

Tuesday - October 28, 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

Councilman Hay gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Mayor Martin announced that Item G. will be removed from the Agenda.

A. RESOLUTION NO. 97-188 - RESOLUTION ENTERING INTO A LEASE AGREEMENT WITH THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES FOR THE RENOVATION TO THE REID ANNEX

Summary: The Parks and Recreation Department submitted a reengineering proposal during the budget process to develop a collaborative effort to renovate the Reid Recreation Center Annex for Child Care. This effort resulted in working with the Opportunity Corporation of Madison-Buncombe County to provide the funding for the renovation of the Reid Annex and to operate a Head Start Child Care Program. The Opportunity Corporation has successfully received grant funding totaling \$670,000 for the renovation which is scheduled to begin by the end of this calendar year. The Parks and Recreation Department will be working closely with the Opportunity Corporation and the Arts Alliance to develop an innovative program that will not only provide child care but also expose these children to a cultural arts environment. The Parks and Recreation Department is excited about this collaborative effort which will result in renovating an existing City facility at no cost to the City of Asheville. More importantly, this effort will provide a much-needed child care facility for parents who could not otherwise afford this service.

RESOLUTION BOOK NO. 24 - PAGE 242

B. ORDINANCE NO. 2417 - BUDGET AMENDMENT TO REALLOCATE FUNDS FOR THE PURCHASE OF A FIRE DEPARTMENT RESCUE TRUCK

Summary: Pursuant to G.S. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a fire rescue truck to the City Fire Department. One bid was received.

In addition to evaluating the proposed equipment to determine compliance with bid specifications, an analysis of the sole bidder's price was conducted. From the analysis it was determined that the price bid the City reflects a discount of \$80,000 off the manufacturer's list price and when compared to other municipalities' cost for comparable equipment, our price is considered to be very competitive, fair and reasonable.

The City of Asheville Capital Improvement Budget (CIB) included a proposal for purchase of a fire rescue truck in Fiscal Year 1999 at a cost of \$120,000. Two months ago, Asheville Fire Department representatives learned of the availability of a fire rescue vehicle "demonstrator" with an estimated value of \$200,000 or more available for \$120,000. After local evaluation of that vehicle for mechanical soundness, and agreement on the part of the vendor to furnish all "as-new" warranties, the City Manager approved a reallocation of Fire Department CIP monies in this year's budget so the City could proceed with acquisition of this vehicle. This reallocation consists of postponement of replacement of a staff vehicle and some small-capital equipment.

This bid has been reviewed with Fire Chief John Rukavina, who supports this recommendation.

Funds for this purchase will be provided by a capital project established for the payment of the vehicle over a minimum five year period.

Staff recommends that the bid be awarded to the sole bidder, Chief's Fire and Rescue Inc., Jefferson, NC, in the amount of \$120,000 for the purchase of a fire rescue truck consisting of a 1994 White Volvo model WG 42 cab and chassis with a 21 ft. Ranger Body.

ORDINANCE BOOK NO. 16 - PAGE 313

C. RESOLUTION NO. 97-189 - RESOLUTION AWARDDING BID TO CHIEF'S FIRE AND RESCUE INC. FOR A FIRE RESCUE TRUCK

Summary: See Item B. above.

RESOLUTION BOOK NO. 24 - PAGE 243

D. RESOLUTION NO. 97-190 - RESOLUTION APPROVING THE ISSUANCE BY THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE OF UP TO \$4,900,000 REVENUE BONDS FOR IMPROVEMENTS TO THE WOODRIDGE APARTMENTS DEVELOPMENT AND TAKING RELATED ACTIONS

Summary: The Housing Authority has agreed in principle to issue up to \$4,900,000 of its housing revenue bonds to finance a loan to Asheville - Woodridge LLC. Asheville-Woodridge LLC will use the loan proceeds for the renovation of the Woodridge Apartments development in Asheville, and to pay related expenses. The U.S. Internal Revenue Code ("Code") requires that for such bonds to be issued on a tax-exempt basis, the Asheville City Council must first approve their issuance. The Housing Authority held a hearing on October 21, 1997, on the issuance of the bonds as required by the Code.

RESOLUTION BOOK NO. 24 - PAGE 245

E. RESOLUTION NO. 97-191- RESOLUTION FIXING DATE OF PUBLIC HEARING ON NOVEMBER 11, 1997, REGARDING ANNEXATION OF PROPERTY LOCATED WEST OF OVERLOOK ROAD (SECTION 9 OF BILTMORE PARK)

RESOLUTION BOOK NO. 24 - PAGE 256

F. RESOLUTION NO. 97-192 - RESOLUTION REJECTING BIDS FOR THE CONSTRUCTION OF THE MORROW STREET SUBDIVISION

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Summary: McGill Associates on behalf of the Community Development Division opened bids for the construction of Morrow Street Subdivision on August 14, 1997. The lowest bid received for the project was in the amount of \$229,620

from Thorpe Construction Company. The engineer's estimate for the project is in the amount of \$164,863. The amount of funds available for the project is \$187,000.

Community Development staff recommends rejection of the bids because all bids exceed the amount of available funds for the project. The Housing and Community Development Committee has concurred in the staff recommendation.

Due to the high cost of developing affordable home sites in the Morrow Street area, staff will be looking at other options in the Montford area for developing affordable housing sites.

RESOLUTION BOOK NO. 24 - PAGE 249

G. RESOLUTION ENTERING INTO A CONTRACT WITH JRM & ASSOCIATES FOR WIRELESS TELECOMMUNICATIONS CONSULTING SERVICES AND PROPERTY MANAGEMENT FOR COMMUNICATION FACILITIES

This item was removed from the Agenda.

H. RESOLUTION NO. 97-193 - RESOLUTION RESCHEDULING THE CITY COUNCIL WORKSESSION AGENDA FROM TUESDAY, NOVEMBER 4, 1997, TO WEDNESDAY, NOVEMBER 5, 1997, BEGINNING AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM, CITY HALL BUILDING

RESOLUTION BOOK NO. 24 - PAGE 250

I. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 1997, TO CONSIDER OFF PREMISE ADVERTISING SIGNS IN THE CITY OF ASHEVILLE'S ZONING JURISDICTION

J. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 1997, TO CONSIDER MINOR REVISIONS TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH REVISIONS DO NOT ALTER THE INTENT OR PURPOSE OF THE STANDARDS

K. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 1997, TO CONSIDER A SECTION 108 LOAN GUARANTEE APPLICATION IN CONNECTION WITH THE CITY-WIDE RESIDENTIAL REHABILITATION PROGRAM

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

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A MODIFICATION REQUEST FROM THE SUBDIVISION STANDARDS TO PERMIT AN IRREGULAR PORTION OF A LOT LOCATED ON OAKLEY SCHOOL ROAD TO BE USED IN CALCULATING COMPLIANCE WITH MINIMUM LOT AREA REQUIREMENTS

Mayor Martin opened the public hearing at 5:03 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that this is a request to approve a modification from the subdivision standards to permit an irregular portion of a

lot located on Oakley School Road to be used in calculating compliance with minimum lot area requirements.

This modification is for a specific lot located on Oakley School Road. The lot is approximately 13,000 square feet and zoned RS-8 (which requires a minimum lot size of 5445 square feet). This lot currently has two residential structures and the owner wishes to subdivide the lot into two separate residential lots. During the review with the surveyor, the staff was attempting to assist the property owner to determine how to meet the setback requirements with the existing structures and comply with the 25 foot flagpole width requirement (this did require the owner to purchase some land from the adjoining property owner) and incorrectly stated that the flagpole area could be used in calculating compliance with the lot area requirement. Subsection 7-15-1.K.2.d.3. of the subdivision regulations does not permit that.

When the minor subdivision plat was presented for approval, the error was discovered. City staff informed the surveyor and owner that the best way to correct this error was to request a modification from the subdivision requirements for this lot. This modification, under Section 7-15-1. J. of the UDO, may be approved by City Council, upon receiving the recommendation of the Planning and Zoning Commission. This modification request is on a case-by-case basis and is not an amendment to the subdivision regulations.

The Planning staff presented the modification request to the Planning and Zoning Commission at their October 1 meeting and the Commission voted unanimously to recommend approval of the modification for this particular lot only.

Mayor Martin closed the public hearing at 5:06 p.m.

Vice-Mayor Field moved to approve the modification request from the subdivision standards to permit an irregular portion of a lot located on Oakley School Road to be used in calculating compliance with minimum lot area requirements. This motion was seconded by Councilman Sellers and carried unanimously.

B. PUBLIC HEARING RELATIVE TO CONTRACT AMENDMENT TO THE EXISTING 1991 INSTALLMENT PURCHASE CONTRACT WITH ASHEVILLE PUBLIC FINANCING CORPORATION RELATIVE TO NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT REGARDING FINANCING OF THE RENOVATION OF THE MUNICIPAL BUILDING, WATER MAINTENANCE BUILDING AND THE CITY BUILDING ROOF; RENOVATION OF THE FIRST FLOOR OF THE GROVE ARCADE AS A PUBLIC MARKET; CONSTRUCTION OF A HIGH TECH/FLEX BUILDING AT BROADLANDS TECHNICAL PARK; AND REFUNDING OF THE SERIES 1991 CERTIFICATES OF PARTICIPATION

RESOLUTION NO. 97-194 - RESOLUTION APPROVING AN AMENDMENT TO THE INSTALLMENT PURCHASE CONTRACT WITH ASHEVILLE PUBLIC FINANCING CORPORATION AND RELATED MATTERS

Mayor Martin opened the public hearing at 5:07 p.m.

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

Councilman Cloninger asked to be excused due to a conflict of interest relative to the Grove Arcade as a public market. Councilman Worley moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Sellers.

Councilman Skalski asked if it would be possible to break down the different

items in the package so that Councilman Cloninger can vote on the projects separately. Councilman Cloninger said that he talked with the City Attorney about that earlier and the City Attorney advised him that it would not be feasible to do that because of the financing involved.

Councilman Skalski then asked if Council could vote separately on the projects, not because of a conflict of interest, but because of a matter of principle. City Attorney Oast said that the matters are coming before Council as a package and any change would require a redrafting of the resolution. It was his opinion that Council could vote on the projects separately as to certain parts of it because Council does have the ability, pursuant to their Rules, to divide a question. However, Councilman Cloninger's conflict transcends all of these particular issues.

Mayor Martin then asked for a voice vote on the motion to excuse Councilman Cloninger from voting due to a conflict of interest. Said motion carried unanimously.

Mr. Bill Schaefer, Finance Director, said that this is consideration of a resolution approving an amendment to an installment purchase contract with Asheville Public Financing Corporation and providing for certain related matters.

Financing of the renovation of the Municipal Building, Water Maintenance Building and the City Building Roof; extension of water and sewer lines and an access road to Broadlands Technical Center; renovation of the first floor of the Grove Arcade as a public market; the construction of a high tech/flex building at Broadlands Technical Center and refunding of the Series 1991 COPs (which funded the acquisition of the Public Works Facilities) will require the issue of Certificates of Participation ("COPs"). The actual issuer of the COPs is Asheville Public Financing Corporation (APFC), a not for profit corporation which was formed to aid the City of Asheville in complex financings such as this COPs. In order to service the debt, the City will enter into an amendment to the existing 1991 installment purchase contract with APFC whereby the City agrees to provide periodic payments (which equal the debt service). The debt is to be secured by a deed of trust on the Municipal Building, the City Building, the Water Maintenance Building and a continued deed of trust on the Public Works Facilities (which was pledged for the 1991 COPs). In furtherance of the issue of COPs, the resolution provides the following: (1) Ratifies all actions of the City, City Manager, Finance Director, City Clerk and City Attorney in effectuating the financing; (2) Authorizes and approves the Preliminary Official Statement and Official Statement in connection with the financing; (3) Approves the Contract Amendment and authorizes and directs the City Manager and City Clerk to execute and deliver the Contract Amendment; (4) Authorizes and directs the City Manager and City Clerk to execute and deliver the Deed of Trust; (5) Approves the Financing Statements and authorizes the City Manager to execute and deliver them; (6) Approves the Certificate Purchase Agreement and authorizes the City Manager to execute the associated Letter of -6-

Representation; and (7) Designates the City Manager as the City's Representative to act on behalf of the City in connection with the financing and authorizes, empowers and directs the City Manager, Finance Director and City Clerk to take necessary actions to carry out the financing.

Mr. Schaefer then briefed Council on public municipal financing and specific details of this financing. He outlined the municipal funding options for large projects which are (1) pay as you go; (2) General Obligation Bonds; (3) Revenue Bonds; and (4) Certificates of Participation. The City is proceeding with Certificates of Participation for which a public hearing is required. The certificates' debt service is subject to annual appropriations and is secured

by property liens. In this case, we propose to place a lien on the Municipal Building, the Water Maintenance Building and a continuation of the lien on the Public Works Facility. He then reviewed the specific financing, noting that the total financing is not to exceed \$27,000,000. He noted that the costs in this presentation are estimates because we don't know the true interest rates yet on the date we will go to market. However the not to exceed figure is firm.

We currently have a statutory debt limit for the City of \$283.9 million - that's what we are allowed under North Carolina to issue. As of June 30, 1997, we have outstanding against that statutory limit \$14.63 million. If we add the current proposed financing - \$41.63 million, we are only approximately 15% of that total statutory limit.

He reviewed Series 1997A which are traditional municipal sorts of projects: Municipal Building renovation - \$13.5 million; Water Maintenance Building renovation - \$1.3 million; City Building Roof renovation - \$1.413 million; Economic Development - \$310,000; and Contingency - \$660,000. The total project amount is \$17.183 million. Additionally proposed to be financed is the cost of issuance (payment of the underwriters, printing of notices, payment to special counsel, etc.) - \$161,000; and insurance on issue (insurance decreases our interest rate we will pay over the life of the issue) - \$71,000. The total Series 1997A financing is \$17.415 million. The Series 1997A has a cap figure of \$18.5 million.

Series 1997B is a refunding of the callable portions of our 1991 Certificates of Participation which are currently outstanding - \$3.4 million. Those Certificates were used for the financing of the Public Works Facility. The cost of issuance is \$34,000 and the insurance is \$15,000. The Series 1997B financing is \$3.449 million. The Series 1997B has a cap figure of \$4 million. We are refinancing this portion to obtain a lower interest rate. Our lower interest that we anticipate at this time will provide us an annual savings each year between \$25,000-\$30,000 through 2011, which is the final maturity on the debt. The net present value of that savings that we would realize is \$277,000.

Series 1997C includes a loan to the Grove Arcade Public Market Foundation ("GAPMF") for renovation of the first floor in the amount of \$2.25 million. The other project is the high tech/flex building at Broadlands Technical Park in the amount of \$2.5 million. Other portions to be financed will be the cost of issuance - \$28,000, insurance - \$28,000 and capitalized interest - \$767,000. He explained that we plan on financing the interest for the first 2.5 years. The total Series 1997C financing is \$5.573 million. The Series 1997C has a cap figure of \$6.5 million.

He explained the Grove Arcade project. He outlined the debt service sources - capitalized interest for 2.5 years. He said the -7-

City's lease agreement with the GAPMF provides that the GAPMF pledged their rents that they receive from their developer of the upper floors of the Grove Arcade to the City. Rents start out at approximately \$120,000 per year and escalate from the time the developer achieves 25% occupancy, plus a CPI based increase or 3% per year, whichever is higher. For security he stressed that the City owns the building. We advance funds only as construction progresses. As we advance those funds, the value of our building goes up. Our alternative, in event of default, is that we could repossess our building with our own improvements to that building. There is also a guarantee in a form from the developer in that he has five years to be up and operating. Some benefits include a potential for increased jobs in the area. Early studies show 70 new shops in the public market portion and throughout the entire building 600 new jobs. Increase of approximately \$288,000 on the estimated sales tax; increase of state income tax; and a very small increase in property taxes. The developer

plans on putting approximately \$14 million of his own money into renovation of the upper floors. The project will sustain revitalization of the downtown area and provides a good anchor for the west side.

He then explained the high tech/flex space building. He outlined a debt service source of capitalized interest for 2.5 years. In this case we have Biltmore Farms and AdvantageWest that have a financial commitment to the operation. At the end of the construction, AdvantageWest stands to pick up debt service for 2 years thereafter. For security the land is subrogated to the City and the City will own the building. Funds are advanced under the loan only as construction progresses. We are looking to have a permanent occupant of that building and should we sell the building prior to 2 years after completion, those that have a financial interest in it (City, Biltmore Farms and AdvantageWest) will participate in any profits that may be realized. If after 2 years after completion the building is not sold, then Biltmore Farms buys out the City's interest and we have a guarantee by Biltmore Farms in the form of a letter of credit. Some benefits include a potential for increased jobs in the area. They anticipate by the completion of the flex space building itself to have approximately 35-50 new local hire jobs, paying as much as \$12. This building is just the first segment of the Broadlands Technical Park, and as the entire project is built-out, we are looking at approximately 500 jobs. We anticipate an increase of approximately \$3 million in property taxes and as the build-out proceeds, it is anticipated as much as \$23 million worth of assessed valuation on the build-out producing approximately \$131,000 per year at our present tax rates. This project is a nucleus for further growth. In our past experience with Biltmore Farms, they have gone through voluntary annexations and to date approximately 125 homes have been built with over \$37 million in assessed valuation.

Councilman Skalski asked which financing will cost the taxpayers the least amount of money. Mr. Schaefer said that on the absolute straight rates, traditionally the General Obligation ("GO") bonds. However, when you look at the Series 1997C, we are looking at some flexibility in financing to be able to, with the Broadlands building, buy out of that whenever the opportunity presents itself at no penalty to us. That is not traditionally possible under a GO issue. In this kind of case, our proposed Certificates of Participation (COPs) financing that we have is probably the least expensive. It provides us with that flexibility and additionally, there are associated costs of issue on a GO issue that are not found in the COPs, i.e., conducting the public referendum. Additionally, we have some immediate needs on our buildings that should a public referendum fail, then we have no options. The COP's issue allows us to go forward in a very financially sound manner. -8-

Councilman Skalski felt that General Revenue bonds in general would be cheaper. Mr. Schaefer said that there is absolutely no way to finance this under a revenue issue. He said there are no significant revenues associated with this to pledge.

Councilman Skalski talked about the Fiscal Year 1996 budget and what the City is obligated to now. Using the Fiscal Year 1996 budget book as a guide, he said the City has a \$300 million infrastructure need that needs to be paid for before we begin to talk about economic development. He said that next year, MSD will have to finance a \$24 million bond to begin to deal with that infrastructure need. With projects like this, the City does not need to become a bank. He noted that in the budget book, the outlook states that "Asheville's tax base continues to grow at a sluggish pace. That fact combined with the significant revenues controlled by the State which have little or no growth and Federal and State funding sources which in fact may not be available at all, are of great concern. Innovative management will work to provide City services more effectively at less cost." He felt that we are going to have to struggle

with what we have on the table right now, let alone take on more. He said that in Fiscal Year 1996/97 reengineering proposals totaled \$290,000 and we are proposing to do the same the next year. These savings will help, but they will not balance the budget. To balance the budget this year we had to take \$905,000 out of our Fund Balance which takes it down to 16% of our total budget. In a typical North Carolina city Asheville's size, they have an average of 24% of their money kept in Fund Balance. He said we are running one third below the average.

Councilman Skalski inquired about the statement in the budget book that reads the General Capital Reserve Fund is balanced with a \$3.4 million from the General Fund. He noted that it states that "the Municipal Building which houses the Police Department and Fire Administration and Station #1 is funded and we will begin complete renovations to the building at an estimated cost of \$14 million. He asked why is the City borrowing another \$14 million if the project is already funded. Mr. Schaefer said that in the Capital Improvements Plan the project is financed over 20 years and the first year's debt service is included.

Councilman Skalski said that in our Street & Sidewalk Fund, there is a total appropriation of \$700,000 from the General Fund and it costs approximately \$200,000 to do one mile of sidewalks. If a project comes up that has to be done, where will we get the money? He said that we are putting into Parking Services from the General Fund another \$80,000 and that does not include the lease payments that we make on the garages.

He noted that every year we get \$2 million in Powell Bill funds from the State to maintain our streets and sidewalks. We have had to supplement \$1.7 million out of the General Fund for the Street and Sidewalk Reserve. To put things in perspective, he said that we are having to pay back \$280,000 on the Pack Place debt and \$1.8 million on the Sidewalk Bonds. There goes the entire \$2 million from our Powell Bill funds that were supposed to go for streets and sidewalks. We are basically having to take \$2 million out of the General Fund to provide for our street maintenance. How can Asheville afford to get into the private banking business with those kind of obligations on our books.

Mayor Martin said that the \$17 million bonds which we floated were necessary for this community. It was perfectly legal and proper for Asheville to use the money from the Powell Bill fund to repay those bonds. He said that over the past 10 years, citizens have said that we -9-

can't continue to send our young people outside of Western North Carolina to seek employment. This has a potential of bringing 600-700 jobs to our community. We have found an innovative way to be of some assistance. We can sit and do nothing or we can try to attract the kind of industry that we want to have in our community.

City Manager Westbrook said that the economic outlook hasn't changed in a number of years. He said that we have to and do live within a balanced budget every year, but that doesn't mean we only concentrate on one thing. If we don't concentrate on everything we need to do to bring out a broad balanced, well diversified city, then we will lose. One thing that we have to do is work on economic development. Even though the funds may be slowing down from the Federal government, the City cannot slow down - we are in competition with other cities around the region for good solid business growth. This is an innovative way to provide economic development as well as the general municipal improvements we need to make to our buildings. In the budget regarding the Municipal Building, we showed a revenue stream coming from general City revenues sufficient to pay the debt service to be able to finance the reconstruction and renovation of that building starting this year. He noted

that one of the goals arrived at during the Council retreat last year was encouraging City-wide economic development and improving the business climate. This is following through with that goal. He explained that Powell Bill funds from the State is actually money that comes from the State gasoline tax. All of that money goes back into streets, whether it is used by Public Works in our street crews or in direct repairs to the street. Since we have a greater need, last year we put in additional money for streets and sidewalks above and beyond whatever else we could do. We need to do that much and more every year.

City Manager Westbrook noted that the partners in the Broadlands project, in addition to the City and Biltmore Farms, are AdvantageWest, Carolina Power & Light Company, BellSouth and Buncombe County.

Mr. Aaron Zaretsky, on behalf of the GAPMF, thanked City Council for their cooperation and clarified that the bonds for the Grove Arcade Public Market do not in any way benefit the private developer. One hundred percent of those bonds go toward the non-profit creation of the Grove Arcade Public Market. However, if those bonds are not paid back, the City not only gets the \$2.25 million in improvements on the building, but also the \$10-15 million in private development on the building. The project will be generating jobs, generating opportunities for people and generating new taxes.

Mr. Chris Peterson, taxpayer and former member of City Council, was totally opposed to "giving sweetheart deals to millionaire business people." He felt Biltmore Farms does not need \$2.6 million, neither does the developer from Atlanta that plans to develop the Grove Arcade.

He felt that Council will have to raise taxes if it adds an additional \$27 million onto the deficit. He felt this is a bad example for future Councils and Asheville government should not be getting into the banking business, especially with wealthy developers.

Mr. Jack Cecil, representing Biltmore Farms, said that they are pleased to be participating with the City in this economic development initiative. They see it as a way the City can grow the economic tax base of the City to the extent that they are willing to subordinate their land up-front to make this project go forward. Also in cooperation with AdvantageWest, they are willing to take the City out of any commitment of the \$2.5 million if the building is not leased or is not sold within the 24 month period of time after the initial construction. He said that Biltmore Farms will also be contributing 4-5 -10-

acres of land to help jump-start the Knowledge Center which also is a partnership of public entities, non-profits and private development.

Upon inquiry of Councilman Skalski, Mr. Cecil said his definition of economic development is "through the expansion and retention of existing businesses within the City limits or the recruitment of new industries and businesses which will bring better higher paying jobs in town." The Knowledge Center will try to recruit smaller companies who pay higher wages so that we can facilitate the job base in order to have something for our future generations. It is also coupled with community development and residential development that we have done in Biltmore Park.

Councilman Skalski said that the top 20 cities in the country say that economic development is technology through job training. The best economic development policies in the country are totally tied to accountability. The company does not get either tax rebates, tax credits or stipends of any kind until they actually show that they have created the jobs. The Biltmore Farms proposal has no such mechanism. Asheville should be putting money into job training at the junior and senior high school levels for skilled trades and working with

companies that actually have on-site jobs. This is more like a real-estate venture rather than economic development.

Mr. Dale Carroll, representing AdvantageWest, reiterated that this is not a recent initiative. This goes back to a study by Arthur Anderson with their expertise throughout this country and other parts of the world looking at how we can diversify the economy in Western North Carolina. We have been significantly dependent on traditional manufacturing wages. We are going to have to move away from that if we are going to make progress. Information technology companies that are going to be targeted to come into this technology park are the kinds of businesses that will put minimal strain on Asheville's infrastructure, will pay excellent wages, will provide good benefits and will be the type of corporate citizens that we would all be proud to have in the region and in Asheville. He feels that this is a unique opportunity to find an innovative solution to moving the economy forward.

Upon inquiry of Councilman Hay on why this project cannot go forward with private financing, Mr. Carroll said that you have to have the momentum to get a project like this started. The high tech flex space involves a certain amount of risk so with a partnership that includes the City, the regional commission AdvantageWest, and Biltmore Farms Inc. we were able to go into this together in a way that does not unreasonably burden any one of our three organizations. Without someone stepping up and making that high tech flex space available, we don't have any product to show the kinds of high growth companies that come in and maybe give you only hours to make your best proposal. With that in mind, we all have to be a part of stepping up and making an investment so we have a product to make available to the clients and consultants.

Upon inquiry of Councilman Skalski about how an empty building can create jobs, Mr. Carroll explained that if you reduce the amount of lead time for a fast growing company to get into production or operation, you have a competitive advantage.

Councilman Skalski felt you need to have skilled people first. He relayed a story about a company in Weaverville that wanted to employ an additional 100 skilled welders, but since they couldn't get the skilled workers, they couldn't expand.

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Ms. Susan Andrew spoke in support of public/private partnership and economic development, however, she did not want the City to use public funds to help a wealthy developer. She felt they should sell some of their assets for this project and leave the public money to the public. She suggested this be put on the ballot for a public vote.

Ms. Leah Karpen, Charlotte Street resident, questioned why can't the Broadlands Technical Park get bank financing. There is no guarantee that there will be tenants or people to work in those places. She understands that the City's buildings need to be repaired, but the City has other needs and desires which were brought out in the Vision process, like greenways, public parks and things that people can use.

Mr. Richard Green, South Asheville resident and small developer, was concerned that the City could be setting a bad precedent in giving away \$300,000 for infrastructure for this new project as well as a low interest loan. He asked what the City's policy is going to be on this in the future. He said he's in the process of building a project in the County and when the project is completed he would be very much in favor of going for voluntary annexation in order to get his share of the money available to developers in South

Asheville.

Mayor Martin said that this is a well constructed business deal which will prove long term benefits to the City. He suggested Mr. Green talk to the City Manager and Finance Director about entering into a public/private partnership if he's interested in that.

City Attorney Oast explained that the \$300,000 is for infrastructure and is not a grant. That type of economic development is specifically authorized by the General Statutes of North Carolina.

Upon inquiry of Ms. Terri Meinhold, dentist in Arden, Mayor Martin said that she could obtain a copy of the map of consideration regarding annexation from the City Manager's Office when that map is made available since it has not come before Council for action.

Mayor Martin closed the public hearing at 6:16 p.m.

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

Vice-Mayor Field moved for the adoption of Resolution No. 97-194. This motion was seconded by Councilman Worley.

Councilman Skalski made a substitute motion to vote on the private developments separately and put it to a vote of the people. This motion died for a lack of a second.

Councilman Skalski said that he was in favor of allocating the money for the renovation of the Municipal Building, Water Maintenance Building, City Building roof and the refinancing of the Series 1991 COP's, noting that he has consistently asked this Council to approach the State legislature for money to be able to pay for our roads and infrastructure. However, he felt strongly that the City should not allocate money for the renovation of the first floor of the Grove Arcade as a public market nor for the construction of a high tech/flex building at Broadlands Technical Park. Therefore, he will have to vote against the entire resolution since the projects cannot be separated out. He saw no specific proposal or business plan to show how, in fact, we would be getting all the high paying jobs. Economic development is jobs and most cities that have serious economic development proposals base all their tax incentives or grant money on actual on-the-job performance. -12-

It makes those companies accountable to the taxpayers. If all we do is go out and do real estate development and annex, we will only raise taxes. A study done by the N.C. League of Municipalities last year showed that every time a city goes over 50,000 in population, the taxes increase by 30-40% almost across the board. He felt that this idea of providing real estate development for some imaginary jobs that may or may not happen is not going to lower our taxes. He felt that City Council was going to have to raise taxes.

City Manager Westbrook explained that the City cannot operate legally with a deficit situation. There are no plans, from his standpoint, of raising taxes anytime in the future for these financings or any others. We will have to live within the means of our current tax structure.

Councilman Worley said that if you serve on Council you should have a vision for the future. You need to look down the road at the City's needs and look for ways to fulfill those needs. A theme consistently heard is that we need jobs in our community, economic development, and ways to keep our young people at home. Economic development of this type increases our tax base, makes us a more

viable City, and allows us to do what we have done for the last nine years in maintaining our tax rate without any increase. Concerns he has heard are that we don't want to "spend" taxpayers money for a totally public and a public/private partnership. He stressed that when you look at the way they are being financed and the security that we have, it's a can't lose situation. We are not "spending" a dime of the taxpayers money on the Broadlands Technology Park. We are making that money available but if you look at the security that we have, we are absolutely guaranteed to get that money back and to not pay one dime in debt service and not have to raise taxes for that project. The same is true of the Grove Arcade. He believed that if you have a vision of what we need in the City, this is the thing to do.

Mayor Martin asked for a voice vote on the motion to adopt Resolution No. 97-194. This motion carried on a 5-1 vote, with Councilman Skalski voting "no".

RESOLUTION BOOK NO. 24 - PAGE 251

C. PUBLIC HEARING TO REZONE TWO LOTS ON WESTWOOD PLACE AND ARGYLE LANE FROM RM-8 TO CBD AND ONE LOT FROM RM-8 AND CB II TO CBD

ORDINANCE NO. 2418 - ORDINANCE TO REZONE TWO LOTS ON WESTWOOD PLACE AND ARGYLE LANE FROM RM-8 TO CBD AND ONE LOT FROM RM-8 AND CB II TO CBD

Mayor Martin opened the public hearing at 6:36 p.m.

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

Due to a conflict of interest, Councilman Sellers asked to be excused from voting. Therefore, Vice-Mayor Field moved to excuse Councilman Sellers from voting due to a conflict of interest. This motion was seconded by Councilman Cloninger and carried unanimously.

Mr. Carl Ownbey, Urban Planner, said that this Ordinance seeks the rezoning of two lots on Westwood Place and Argyle Lane (PIN Nos. 9638.15-54-4644 and 5708) from RM-8 to CBD and one lot (PIN No. 9638.15-54-5671) from RM-8 and CB II to CBD. -13-

The subject properties are located on Westwood Place and Argyle Lane in West Asheville. Two of the parcels of land have existing commercial structures that are currently vacant and are zoned residential. The third lot has an existing commercial structure and is split zoned between residential and commercial. The 2010 Plan shows the area to be low density residential with some institutional and commercial development along Haywood Road. This rezoning will allow the existing structures to be used as commercial.

The zoning boundary line for south portion of lot 9638.15-54-5708 which is requested to be rezoned to CBD is to begin at the northeast corner of lot 9638.15-54-3772 and in a straight line direction approximately 80 feet to the northwest corner of lot 9638.15-54-6732.

The Planning staff reviewed the rezoning request and recommended approval of PIN Nos. 9638.15-54-4644 and 5708 from RM-8 to CBD and 9638.15-54-5671 from RM-8 and CB II to CBD. At their October 1, 1997, the Planning & Zoning Commission voted unanimously to approve the rezoning request.

Mayor Martin closed the public hearing at 6:38 p.m.

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

Vice-Mayor Field moved for the adoption of Ordinance No. 2418 This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 315

D. PUBLIC HEARING TO REZONE A PORTION OF 1897 HENDERSONVILLE ROAD FROM RM-6 TO OFFICE BUSINESS, RS-2 AND RS-4

ORDINANCE NO. 2419 - ORDINANCE TO REZONE A PORTION OF 1897 HENDERSONVILLE ROAD FROM RM-6 TO OFFICE BUSINESS, RS-2 AND RS-4

Mayor Martin opened the public hearing at 6:39 p.m.

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

Mr. Bruce Black, Urban Planner, said that the petitioner seeks to rezone a portion of 1897 Hendersonville Road (PIN No. 9655-09-15-0034) lot from RM-6 (Residential Multi-Family, six units per acre) to OB (Office Business), RS-2 (Residential Single-Family, two units per acre), and RS-4 (Residential Single-Family, four units per acre).

This property is located west of Hendersonville Road. It is bordered on the west by Residential uses in a RS-4 zoning district, on the south by residential uses in a RS-2 zoning district, on the north by vacant land in a RS-6 zoning District, and on the east by commercial uses along Hendersonville Road. The petitioner is asking the rezoning to extend the existing OB zone westward towards the residential uses along Deer Run Road. In so doing, the petitioner has also asked that the residential zoning (RS-4) of the areas along Deer Run Road be extended eastward into the subject property by 75 feet, thus forming a buffer of 75 feet plus the setbacks required by future development between the future uses on the OB section of the land, and the residential uses to the west. The same thing has been done concerning the residential uses to the south of the proposed rezoning to create buffer for that area. -14-

The 2010 plan shows this area as a transitional use area, and OB is considered a transition district between the residential areas, and the Highway Business zoning along Hendersonville Road.

Staff has received no comments opposed to this rezoning, and has received support from neighbors in the residential area to the west.

The City Planning and Development staff recommends approval of the rezoning request.

At their meeting of October 1, 1997, the Planning and Zoning Commission recommended unanimously to approve the proposed rezoning.

Mr. Laura Eide spoke in favor of the rezoning. She said that since the Office Business District and the Office District are quite different, she suggested perhaps an Office I District and an Office II District be explored.

Mayor Martin closed the public hearing at 6:44 p.m.

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

Councilman Skalski moved for the adoption of Ordinance No. 2419. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 317

E. PUBLIC HEARING TO REZONE PROPERTY AT YORKSHIRE AND REED STREETS FROM RS-8 TO OFFICE

ORDINANCE NO. 2420 - ORDINANCE TO REZONE PROPERTY AT YORKSHIRE AND REED STREETS FROM RS-8 TO OFFICE

Mayor Martin opened the public hearing at 6:46 p.m.

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

Councilman Cloninger asked to be excused from voting since his law firm is doing real estate work regarding this transaction. Therefore, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Vice-Mayor Field asked to be excused from voting since the applicant is her employer. Therefore, Councilman Worley moved to excuse Vice-Mayor Field from voting due to a conflict of interest. This motion was seconded by Councilman Skalski and carried unanimously.

Mr. Bruce Black, Urban Planner, said that the petitioner seeks to rezone the property at Yorkshire and Reed Streets (PIN Nos. 9647-12-85-1834,1964, a part of 5761) from RS-8 (Residential- eight units per acre) to O (Office).

This property is one block east of Hendersonville Road on Yorkshire Street, southeast of the intersection of Yorkshire and Reed Streets. It is currently vacant land. It is mildly steep near the Yorkshire Road and Reed Street intersection, and very steep as it moves southeasterly away from the intersection. The initial request by the applicant was for the rezoning of 2.8 acres. After working with the -15-

staff, the applicant has agreed to seek the rezoning as suggested by the Planning staff. This will place the front of the rezoned piece adjacent to an existing office zone, and will utilize existing city right-of-ways along the back of the property as buffers between the proposed office uses and the existing residential developments.

Staff has received no comments opposed to this rezoning, and has received three phone calls from a neighboring church supporting this rezoning.

The City Planning and Development staff recommends approval of the rezoning request.

At their meeting of October 1, 1997, the Planning and Zoning Commission recommended unanimously to approve the proposed rezoning.

Mayor Martin closed the public hearing at 6:49 p.m.

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

Councilman Worley moved for the adoption of Ordinance No. 2420. This motion was seconded by Councilman Skalski and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 319

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 97-195 - RESOLUTION ESTABLISHING A HOLIDAY LIGHTING INCENTIVE PROGRAM

Mr. Mark Combs, Director of Public Works, asked for consideration of creating an incentive program for downtown businesses to mount holiday lights on their buildings.

Based upon the past success of holiday lighting in Biltmore Village by businesses in that area, last year staff and other interested persons promoted a similar program for Downtown businesses.

As an incentive to encourage businesses, the City is willing to provide "seed" money toward the purchase of the lights. This incentive will be a one time effort and businesses will be responsible for installing and maintaining the lights.

Also, with the impending renovation of Pritchard Park and the decrepit condition of the wiring, no holiday lighting is planned for that area. All of the Lexington Avenue trees will be wired and operated by businesses in that area for the first time.

It is hoped that the expansion of holiday lighting to buildings and streets in the Central Business District will assist in developing a public/private "partnership" that will increase retail potential, tourist interest, and overall community holiday spirit.

In view of Public Works efforts last year in stringing lights for longevity, it is estimated that approximately \$5,000 in budgeted funds could be utilized for the purchase of lights for businesses who are willing to install them on their buildings.

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Staff recommends that a program be established earmarking \$5,000 for the purchase of holiday lights for downtown businesses. Staff will formulate a short, detailed policy to encourage maximum participation.

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

Councilman Skalski moved for the adoption of Resolution No. 97-195. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 258

B. RESOLUTION NO. 97-196 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THORPE CONSTRUCTION COMPANY TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is consideration of the selection of a contractor to reconstruct a retaining wall along a portion of Cherokee Road.

The City, through the Public Works Department, solicited bids for this project. Four bid proposals were received. The bidders were qualified and listed below:

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| Company | MB Part | Drug Free | Bond | Bid |
|---------------------------|---------|-----------|------|-----------|
| Thorpe Construction Co. | 8.02% | Yes | Yes | \$231,685 |
| Buncombe Construction | 2.1% | No | Yes | \$247,100 |
| Taylor and Murphy | 0% | No | Yes | \$280,000 |
| R.E. Burns and Sons, Inc. | 9.4% | No | Yes | \$320,000 |

City staff has negotiated with the lowest bidder, Thorpe Construction Company, in efforts to lower the costs of construction. Alternative designs to reconstruct the wall and lower costs were not found to be acceptable by the Public Works Department. Therefore, upfront costs have not been identified to lower the costs. Should specific conditions be encountered during construction, construction requirements may be modified to bring down costs; however, at this time, the contract should remain as originally bid.

Ms. Molloy said that the design by the Public Works Department does include putting back on a stone veneer because we want to receive a Certificate of Appropriateness. The only way we have found we might lower the cost is that during construction if we find a portion of the wall that does not need to be repaired, that part will not be repaired. However, at this time we cannot verify that can be done. If that is the case, we would not expend all the funds approved today.

City Manager Westbrook said that the \$240,000 is the worst case scenario. He felt the road is important for public access up the mountain, in particular from a public safety standpoint.

Councilman Cloninger said that he hoped that staff will continue to look at ways to save money on the project. When he looked at the side of the wall, he noticed it was covered with ivy and will no doubt will be again and as far as spending a substantial amount of additional money just to put a stone facade on the wall, he was just not sure it's justified. He is very supportive of historic property and historic -17-

projects, but was a little skeptical in this case. He did agree that the wall needed to be repaired.

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

Councilman Skalski moved for the adoption of Resolution No. 97-196. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 259

C. ORDINANCE NO. 2421 - BUDGET AMENDMENT TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this budget amendment, in the amount of \$240,000, is to reconstruct the Cherokee Road retaining wall.

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

Councilman Skalski moved for the adoption of Ordinance No. 2421. This motion

was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 321

D. RESOLUTION NO. 97-197 - RESOLUTION AUTHORIZING ESTOPPEL CERTIFICATE FOR AIRPORT PROPERTY

City Attorney Bob Oast said that the City owns certain real property near the Airport on which is situated a Holiday Inn.

Davidson Hotel Partners, (herein "DHP"), the limited partnership that owns and operates the Airport Holiday Inn, has requested that the City execute an estoppel letter indicating that DHP is not in default on the lease. This is necessary in order for DHP to use its interest in the lease as security for new financing that it is obtaining.

A similar estoppel letter was executed by the City in 1994.

Staff recommends adoption of the resolution.

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

Councilman Hay moved for the adoption of Resolution No. 97-197. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 260

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 14, 1997

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on October 14, 1997. This motion was seconded by Vice-Mayor Field and carried unanimously.

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B. TRAFFIC STUDIES UNDER THE UNIFIED DEVELOPMENT ORDINANCE

Vice-Mayor Field said that the new Unified Development Ordinance ("UDO") requires certain projects obtain a traffic study. There are no certified traffic engineers in Asheville and the two that are available from the state have notified us that they are so busy they can't perform a traffic study for the next 8-10 weeks. Since we are at the beginning of this process, she suggested that in order not to hold projects up, that that they be allowed to provide the City with a traffic study a certain number of weeks down the road. The whole idea of the UDO is to facilitate and make it easier to do development - not to slow it down. She suggested staff report back to City Council with some recommendations very quickly on how to address this concern. She said another option would be to allow architects to perform those studies, since they technically have engineering degrees as well as architectural degrees. She felt that with a certain amount of training from City staff, that local architects might be allowed to be able to do some of this work.

It was the consensus of City Council to have staff look at the suggestions outlined by Vice-Mayor Field.

C. COVEN OLDENWILDE

Ms. Christy Howard, speaking on behalf of Dixie Deerman and Steve Rasmussen of Coven Oldenwilde in Asheville, said that John Miall was to have sent all members of Council a memo indicating that Dixie Deerman and Steve Rasmussen of Coven Oldenwilde have signed a hold harmless agreement that waives the City of Asheville of all liability for the 3rd Annual Witch Ritual. The memo should also read that they have secured \$3 million of event insurance for any liability. She had a letter in hand stating that City staff will allow them to do the lighting as they see fit. The City does, however, recommend that the lighting be left on but they will show Coven Oldenwilde how to control the lighting, if they choose to change it.

City Attorney Oast said that City staff has not had time to prepare the memo to Council because the documents were not executed until Noon today. Following Council's last meeting, Council's concern was with the City agreeing to allow that the lights to be turned off - that it might expose the City to an unreasonable degree of risk. We have worked with Coven Oldenwilde and they have secured a policy of insurance that the City believes is sufficient to cover the risk associated with what they wanted to do. We have also obtained an indemnity agreement from them. We still suggest that the lights remain on, but if they don't, the City is covered. This requires no action from Council.

D. CLAIMS

The following claims were received by the City of Asheville during the week of October 10-23, 1997: Retaw (Water), Carlotta Roberts (Sanitation), Charlyn Acres (Water), James Moore (Traffic Engineering), Chris Beddingfield (Water), Michael McClanahan (Water), Joan Nicholson (Water) and Laura Petriz (Police).

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

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E. CLOSED SESSION

At 7:12 p.m., Councilman Worley moved to go into closed session (1) to consult with an attorney employed by the City in order to

preserve the attorney-client privilege between the attorney and the City - statutory authority is G.S. 143-318.11 (a) (3); (2) to investigate a grievance by a public employee - statutory authority is G.S. 143-318.11 (a) (6); and (3) to discuss matters relative to the location or expansion or other businesses in the area served by the City of Asheville - statutory authority is G.S. 143-318.11 (a) (4). This motion was seconded by Vice-Mayor Field and carried unanimously.

At 7:30 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:45 p.m.

CITY CLERK MAYOR
