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

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

ITEM REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 97-26 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE AREA CIVIC CENTER COMMISSION

Summary: Hayes Martin and Tom Bailey resigned as members on the Civic Center Commission, both leaving unexpired terms. This resolution will appoint Douglas Haldane to fill out the term of Mr. Martin, term to expire June 30, 1997, at which time he is hereby reappointed to serve a three year term, term to expire June 30, 2000. This resolution will also appoint Carl Mumpower to fill the unexpired term of Mr. Bailey, term to expire June 30, 1998.

Councilman Hay felt that all the candidates were good choices and was pleased that Mr. Mumpower and Mr. Haldane were willing to serve on the Civic Center Commission.

Councilman Hay said that he has been asked about Consent Agenda containing appointments to boards and commissions. City Attorney Oast responded that City Code Section 2-31 directs the City Manager to prepare a Consent Agenda for each Council meeting, said agenda to consist of "routine, non-controversial items that require Council action but need little or no deliberation." That same Code section contains a -7-

non-exclusive list of appropriate Consent Agenda items, which includes "annual appointments." The City Council Rules of Procedure also provide for a Consent Agenda, and lists the somewhat broader "appointments to boards and commissions" among the items appropriate for placement on the Consent Agenda.

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

Councilman Hay moved for the adoption of Resolution No. 97-26. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 18

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE ZONING ORDINANCE TO ADD A NEW OFFICE BUSINESS DISTRICT

ORDINANCE NO. 2346 - ORDINANCE AMENDING THE ZONING ORDINANCE TO ADD A NEW OFFICE BUSINESS DISTRICT

Mayor Martin opened the public hearing at 5:23 p.m.

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

Ms. Erin McLoughlin, Urban Planner, said that the Planning Department has received requests from the public for a zoning district that would allow office uses near residential districts. The current zoning district of Office Institutional is very broad in range of uses and densities. Staff feels that an office/business district with a narrower range of uses and densities would be more compatible for those transition areas near commercial and residential districts. This wording amendment presents a district that could serve as a transition between higher intensity commercial uses and residential areas.

On February 5, 1997, the Planning & Zoning Commission voted 5-1 to recommend approval of an amendment to the Zoning Ordinance which would add an Office Business District to the current ordinance. The Planning staff also recommends approval of this amendment.

When Vice-Mayor Field questioned why restaurants were not included in this new district, Ms. McLoughlin said that they should be a permitted use in this new district and it was an oversight that they were not. Planning staff did recommend they be included.

City Attorney Oast said that it was appropriate to add restaurants as a permitted use to the proposed ordinance at this time. The ordinance should specify if the restaurants were drive-in or not.

Planning & Development Director Julia Cogburn suggested the ordinance be amended to include "restaurants (no drive-in facilities permitted)" under the permitted uses in this new Office Business District.

When Councilman Skalski inquired about the one dissenting vote from the Planning & Zoning Commission, Ms. McLoughlin said that the member wanted both the Office and the Office Business districts be brought to Council for action for additional tools, not just Office Business District. Because of the number of requests for a less intense district than current Office Institutional District, staff felt it would -8-

be appropriate to bring this District forward at this time. Staff is still working on the addition of the other District as well.

Upon inquiry of Councilman Cloninger, Ms. McLoughlin said that if this new District is adopted and someone wanted to rezone their property to this new designation, they would have to go through the entire rezoning process which typically takes one to two months.

When Mayor Martin asked what the advantage was for going forward with this new District, Ms. McLoughlin said that it will allow Planning staff one more tool within which to choose a proper zoning district for an area.

Mr. Richard Green, 203 Blake Mountain Circle, supported Council's consideration of both the Office and the Office Business Districts. It was his understanding that the requests from the public wanted both tools rather just the Office Business District tool.

Mayor Martin closed the public hearing at 5:34 p.m.

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

Councilman Cloninger moved for the adoption of Ordinance No. 2346 with the addition of "restaurants (no drive-in facilities permitted)" under the permitted uses in this new Office Business District. This motion was seconded by Councilman Sellers.

On a roll call vote of 6-1 (with Councilman Skalski voting "no"), Ordinance No. 2346 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 148

B. PUBLIC HEARING RELATIVE TO APPROVAL OF WILLOUGHBY RUN TOWNHOUSES

Mayor Martin opened the public hearing at 5:36 p.m.

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

Ms. Erin McLoughlin, Urban Planner, said that this is consideration for approval of a twenty seven unit townhouse development at the intersection of Sweeten Creek and Rathfarnham Roads.

The 2.93 acre parcel is zoned CG Commercial General which refers to R-3 standards. R-3 allows 16 units per acre. Twenty-seven units is within the allowed density. This development borders CG Commercial General zoning to the south and R-3 Medium Density Residential zoning to the west. The proposal meets all zoning and group development requirements.

At the February 5, 1997, Planning & Zoning Commission ("Commission") meeting, a member of the public voiced concern about erosion problems already existing on the proposed site.

At the February 5, 1997, meeting, the Commission voted 6-0 to approve the development with the following two conditions: (1) letter from the Water Authority confirming availability; and (2) a public hearing regarding a variance to the setback requirements for accessory -9-

structures. The Planning & Development staff also recommended approval of the group development with the two conditions.

Ms. McLoughlin said that a letter has been received from the Water Authority confirming availability. She also said that on February 11, 1997, City Council set the public hearing for this date on the 15 foot variance request for the setback requirements for an accessory structures for the project.

By use of a map, Ms. McLoughlin showed Council where the 15 foot variance request was being requested.

Upon inquiry of Mayor Martin, Traffic Engineer James Cheeks, said that they have reviewed the request for a development at this intersection and they have performed the necessary traffic analysis. He said that he is comfortable with the development as it stands right now with the addition of the traffic control measures requested. He saw no adverse impact on the adjacent roadway system.

Mayor Martin closed the public hearing at 5:39 p.m.

Councilman Skalski moved to approve the site plan for Willoughby Run Townhouses, located at the intersection of Sweeten Creek and Rathfarnham Roads. This motion was seconded by Vice-Mayor Field and carried unanimously.

Councilman Skalski moved to approve the 15 foot variance to the setback requirements for accessory structures for the project. This motion was seconded by Councilman Worley and carried unanimously.

C. PUBLIC HEARING RELATIVE TO APPROVAL OF GASHES CREEK OFFICE BUILDING

Mayor Martin opened the public hearing at 5:41 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that this is consideration of approval of a 32,750 square foot office building on 1.65 acres located off Gashes Creek Road in East Asheville.

On January 6, 1997, the Planning Department received the site plan for a proposed office building. The proposed project will be a three story, 32,750 square foot office building. The site plan was presented to the Technical Review Committee on January 13, 1997, for their comments.

On February 5, 1997, the Planning & Zoning Commission reviewed the site plan and received only one comment from an adjoining property owner who expressed their support for the project.

City Council will need to consider the following items for the proposed project known as the "Gashes Creek Office Building", located off Gashes Creek Road in East Asheville: (1) the approval of a site plan; (2) the granting of a zoning vested right for Gashes Creek Office Building. The granting of a zoning vested right will extend the approval time period for the project from 1 year to 2 years; (3) The following variances:

(a) variance to the parking space requirements for office buildings. The petitioner is requesting a variance on the number of -10-

parking spaces. The current ordinance requires 1 space per 200 square feet of gross floor area. The petitioner is requesting a variance of 1 space per 275 square feet of gross floor area due to the narrow width of the property. Some of the parking spaces will be on the first level of the three story structure. The variance is for 1 space per 75 square feet of gross floor area.

(b) variance to the street tree requirements regarding location and width of the street tree planting strip. The petitioner is requesting a variance in the location and width of the street tree planting strip required. The ordinance requires a planting strip to be located on the property abutting a public street. The planting strip must be 10 feet wide and 1 tree per 40 linear feet of street frontage. The petitioner is requesting that the planting strip be on the NC DOT right-of-way due to the topography and location of the property and that the planting strip be an average of 10 feet wide. The planting within the

right-of-way must be approved by NC DOT and that has been done. The variance is for the location and width of the street tree planting strip.

(c) variance to the landscaping in the off-street parking area. The petitioner is requesting a variance in the width of the landscaping strip between a parking lot and an abutting property line. The ordinance requires a minimum width of 5 feet. The petitioner is requesting that the width of the planting strip be 1 foot on the south side of the property approximately 130 feet in length due to the proposed parking spaces and the configuration of the lot. This distance is between elevations 2118 and 2127. The number of required trees will be planted within the remainder of the planting strip. The variance is for the off-street parking landscaping strip in that specified area to be 4 feet.

(d) variance to the rear setback requirement for an office building. The petition is requesting a variance of the rear setback for an office building. The current ordinance requires a rear setback of 20 feet in an office development. The petitioner is requesting a rear setback of 15 feet. The variance in the rear setback is 5 feet.

The Planning & Zoning Commission voted unanimously to approve of the project with the four variances and one condition which is the submittal of an erosion control plan. The Commission also recommended the granting of the zoning vested rights.

Mayor Martin closed the public hearing at 5:46 p.m.

Councilman Hay moved to approve the following variances: (a) variance to the parking space requirements for office buildings; (b) variance to the street tree requirements regarding location and width of the street tree planting strip; (c) variance to the landscaping in the off-street parking area; and (d) variance to the rear setback requirement for the "Gashes Creek Office Building". This motion was seconded by Vice-Mayor Field and carried unanimously.

Councilman Worley moved to grant the zoning vested right for Gashes Creek Office Building. This motion was seconded by Vice-Mayor Field and carried unanimously.

Vice-Mayor Field moved to approve the site plan for the proposed project known as the "Gashes Creek Office Building" located off Gashes Creek Road in East Asheville. This motion was seconded by Councilman Worley and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 97-27 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE WATER AUTHORITY

Harold Enloe has resigned as a member of the Water Authority leaving an unexpired term.

Mayor Martin said that on February 24, 1997, he received a letter from Norma Price which reads as follows: "Russ, thank you for giving me the opportunity to be considered for the Asheville-Buncombe Water Authority. However, at this time, I would like to withdraw my name from further consideration."

Councilman Skalski nominated Nelda Holder for the Water Authority because she is a consumer advocate that will serve well on the board.

Councilman Worley nominated J. Lewis Daniels for the Water Authority.

Vice-Mayor Field spoke in support of Ms. Holder. She felt we needed another woman on the Water Authority to have some balance. She felt there needed to be a balance of opinions on the Water Authority and Ms. Holder represents a side of the community that deserves to be heard on the Water Authority, and that is the environmental community. She felt she was a reasonable and thoughtful person. Her background was exemplary and she has the qualifications to make a good representative.

Councilman Worley said that Mr. Daniels is Vice-President of Mission/St. Joseph's Health System and a CPA by profession. He has excellent financial and managerial skills. He pointed out that the seat vacated was by a person who had a strong financial background and served as Chair to the Budget Committee. He felt it was appropriate for Mr. Daniels to fill that particular seat and bring that same expertise to the Water Authority.

Vice-Mayor Field stated that in her view, all three people interviewed were excellent and a positive vote for one is not a negative vote for the other.

Mayor Martin echoed Vice-Mayor Field's comments and commended each candidate for their inclination to give of their time and their expertise on this very important board. He felt that any one of the three would adequately serve in this capacity.

Councilman Hay also felt that all three candidates were good and capable. He would support Nelda Holder however, not only because of her credentials and her capabilities, but for the role she played in resolving the issues in Montford Hills. She mediated the dispute, was a moderate voice and played the leadership role in the successful resolution of that issue. He was impressed with that and felt that was something we needed on the Water Authority.

Mayor Martin stated that all Council discussions were in open session and even though Council does discuss appointments in worksessions, they don't make their decisions until formal meetings. He said that Council does encourage comments from the public regarding candidates.

Ms. Ginny Lindsey, representing the Clean Water Fund of North Carolina, read a letter sent to Council dated February 3, 1997. The -12-

letter strongly supported Nelda Holder for three reasons: "(1) The Board of the Water Authority has able representation of the business/industrial community. The residential community - the general citizenry - approximately 4 of our water users - need a representative who will be a channel to and from the Authority and a representative on such matters as efficient use of water in households and gardens; public accountability; the promotion of education and information re: water resources, values, costs and environmental considerations in general. Nelda Holder's experience and perspectives prepare her to be an excellent representative of the general interest of citizens. (2) Nelda Holder has a Master's Degree and extended experience in resource management and administration, including courses in hydrology and geomorphology, waste and land management and planning. She has taught environmental science and organizational communications, both areas of value to the Water Authority Board. (3) Nelda Holder has the necessary time to devote to the Authority and its development and wants to serve it and the community in a responsible manner." Said letter was signed by Quality Forward, Citizens for Safe Drinking Water, League of Women Voters, WNC Alliance, Clean Water Fund and Water

Efficiency Task Force. She said that the letter also had the support of the Coalition of Asheville Neighborhoods. She personally spoke in support of Ms. Holder because she is a woman and women are vastly under-represented on our boards and commissions in Asheville and Buncombe County. She noted that the Asheville-Buncombe Vision supports appointing women to boards and commissions.

Mayor Martin felt that appointing women to the City's boards and commissions is not a problem. Council is very diligent in looking at the gender makeup, as well as racial, and location in the City. He did state, however, that Council's primary objective is to get the best person for the particular board.

Mr. Ron Lambe spoke in support of Nelda Holder in that she would represent the public interest by way of her background in environmental science and her community perspective.

Mr. Mike Lewis, representing the Coalition of Asheville Neighborhoods, spoke in support of Nelda Holder. He felt that the process regarding this appointment at last week's worksession was very political. He said that given the national and regional coverage devoted to the matters of conflict of interest and how we appoint people, he thought Council would be sensitive to a balance of community representation and possible bias by appointees to the bodies to which Council appoints members. He felt that Mr. Daniels, as an executive employed by one of the Asheville-Buncombe Water Authority's largest customers, has interests which make it impossible for him to render an objective judgment on behalf of the Authority or the welfare of the community. He asked that Mr. Daniels name be withdrawn.

Mayor Martin said that the worksession held last week was in preparation of this formal meeting. Council followed acceptable rules, as they have in the past, which resulted in the two candidates being considered today. He said that it's very marginal, at best, that you can say that Mr. Daniels has a conflict of interest without any proof. He said that there is no conflict of interest that City Council has been able to discern. Certainly business interests must have representation as well. He objected putting into the record as fact that there is a conflict of interest, when it is very difficult to perceive that to be fact.

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Mr. Lewis responded that he didn't say the conflict of interest was a fact, just that it certainly appears that there could be a conflict of interest.

Ms. Leni Sitnick said that in honor of Community Oriented Government, she encouraged Council not to take straw votes in worksessions. She didn't feel that the meetings are public enough when Council meets at 3:00 p.m. and most people cannot get there. She felt that appointments to boards and commissions should not be on the Consent Agenda, but conducted in this format to allow public comment. She felt that there should be full representation on the Water Authority. Women are half the population and have at least half of the good ideas. There is only one woman on the Water Authority. In addition, there is no "ordinary residential user" on the Water Authority. Nelda Holder represents the citizen community. She said that Mr. Daniels is a fine and honorable gentlemen, he is a top administrator of one of the top three water users in Asheville which could be perceived to create a potential conflict of interest as a policy-maker on the Water Authority. To be sure, rates and rate structure will be the prominent Water Authority considerations and votes. Mr. Daniels was nominated in part for his financial acumen, a good reason. If Mr. Daniels excuses himself from those rate structure discussions and votes to avoid creating that perception of a potential conflict of interest, then a large part of the reason for his appointment will be null and void. There were three good

excellent candidates. She was confident that Ms. Holder would bring to the Water Authority an intelligent, inclusive and visionary prospective that will serve this City well.

Ms. Catherine Gibson, representative of the Montford Hills Neighborhood Association, voiced support for the appointment of Nelda Holder. She said that in the recent Montford Hills issue, Ms. Holder represented a voice of reason throughout the process. While she can be described as an environmentalist, she added reason and moderation in virtually all of the discussion. As a neighborhood advocate, Ms. Holder lends her a very high level of comfort as an addition to the Water Authority.

Mr. Ted Patton, member of the Water Efficiency Task Force ("WET"), stated "As you know, the Water Efficiency Task Force was established by the Water Authority in 1991 to research and study the most efficient use of water as a utility and natural resource for the citizens of Asheville and Buncombe County. The current members of the Water Authority represent a variety of interests and points of view. As you are currently interviewing candidates for the open position on the Authority, we would like to encourage you to appoint someone who will give particular attention to the concerns of the citizens of Asheville, the families and individuals who rely on the produce of the Water Resources Department every day for their basic water needs, and whose main concerns are health (quality of the water), cost, and management which recognizes that water is not an unlimited resource. Although we have not spent time with each of the candidates, we are aware of one who would be an excellent choice, bringing expertise as well as grassroots citizen's point of view to the task. The candidate is Nelda Holder and we request that you give strong consideration to appointing her to the Water Authority."

Ms. Hazel Fobes, representing the Citizens for Safe Drinking Water ("CSDW"), explained their mission statement stating that it is an organization committed to increasing and empowering citizen involvement in decisions about drinking water issues in Buncombe and adjacent counties. Her association, and she personally, has paid close attention to the Water Authority for several years. She said that the WET Force -14-

and CSDW are studying the water rates because they feel they are skewed to the high water users and not to the lesser water users (the residential users). CSDW wants the Water Authority to represent the entire community and all of its groups and interests with more balance in the male and female composition. She has give hours to this community in water related issues so when she makes a recommendation to the City Council for the appointment to the Water Authority, she is basing her recommendation on factual knowledge. She said that Nelda Holder has CSDW's and her personal support. She said the Water Authority now and has for several years has had able representation of the business, commerce and industrial communities - all male, except one woman. Within the past ten years there have been only two woman on the Water Authority and not at the same time. There are 40,000 customers on the Water Authority's list and 33,000 are residential customers. They do not have a representative, as such, on the Water Authority. All the members try to cover the field, but Ms. Holder will cover the interests of residential customers. Ms. Holder would be the liaison between the Water Authority and the residential community. She has a Masters in Management Administration and the Water Authority could find her services valuable. Her studies include hydrology and geomorphology, Coastal Zone Management, waste management, and groundwater contamination. Ms. Holder has had years of communication proficiency. She recommended that Council would put into action Rule 30 of the Rules of Procedure, including putting forward of the names of all possible appointees and a debate prior to a vote on the entire slate. She asked Council give careful consideration to the views of the citizens expressed on the candidates for appointment to the board. The Council

should bear in mind and be sensitive to the spirit and content of the Vision Project, especially Part VI on Government.

Mayor Martin called the roll for each member of Council to vote for their preferred candidate for the vacancy on the Water Authority. Mayor Martin and Councilmen Cloninger, Sellers, and Worley voted in favor of J. Lewis Daniels. Vice-Mayor Field and Councilmen Hay and Skalski voted in favor of Nelda Holder.

The resolution will appoint J. Lewis Daniels to fill out the term of Mr. Enloe, term to expire September 30, 1997, at which time he is hereby reappointed to serve a three year term, term to expire September 30, 2000.

Councilman Sellers noted that Buncombe County has two vacancies on the Water Authority this year. In addition to the Buncombe County's two vacancies, the entire board will have a vacancy this year also.

RESOLUTION BOOK NO. 24 - PAGE 19

B. RESOLUTION NO. 97-28 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH ANDREX INDUSTRIES INC. TO ALLOW ANDREX TO PLACE MONITORING WELLS AT DEAVERVIEW AND MALVERN HILLS PARKS FOR DETERMINING GROUNDWATER CONTAMINATION

Mr. Irby Brinson, Director of Parks & Recreation, said that the City of Asheville Parks and Recreation Department desires to enter into an agreement with Andrex Industries, Inc., which will allow Andrex to place monitoring wells for determining groundwater contamination.

In July of 1996, the City of Asheville was approached by Andrex Industries, Inc., to allow monitoring wells to be placed at Deaverview and Malvern Hills Parks in order to detect the presence of any groundwater contamination from their plant. The North Carolina Department of Environment, Health, and Natural Resources, Division of -15-

Environmental Management, is requiring Andrex to conduct an assessment relating to groundwater contamination. The Parks and Recreation Department and the Legal Division has been working with representatives from Andrex regarding the time, location, and other matters concerning the monitoring wells. Based upon several revisions, the Parks and Recreation Department and the Legal Division supports this request to allow these monitoring wells to be placed at the above locations.

When Councilman Worley asked if the presence of the wells would interfere with our use of the parks, Mr. Brinson replied that they would not.

Upon inquiry of Vice-Mayor Field about liability, Mr. Brinson said they are ground level and marked in a way that they can be mowed over.

It was the consensus of Council to instruct Mr. Brinson to write a letter to Andrex asking that the City be provided with a copy of the results of testing each time. Mr. Mark Pinkston, representative of Andrex in the audience, indicated by nodding his head that Andrex would provide those results.

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

Councilman Worley moved for the adoption of Resolution No. 97-28. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 20

C. RESOLUTION NO. 97-29 - RESOLUTION RENAMING THE ASHEVILLE-BUNCOMBE WATER AUTHORITY TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Councilman Worley said that at Water Authority Retreat, December 3, 1996, a motion passed to recommend to City Council, the renaming of the Asheville-Buncombe Water Authority. As a part of this discussion several names were considered by the Authority. The following outlines those considered by the Authority:

Top Three

1. Regional Water Authority of Asheville, Buncombe and Henderson
2. Regional Water Authority of Western North Carolina
3. Asheville, Buncombe, Henderson Regional Water Authority

Other Suggestions

4. Asheville, Buncombe, Henderson Water Authority
5. ABH Regional Water Authority
6. ABH Water Authority
7. WNC Regional Water Authority

The name recommended for approval by the Authority is Regional Water Authority of Asheville, Buncombe and Henderson.

The process for consideration of a name change for the Water Authority consists of the Water Authority recommending to the City and the County that this be done. The Buncombe County Commissioners approved the name change at their February 4, 1997, meeting.

Vice-Mayor Field preferred the name be "Asheville, Buncombe, Henderson Regional Water Authority." City Attorney Oast said that if the City did not agree with the name change to "Regional Water Authority -16-

for Asheville, Buncombe and Henderson" the other suggested name would have to go back to the Asheville-Buncombe Water Authority.

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

Councilman Worley moved for the adoption of Resolution No. 97-29. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 21

VI. OTHER BUSINESS:

RESOLUTION NO. 97-30 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO SEEK LEGISLATION AFFECTING ITS CORPORATE BOUNDARIES

City Manager Westbrook, by use of a map, showed City Council the current boundaries of the City of Asheville and the Town of Biltmore Forest and the proposed boundary adjustment, which will be subject to verification by a survey. He explained that he has been working with Biltmore Forest to adjust their shared corporate boundary in a manner that is mutually beneficial to both

municipalities and in the best interest of their respective citizens. In order to effect this change, action is required by the North Carolina General Assembly in the form of legislation authorizing the proposed boundary adjustment. This resolution will authorize the proposed boundary adjustment between Asheville and Biltmore Forest to be submitted to the Buncombe County delegation of the North Carolina General Assembly for consideration for introduction as legislation in the 1997 Legislative Session.

He said that the boundary adjustment would be a net increase of about six acres for the City. He mentioned three reasons for the boundary adjustment, i.e., (1) there are some residential areas currently in the City of Asheville that more closely identify with Biltmore Forest than Asheville right now; (2) there is a bit of a service delivery problem for those residential areas and the boundary adjustment would clear up those problems; and (3) there is a proposed developer in the area and Biltmore Forest prefers not to have the commercial development in their Town limits.

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

Councilman Worley moved for the adoption of Resolution No. 97-30. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 23

SCHOOL BOARD APPOINTMENTS

Vice-Mayor Field requested the City Attorney advise Council on exactly how the appointment process for the School Board vacancies should occur.

PINNACLES II AT PARK AVENUE

Mr. Richard Green, representing the Coalition of South Asheville Neighborhoods, said that in 1990 the Planning Department granted vested development rights for the Pinnacles at Park Avenue. The Coalition of South Asheville Neighborhoods asked for an investigation in the last 6 months be launched into the granting of those vested development rights. The Planning Department did an investigation stating that the vested -17-

rights were granted properly. Subsequent to that, it was shown that those rights were not granted properly and those vested development rights were revoked. The developer was put on notice that any work on that 13 acre hillside would require City of Asheville's approval. The developer would have to go through back through the group development process. At that time the Planning Department had on file a site plan clearly showing the developer's intention to build an additional 24 units on that hillside. Subsequent to that, the developer and his attorney met with the Planning Department and told Gerald Green (as relayed to him by Mr. G. Green) that since they previously were allowed to circumvent the hillside ordinance, they wanted to circumvent the group development process as well. Their intentions were to do four contiguous subdivisions of 7 units each so that they would stay below the threshold that would require them to have to go through the group development process and the public hearing phase because they did not want to go back through a public hearing phase because they did not want the public challenging their storm drainage plan which a number of people have stated they feel is contrary to North Carolina case law. Mr. Becker, President of the Ballentree Homeowners Association, called him this morning saying that there was construction of houses going up on the area of Park Avenue where the vested rights have been revoked. He called Mr. G. Green and said that he thought it was his understanding that Mr. G. Green was going to make him aware if the developers

submitted any kind of plans for new approvals on that hillside. Mr. G. Green stated that Mr. David Quinn, a resident at Ballantree, had contacted him yesterday concerning this construction activity and that he has been on the phone with Mr. Richard Bass in the Building Permit Office. Mr. Bass had verified that the developer had picked up several building permits yesterday and that he was attempting to get Mr. Bass to revoke those building permits since there was no valid reason for those permits being issued. Mr. R. Green then faxed a letter to City Council which informed City Council of the continued illegal activities at the Pinnacles and requested City Council take necessary action to prevent this type of occurrence in the future at this project, as well as other projects, throughout the City of Asheville. Shortly before this meeting, Mr. G. Green phoned him to tell him that he had just received information that the developer had submitted a small area site plan for that 13 acre hillside where the vested rights had been previously revoked and the developer had shown 7 units to be built on that hillside and someone in the Planning Department had approved it. He asked Mr. G. Green how can a sham activity of this magnetite be allowed. Mr. G. Green said that he spoke with Patsy Meldrum in the City Attorney's Office who said she would like to get some direction from City Council stating that sham activities of this nature would not be tolerated. The developer has clearly stated his intentions to the Planning Department that he wants to circumvent the group development and public hearing process by doing four subdivisions of 7 units each that are contiguous - you must drive through each one of the parcels to access the next one. The developer has told a number of homeowners in Park Avenue and Ballentree of his intentions to build not 24 units as originally planned on that hillside, but 28 now because he has had additional site work costs. When he talked to Planning & Development Director Julia Cogburn before the meeting, she stated that it was below the threshold of eight and compliance with the group development process and the public hearing was not required. Mr. R. Green questioned "is City Council going to allow developers to do 1,000 unit condo projects without any public hearing whatsoever, as long as they get approval for seven units at a time, even though the property is all contiguous and you must go through one parcel to access another parcel?" The neighborhood groups in South Asheville would like for City Council to give some direction to the City Attorney's Office, as well as the Planning Department, stating that sham activities of this type will not be tolerated. He has spoken with his -18-

private legal counsel, who has informed him that there is a number of legal precedents on this matter. The Interstate Land Sales Act will not allow developers to do contiguous developments of 49 lots each and circumvent the Interstate Land Sales Act. His real estate attorney, who does not want to be quoted, questions why the City of Asheville would tolerate anything of this nature.

Planning & Development Director Julia Cogburn said that this was called to her attention this afternoon. She has checked into it to a certain extent. As she understands it, as she has not actually seen the documentation, four permits were issued for 4 units of a 7 unit proposal. The four building permits were issued prematurely by the City's Zoning Enforcement Office. Mr. Kiger, the developer, has been informed that these were inappropriately issued. However, a site plan has been submitted for 7 units on some property owned by Mr. Kiger. There is no reason that we cannot approve that at the staff level at this time and have that approval ready for Mr. Kiger tomorrow so that his building permits will be validated by the accompanying site plan approval. In terms of any subsequent development, they will have to deal with that as it comes in. What is before the Planning Department at this time is 7 units, which is underneath the threshold for group development.

Mayor Martin said it's not our policy to do continue to allow the building of repetitive 7 units in order to circumvent our ordinance.

Ms. Cogburn said that they would have to look at the context of those 7 units and see whether or not the application of the ordinance was appropriate in terms of group development review. So it's very difficult to make a judgment about that until we see what the actual application says that is submitted to them.

Councilman Worley questioned if our ordinance has language in it that would prevent a repetitive 7 units, where it would appear after you see the second and third groupings that it is part of a plan. Ms. Cogburn said that our current ordinance said that "types of projects subject to group development review - the types of projects which shall be reviewed under the procedures described in Section 30-6-2 include new construction or any structural alterations which would result in the rehabilitation, redesign, or reconstruction of a building or structures and which fall into one or more of the following categories: (b) any mobile home park, camper trailer park, or multi-family residential building or structure containing eight or more individual units." She again said that she would really need to look at whatever was submitted to them carefully to really make a determination.

Mayor Martin suggested this matter be looked at this in terms of the new Unified Development Ordinance so we don't find ourselves with a loophole where someone can legally circumvent the actual intent of the ordinance.

Councilman Worley asked the City Attorney's Office to check research this issue in the context of the current ordinance as well as the UDO.

Ms. Cogburn said that the UDO thresholds are substantially greater than this threshold, so that would need to be taken into consideration as well.

Councilman Cloninger noted that the UDO also has some language about the steepness of slope and so forth that would prevent large multi-family units. Ms. Cogburn said that the hillside ordinance -19-

applies to properties that are over certain slopes which reduces the density that is permitted. The mapping, however, is actually what you look at in terms of the density and City staff has been conscientious of the topography issues when they have indicated density. We have proposed lower density on steeper slopes.

City Attorney Oast said that his office recently has been involved in consideration of whether a road in that area constituted a subdivision of land. He didn't recall any specific discussion about the phased development coming to his office, although Ms. Meldrum may have reviewed something. And he certainly didn't recall indicating to anyone that they would have to go to Council to seek direction. His office may have indicated that they would talk to the City Manager about issues regarding the Pinnacles.

Mayor Martin said that he was very concerned about someone taking advantage of what appears to be a possible loophole.

City Attorney Oast said that there are mechanisms available legally for dealing with that but he would have to investigate whether they are contained in our current Code. He said that he would report back to Council next week about what is available in this context.

Councilman Skalski asked if Council is going to allow this developer to continue to develop this 24 unit project. Ms. Cogburn said what will control is if the developer meets the standards of the ordinance.

Councilman Worley said that it was his feeling that Council definitely wants

their ordinances enforced with no loopholes in them. If the ordinance has a flaw in it and we can't stop it, then we can't stop it. But he's hoping that we find that it doesn't have a flaw in it and the ordinance can be enforced and that this project not go forward under a loophole or a back-door way of getting in. If there is a flaw, then we need to fix it.

Councilman Skalski asked while we are figuring out if it is legal or illegal for this developer to continue, is Council going to allow him to continue or are we going to ask him to stop until we decide whether or not it's legal?

Mayor Martin said that the Planning Department and the City Attorney's Office has been instructed to look at the facts and see what Council can do. We are not trying to let someone circumvent the rules so we need to find out legally where we stand before we take action. It is not consensus here to permit something to go on and circumvent our rules.

Ms. Cogburn advised Council that insofar as the 7 units are concerned, there is no circumvention of anything and that those 7 units are in the pervuews of the ordinance, as far as she has been able to check today. She will be issuing permits for those 7 units tomorrow. She will be looking at what can happen beyond those seven units, however, there is no reason for her to not issue those permits tomorrow.

Councilman Hay said that if another site plan comes in for 7 more units between now and the time we hear from the City Attorney next week, has Ms. Cogburn heard enough from Council to table that? Ms. Cogburn said that she would work with the developer to see about slowing things down. She felt the developer would be concerned with Council's concerns as well.

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Vice-Mayor Field felt that we are only hearing the property owners' sides and the developer is not present to say that he is attempting to circumvent anything. All we have is an application for a permit to build 4 units, which were issued inappropriately. Ms. Cogburn stated however, that there is a site plan for seven units which we can approve.

Mayor Martin reiterated that staff will investigate the allegations so that no one can circumvent the rules.

UNITY IN DIVERSITY DAY

At the request of Ms. Johnice, Mayor Martin proclaimed Saturday, March 22, 1997, as "Unity in Diversity Day" in the City of Asheville. Ms. Johnice briefed the Council on activities that would be taking place that day and invited all Council to attend.

FRENCH BROAD RIVER WHITEWATER RAFTING

Mr. Rob Goins invited Mayor and Council to be guests of Nantahala Outdoor Center to officially open the 1997 Whitewater Season on the French Broad River on Saturday, April 5 1997, at 11:00 p.m.

CLAIMS

The following claims were received by the City of Asheville during the week of February 7-20, 1997: Joe Floyd (Water), Kimberly Miller (Streets), David W. Robinson (Water) and Ken Butler (Civic Center).

These claims have been referred to Asheville Claims Corporation for

investigation.

LAWSUIT

The City was served with the following Complaint on February 12, 1997: Samuel Lee Stewart Sr. v. Allen W. Presnell, individually and as an agent of the Asheville City Police Department, City of Asheville, and Tom Baldwin, individually and as agent for Hamricks Inc. The Complaint is for false arrest, false imprisonment and assault and battery.

This matter will be handled by an attorney outside the City Attorney's Office.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:07 p.m.

CITY CLERK MAYOR
