

Tuesday - April 28, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Tomes gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 30, 1998, AS "ISRAEL'S INDEPENDENCE DAY "

Vice-Mayor Hay read the proclamation proclaiming April 30, 1998, as "Israel's Independence Day " in the City of Asheville and presented a proclamation to Rabbi Ratner who

asked for peace in the Middle East.

B. PROCLAMATION PROCLAIMING MAY, 1998, AS "OLDER AMERICANS' MONTH," THE WEEK OF MAY 10-16, 1998, AS "SENIOR CENTER WEEK," "SENIOR SMILE WEEK," "NURSING HOME WEEK," AND MAY 17-23, 1998, AS "SENIOR WELLNESS WEEK"

Councilman Cobb read the proclamation proclaiming May, 1998, as "Older Americans Month," the week of May 10-16, 1998, as "Senior Center Week," "Senior Smile Week," "Nursing Home Week," and May 17-23, 1998, as "Senior Wellness Week" in the City of Asheville. He presented the proclamation to Ms. Frances Corbin who briefed Council on some planned activities taking place during the month.

C. PROCLAMATION PROCLAIMING THURSDAY, MAY 7, 1998, AS "PARKS AND RECREATION VOLUNTEER RECOGNITION DAY "

Councilman Sellers read the proclamation proclaiming Thursday, May 7, 1998, as "Parks and Recreation Volunteer Recognition Day" in the City of Asheville and presented the proclamation to Mr. Jim Orr who is the recipient of the 1998 award.

D. PROCLAMATION PROCLAIMING APRIL 30, 1998, AS "DAY OF DIALOGUE"

Councilwoman Field read the proclamation proclaiming Thursday, April 30, 1998, the beginning of "Day of Dialogue" in the City of Asheville and presented the proclamation to Ms. Holly Jones, Executive Director of the YWCA. Ms. Jones briefed the Council on some activities planned for the day.

E. PROCLAMATION PROCLAIMING MAY 7, 1998, AS "NATIONAL DAY OF PRAYER DAY"

Councilman Tomes read the proclamation proclaiming Thursday, May 7, 1998, as "National Day of Prayer" in the City of Asheville and presented the proclamation to Reverend Canon William G. McLoughlin, Rector of the Church of the Resurrection, and Reverend Frank -2-

Saunders from St. James AME Church, who briefed the Council on some activities planned for the day.

II. CONSENT:

Mayor Sitnick said that Item C. on the Consent Agenda has been removed.

A. RESOLUTION NO. 98-44 - RESOLUTION TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO FUND THE FOOD SERVICE FOR THE SUMMER DAY CAMP PROGRAM.

Summary: The consideration of the City applying for funding to provide food service as a part of the Summer Day Camp Program.

Funds are available through the North Carolina Department of Environment and Natural Resources, Division of Maternal and Child Health, Child and Adult Care Food Program to provide breakfast, lunch, and snacks. The City of Asheville wishes to apply for funding to provide food service in the Summer Day Camp Program.

The Summer Day Camp Program will provide supervised licensed child care, recreation, enrichment activities, and food service for children in kindergarten through 5th grade, June 4 through August 7, 1998, Monday through Friday, 7:30 am to 6 p.m. at a cost of \$72 per week for city residents, \$82 per week for non-city residents. Sites will be located at Claxton, Hall Fletcher, Jones, Dickson, and Vance Elementary Schools; and Reid Community Center. Breakfast, lunch and snacks will be provided daily at no extra cost. The number of meals and amount of reimbursement will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville apply for the Summer Food Service Program for Children through the North Carolina Department of Environment and Natural Resources.

RESOLUTION BOOK NO. 24 - PAGE 376

B. RESOLUTION NO. 98-45 - RESOLUTION RENAMING THE ATHLETIC FACILITY IN THE HAW CREEK COMMUNITY IN HONOR OF CHARLIE BULLMAN

Summary: The Parks and Recreation Advisory Board recommends erecting a sign at the ballfields to rename this athletic facility in honor of Charlie Bullman.

In 1994, the Parks and Recreation Advisory Board unanimously approved renaming the ballfields in the Haw Creek community in honor of Charlie Bullman. Charlie Bullman has dedicated over 40 years of his life to the youth of Asheville. He has been very instrumental in developing the program for the East Asheville Youth Activities Association and has served as President for the league for all but three of the past 40 years. He has not only served as the President but as a role model for many children who have grown up learning the value of wholesome recreation. Charlie has proven himself as an invaluable asset to the community and the recognition of naming the ballfields in honor of Charlie is only fitting. A ceremony will be held on April 27 prior to the opening game of the season where a sign will be erected officially renaming the park the Charlie Bullman Park.

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The Parks and Recreation Advisory Board recommends that City Council approve erecting a sign renaming this athletic facility in honor of Charlie Bullman.

RESOLUTION BOOK NO. 24 - PAGE 377

C. RESOLUTION AWARDED MILLING CONTRACT TO APAC-CAROLINA INC. FOR HILLIARD

AVENUE

This item was removed from the Agenda.

D. ORDINANCE NO. 2464 - BUDGET AMENDMENT TO APPROPRIATE \$1,500,000 IN SECTION 108 LOAN GUARANTEE FUNDS FOR REHABILITATION OF SUBSTANDARD AFFORDABLE RENTAL PROPERTIES

Summary: The consideration of a budget amendment to appropriate \$1,500,000 from the U.S. Dept. of Housing and Urban Development ("HUD") in Section 108 Loan Guarantee Funds for rehabilitation of substandard affordable rental properties.

City Council approved submittal of the Section 108 Loan application on November 11, 1997. The City submitted an application to HUD on December 16, 1997, for \$1,500,000 in Section 108 Loan Guarantee funds. Approval of the loan application by HUD was received by the City on March 31, 1998. This action will appropriate the funds into the General Ledger. These funds will be loaned to investor-owners of substandard affordable rental properties. The investor-owners must agree to rehabilitate the structure with loan proceeds and rent the units at affordable rents, to low and moderate income persons. The goal is to rehabilitate 100 - 150 rental units over the next three years.

Community Development staff recommends adoption of the budget amendment.

ORDINANCE BOOK NO. 16 - PAGE 440

E. ORDINANCE NO. 2465 - ORDINANCE ESTABLISHING AN ASHEVILLE FILM BOARD

Summary: Western North Carolina (WNC) and the surrounding area has become an increasingly popular location for film production. Efforts to promote and coordinate film production in WNC are currently organized through the North Carolina Film Commission and the Western North Carolina Film Commission. City Council has expressed an interest in supporting these and other activities by establishing an Asheville Film Board. This Board will encourage and support efforts to increase film production in the City of Asheville.

ORDINANCE BOOK NO. 16 - PAGE 442

F. MOTION SETTING A PUBLIC HEARING FOR MAY 12, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE A REVISED DEFINITION OF SCHOOLS

G. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO REZONE 594 EMMA ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND COMMUNITY BUSINESS II TO CB I COMMUNITY BUSINESS I DISTRICT -4-

H. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO REZONE 2222 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO REZONE 2200 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

J. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO CONSIDER THE PARKS AND RECREATION DEPARTMENT 2015 COMPREHENSIVE MASTER PLAN

Mayor Sitnick 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.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A REQUEST FOR A NEW STREET NAME OF WREN WAY DRIVE, LOCATED AT THE CORNER OF SHANNON DRIVE

RESOLUTION NO. 98-46 - RESOLUTION ACCEPTING THE STREET NAME OF WREN WAY DRIVE

Mayor Sitnick opened the public hearing at 5:22 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 the developer and owner of Cardinal Park Subdivision project has requested to rename the existing Second Street right-of-way to Wren Way Drive. The acceptance is more indicative and appropriate for the property location which is at the corner of Shannon Drive. The Buncombe County representative, and City of Asheville representatives, from Traffic Engineering Division and the Asheville Fire Department, have confirmed that Wren Way Drive will not duplicate another street name elsewhere in Buncombe County.

The Technical Review Committee and the Planning & Zoning Commission both voted unanimously to recommend approval of the new street name.

Mayor Sitnick closed the public hearing at 5:24 p.m.

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

Councilman Cloninger moved for the adoption of Resolution No. 98-46. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 378 -5-

B. PUBLIC HEARING RELATIVE TO REZONING 1201 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HB HIGHWAY BUSINESS

ORDINANCE NO. 2466 - ORDINANCE TO REZONE 1201 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HB HIGHWAY BUSINESS

Mayor Sitnick opened the public hearing at 5:24 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 an ordinance to rezone a split-zoned lot located at 1201 Patton Avenue from RM-8 Residential Multi-Family Medium Density to HB Highway Business. The entire lot is approximately 1.03 acres and each zone is approximate one-half an acre.

The 2010 Plan shows this area to be low density residential which the current RM-8 zoning permits. City staff feels that any higher intense uses permitted in the HB zoning district could possibly cause negative impacts on the existing residential neighborhood and street. This existing neighborhood is isolated with its primary access adjacent to this property.

This property is inside the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended denial from RM-8 Residential Multi-Family Medium Density to HB Highway Business. However, at the Planning & Zoning Commission meeting on April 1, 1998, the Commission voted 6-1 to approve the rezoning of PIN # 9628.08-97-4767 from RM-8 Residential Multi-Family Medium Density to HB Highway Business.

Upon inquiry of Councilman Cobb, Mr. Ownbey responded that there will be buffering required depending on what type of development is built.

When Vice-Mayor Hay asked about the parking lot. Mr. Ownbey said that since the use grandfathered in, if he changes the use, he can no longer use the parking lot.

Mr. Chao J. Tse spoke in support of zoning the entire lot Highway Business. He explained that when his family bought the property, they were not told that it was split-zoned.

Mr. Steve Aceto, attorney representing the petitioner, passed out some photographs and deeds showing the topography of the area and how the piece is developed as a whole. He said that the Tse family has been selling food at this location for ten years to finance their investment in this property. He said the level, paved parking area has access off Patton Avenue and at the rear on Laurel Loop. He said that the N.C. Dept. of Transportation has determined that a traffic light at Patton Avenue and Druid Drive is warranted and will be eventually installed. He noted that since 1967 the ownership of this property has not been divided and has been deeded as a single lot since at least 1969. He noted that the zoning line does not follow the tax lot boundaries. He said the Unified Development Ordinance provides for substantial buffering to be added if this use were to change. He felt this was a common sense revision to the zoning maps.

Vice-Mayor Hay felt frustrated when people don't check the zoning maps when they buy property. -6-

Councilman Tomes wondered how many other parcels of land in the City are split-zoned.

When Councilwoman Field questioned why the property was split zoned especially since the Planning & Development Director doesn't support split zoning and City Council went out of their way when adopting the Unified Development Ordinance to solve some of the lot that were split zoned. Mr. Ownbey responded that he didn't have that history on this particular lot, however, the boundary line was the same that was used under the old zoning ordinance.

Councilwoman Field felt that the City should get a listing of all of the split zoned lots and review them to see if they needed to be all zoned one classification.

Regarding the split zoned lot, Vice-Mayor Hay theorized that when Patton Avenue was widened, the N.C. Dept. of Transportation condemned a portion of the front part of the lot on Patton Avenue making the front lot much smaller and they just put parking in the back.

At the request of Councilwoman Field, Mr. Ownbey explained why the Planning & Zoning Commission felt the lot should be rezoned.

Mayor Sitnick closed the public hearing at 5:43 p.m.

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

Councilman Sellers moved for the adoption of Ordinance No. 2466. This motion was seconded by

Councilman Tomes.

Councilman Sellers spoke in support of the rezoning to Highway Business, however, he was concerned about the entrance/exit onto Laurel Loop.

Councilwoman Field and Councilman Cloninger asked staff to attempt to get all the split zoned lots cleared up in Asheville.

Mayor Sitnick said that in looking at all the uses available in the Highway Business District and know that City Council cannot vote on a rezoning having to do with current use or intended use, she would vote against this rezoning because of the distance in which it intrudes into the residential neighborhood.

When Mayor Sitnick asked for a vote on the motion, said motion carried on a 6-1 vote with Mayor Sitnick voting "no".

ORDINANCE BOOK NO. 16 - PAGE 444

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2467 - ORDINANCE AMENDING THE ZONING OF PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

Mayor Sitnick noted that the public hearing on this matter was held on March 24, 1998, and tabled until today in order to give the petitioners and the neighboring property owners time to get together in an attempt to reach a compromise on the rezoning. She said that after the

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reports are given as to the outcome of the meeting, she would re-open the public hearing to hear only new information as it pertains to the rezoning.

Mr. Gerald Green, Senior Planner, reviewed the original request by stating that David and Connie Evans and Max and Flora Wilson are the owners of 3 lots (PIN Nos. 9628.13-12-1961, 9628.17-02-6431, and 9618.16-93-6038), containing approximately 42 acres, located on Old Haywood Road near its intersection with Patton Avenue. The property is wooded with two homes located on it. The area adjacent to Lakeside Drive is wet and marshy. The property which is requested to be rezoned was R-3 under the old zoning ordinance but with the adoption of the Unified Development Ordinance, the property was designated RS-4. The R-3 designation of the property under the previous zoning ordinance permitted a development density of 16 units per acre, both single family and multi-family development.

Mr. Green then briefed Council on the meeting by stating that interested parties were contacted and a meeting to discuss the issue in an attempt to reach a compromise was scheduled on Wednesday, April 15, at 5:30 p.m. in the old West Asheville Branch Library on Haywood Road. He arranged the meeting and served as mediator. The meeting was arranged as follows: (1) Five neighboring property owners were identified and invited to represent the neighborhood; (2) in order to keep the meeting focused, only the identified neighborhood representatives could participate in the discussion; (3) all interested area residents could attend the meeting; (4) the rezoning petitioners were invited to present their desires for the property and to hear the concerns of the neighboring property owners; (5) the petitioners' attorneys could participate in the identification of possible compromises, but not in the discussion of desires and concerns; and (6) the purpose of the meeting was to identify concerns, desires, and a potential compromise(s). In addition to the identified neighborhood representatives, approximately 30 area residents attended the meeting.

The meeting lasted approximately two hours during which a number of concerns were expressed by the neighborhood representatives. The identified concerns include:

- traffic impacts;
- the impact of multi-family development on the character of the neighborhood;
- school overcrowding; and
- pedestrian safety in the area.

The petitioners discussed their plans for the property, stating that they have no development plans. They are interested in selling the property, with the purchaser being responsible for the development. Mr. and Mrs. Evans mentioned that a prospective buyer was interested in converting the large home on the property into a bed and breakfast, which would require multi-family zoning.

Following the discussion of concerns and desires, the petitioners for the rezoning identified possible compromises, as follows:

- Revise the rezoning request to RM-6 instead of RM-8;
- Provide a 50 foot buffer of RS-4 zoning around the boundary of the property; and
- Request a partial rezoning of the property, requesting multi-family zoning only for the house and the surrounding 8 to 10 acres (care would have to be taken with this approach to avoid illegal spot zoning).

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The neighboring property owners did not accept any of the compromises offered by the petitioners for the rezoning. The consensus of the neighboring property owners was that the property should be zoned RS-2 and they did not support any rezoning of the property to permit greater density.

The meeting ended with no compromise being reached and the area residents strongly opposed to the rezoning of the property.

Mr. Green said that the Evans' are not here at this meeting due to medical problems. He said that he has talked with the attorney for the petitioners and they may present a request to revise the rezoning request application to provide a 100 foot buffer around the perimeter of the property, thereby negating the protest petition which has been filed by the neighboring property owners.

City Attorney Oast explained that one of the legal requirements of a protest petition is that the properties in opposition to the proposed rezoning have to be located within a 100 feet of the area to be rezoned and if you back off the rezoning line by 100 feet, it effectively negates the protest petition.

Upon inquiry of Councilman Sellers about a small piece of property, Mr. Green said that since the piece is marshy with a stream running through it, it would be difficult to develop.

When Councilwoman Field asked how the 100 foot buffering would address the visual concerns of the property owners, Mr. Green said that any development in the center of the property would still be visible.

Upon inquiry of Mayor Sitnick, City Attorney Oast explained that spot zoning depends on a number of

different factors and that only a court can say whether it's spot zoning or not. Mayor Sitnick said she saw this as spot zoning in reverse - rather than creating a spot zoning, we're creating an area around a piece to create the spot.

Mr. William F. Slawter, attorney for the petitioners Evans and Wilson, reported on the meeting as well, in that the petitioners had agreed to a compromise of a 50 foot buffer along the perimeter of the property, which would be in addition to the buffering required by the buffering ordinance, which may be as much as 30 feet in some areas. They also discussed reducing the request from RM-8 to RM-6. The response they heard was simply that the neighborhood did not want the property developed except to single family and even to a more restrictive zoning of RS-2. Based upon the outcome of the neighborhood meeting and their follow-up from that meeting, the petitioners have authorized him to ask that the petition for rezoning be modified so as to only request the rezoning to RM-8 on the interior portion of the property leaving a 100 foot strip around the entire perimeter of the property zoned RS-4. He presented City Council with a map showing how that rezoning would look in that it would not be RS-4 along the line between the Wilson property and the Evans property, but around the entire perimeter of the property. That would negate the protest petition, however, it would absolutely ensure that the development of the property around the perimeter would have to be single family or the 100 foot strip left undeveloped. He reiterated that the zoning of the property before adoption of the Unified Development Ordinance was R-3, which allowed 16 units per acre.

Mr. Slawter responded to a questions about how someone could develop lots in the 100 foot strip that met the requirements of RS-4.

In response to a question from Councilman Cobb, Mayor Sitnick felt that it was pretty fair to say that lots that are developed for more density or for commercial use sell for a higher value than residential use. -9-

Mayor Sitnick reopened the public hearing at 6:17 p.m.

Mr. Joseph Kane, representative of the property owners who directly surround the petitioners' property, said that the property owners are convinced that there has not been a convincing demonstration that all uses permitted under the proposed zoning district classification would be in the general public interest and not merely in the interest of an individual or small group of people. Also, there has not been convincing demonstration on the petitioners' behalf that all uses permitted under the proposed zoning district would be appropriate in the area of the proposed change. There is, however, convincing demonstration on the community's behalf that the character of the neighborhood will be materially or adversely affected by any use permitted under the proposed zoning classification. The protection and preservation of neighborhoods is clearly stated in both the 2010 Plan and the Unified Development Ordinance. The approval of the proposed rezoning would be inconsistent with the goals and objectives of the community. The neighborhood does not feel that the financial gain for the benefit of two petitioners is a legitimate basis for downzoning. Democracy should prevail. The neighborhood urges City Council not to rezone this property.

Mr. David Peifer said that there was no compromise to be found at the meeting and reiterated all the reasons why the neighborhood did not support rezoning.

Mr. Jim Fagan stressed that the majority should rule.

Mr. Herman Hipps said that if City Council allows the 100 foot strip, it will undermine the Unified Development Ordinance. He urged Council not to rezone the property at all.

Mayor Sitnick closed the public hearing at 6:37 p.m.

Upon inquiry of Councilman Cloninger, Mr. Green explained why the protest petition would be negated and noted that there is no way the community could do a valid protest petition with the 100 foot strip around the

properties remaining RS-4. With no valid protest petition, there is no longer the 3/4's majority voting requirement from Council - it would only take a simple majority to pass. City Attorney Oast added that this is not the kind of change that would invoke a separate public notice requirement.

When Vice-Mayor Hay asked if staff has had a chance to review the 100 foot buffer and if staff had a recommendation, Mr. Green replied that they have not received this proposal.

Upon inquiry of Councilwoman Field about the tone of the meeting with the property owners and neighborhood, Mr. Green felt that there was a willingness to listen on all parts, however, the neighborhood was adamant that the property not be rezoned but the petitioners did try to compromise.

Mr. Green said that if this rezoning were approved with the 100 foot buffer around the perimeter of the properties, the only way to access a multi-family development would be by crossing single-family zoned property which would require the building of a public street onto the property as opposed to using the private drive. Mr. Slawter did state that they were aware of this requirement.

Councilwoman Field said that she is a strong supporter of affordable housing and feels that this is a very difficult decision for her to make.

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

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Councilman Cloninger moved for the adoption of Ordinance No. 2467 to rezone the 3 lots (PIN Nos. 9628.13-12-1961, 9628.17-02-6431, and 9618.16-93-6038), containing approximately 42 acres, located on Old Haywood Road near its intersection with Patton Avenue, from RS-4 to RM-8, with the exception of a 100 foot buffer around the entire perimeter of the property remaining RS-4. This motion was seconded by Vice-Mayor Hay.

Councilman Cobb said that the rezoning is against the 2010 Plan, there are traffic congestion in the area already, the school is overcrowded and the community doesn't want multi-family development. He would not vote in favor of the rezoning.

Councilman Tomes hoped to have consensus from the community, however, he would not vote in favor of the rezoning.

Mayor Sitnick said that she would also have to vote against the rezoning because (1) she believes strongly in the 2010 Plan and it serves the community well, (2) the rezoning request will create spot zoning in several spots; (3) that the development of the 100 foot buffer will result in split zoned lots that will come back to City Council for resolution at a future date; and (4) the RM-8 which permits some non-residential uses could negatively impact this neighborhood, including the affordable housing aspect of the neighborhood. She felt that while a 100 foot buffer is an interesting idea and a clever idea, she believed that it was created in order to get a better vote from this Council.

Councilman Cloninger said that if there was still the potential for the neighborhood to gather another valid protest petition, he would support postponing this hearing in fairness to them to do that. However, since there is no way that a valid protest petition can occur, he didn't see any point in postponing the action.

Upon inquiry of Mayor Sitnick, Mr. Oast outlined the purposes City Council should use in considering rezoning requests.

Councilwoman Field said that her firm was the architect for the Sand Hill Venable School and the school is

designed to be expandable. She said that the County School System did understand that there would be growth in that community and the school is designed to be able to be added onto fairly easily.

Mayor Sitnick called for a show of hands on the motion. Said motion carried on a 4-3 vote with Vice-Mayor Hay, Councilwoman Field and Councilmen Cloninger and Sellers voting "yea" and Mayor Sitnick and Councilmen Cobb and Tomes voting "no".

City Attorney Oast explained that since the ordinance didn't pass by a 2/3's vote of the Council, it has to be voted on again at the next formal meeting.

At 7:00 p.m. Mayor Sitnick announced a three minute break.

V. NEW BUSINESS:

A. PRESENTATION ON BUILDING SAFETY DEPARTMENT RECEIVING AN INSURANCE SERVICE OFFICE RATING OF "2" - BEST IN THE STATE

Mayor Sitnick was pleased to report that the Insurance Service Office Rating of "2" is not only the best in the State, but Asheville is the only City in the State to receive such a rating, and only one of a few cities in the nation to receive the rating.

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Mr. Terry Summey, Director of Building Safety, said that effective on May 1, 1998, the City of Asheville will have new Insurance Service Office (ISO) Building-Code Effectiveness Grading Schedule (BCEGS) Ratings; the new Ratings of "2" are the best in the State.

As a result of Hurricane Andrew in 1992 knocking the wind out of property/casualty insurers that covered homes and businesses, it was recognized that effective building code enforcement can lower insured losses. The ISO, in cooperation with numerous organizations, developed the Building Code Effectiveness Grading Schedule (BCEGS). Studies of various catastrophes graphically demonstrated that effective code enforcement reduces loss in catastrophic events. Experts estimate that Hurricane Andrew losses could have been reduced 25% to 55% if building codes had been strictly enforced.

In 1995, ISO completed classifying communities in Florida, North Carolina, and South Carolina, three of the country's most hurricane-prone states. The City of Asheville was evaluated in mid-1995 and received a positive rating of "4" for both new commercial and residential construction. Normally jurisdictions are reevaluated every five years unless significant changes occur within the jurisdiction's inspection department. Due to changes, the City was reevaluated in November 1997, and received new ratings of "2" which are effective on May 1, 1998.

The benefits of "BCEGS" include the following: improving building codes, building departments and code enforcement; leading to better, more catastrophe-resistant buildings; reducing property losses from catastrophes; and reducing the economic and social disruption that results from catastrophes' serious and widespread destruction.

Due to rating credit tables currently being developed by insurance companies, staff will report back to City Council in the near future with the insurance cost savings to property owners as a result of the new ratings.

Upon inquiry of Councilwoman Field, Mr. Summey said that the insurance could go down anywhere from 2% to 17%.

At 7:28 p.m., Vice-Mayor Hay moved to excuse Councilman Tomes from the meeting. This motion was

seconded by Councilman Sellers and carried unanimously.

B. RESOLUTION NO. 98-47 - RESOLUTION APPOINTING A MEMBER TO VICTORIA OF ASHEVILLE BOARD OF DIRECTORS

Vice-Mayor Hay said that the term of Robert G. Wurst, as a member of the Board of Directors of Victoria of Asheville Inc., expired on November 29, 1997. This resolution will appoint Mr. Ben Durant, Budget Director, to serve until November 29, 2000, or until his successor has been appointed.

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

Vice-Mayor Hay moved for the adoption of Resolution No. 98-47. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 379

VI. OTHER BUSINESS:

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A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 14, 1998, AND THE WORKSESSION HELD ON APRIL 21, 1998

Mayor Sitnick asked that the minutes of the April 14, 1998, meeting be amended on page 11 under the comments of Mr. Jerry Rice. Said amendment would be the addition of the following sentence: "Mr. Rice also commented that he had contacted several cities in the eastern part of the state that had cable franchises with Multi-Media and requested public records from those cities and was refused."

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on April 14, 1998, as amended by Mayor Sitnick above, and the minutes of the worksession held on April 21, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of March 27-April 16, 1998: Hobson Construction (Water), Joy Gossett (Water), David Helms (Water), Marie Heller (Water), Anna Sue Beathard (Water), Bob Edsell (Water), David Zane (Water), and Premier Federal Credit Union (Civic Center).

The following claims were received during the week of April 17-23, 1998: Carl Smith (Water), Signal Point Systems (Streets), Joyce Bugg (Water), Karen Walton (Water), Gail Wilson (Streets), Karen Davis (Sanitation) and Ruby Tweed (Water).

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

C. PUBLIC RECORDS

Mayor Sitnick read the following statement:

"As of today at approximately 5:00 p.m. InterMedia announced that it was withdrawing its appeal from the Superior Court's Order for the release of cable TV franchise fee records. This means that its Motion to Stay the release of those records will also be withdrawn. The City has already determined that it will not appeal the Court's Order. This means that the records can be available for inspection immediately.

"We want to emphasize that the position taken by the City in this case was never about trying to withhold information about the cable franchise from the public; it was about the interpretation of a statute that exists to protect the privacy of anyone that pays to the City taxes based on gross receipts. That statute makes it a criminal offense to release records that might disclose a taxpayer's income, and requires that an official who releases such records be dismissed from employment and not hold a government job in this State for five years. The City was caught in the middle--between the public's understandable desire to see the records, and the taxpayer's interest in not having sensitive financial information disclosed. The City's only interest in this matter has been to correctly interpret and obey the law. Although the Court's order directed the release of the records, the way the Order was written left City with some uncertainty about how the statute and the Court's interpretation of it might apply to other tax records. Given the severe consequences of an incorrect interpretation of the statute, this uncertainty was troubling. That is why the City carefully considered an appeal.

"We do not think, however, that it was the Court's intention that its decision be used to gain access to other tax records that are protected from disclosure, and so the City decided not to appeal. We hope that no one will attempt to use the Court's Order for that purpose. -13-

"We appreciate the actions of InterMedia that made the release of the records possible, and recognize their willingness to cooperate, despite their understandable position on the legal issue involved in this matter.

"For now, the City will make the franchise payment records from the 1967 franchise available for inspection. The City and its staff have worked hard to address all of the competing interests in this matter; that's our job. We hope that our well-intended efforts are appropriately recognized for what they are, and that we can put this unpleasant episode behind us and direct our energies to more productive ends."

Mayor Sitnick said that anyone interested in inspecting those records that they are available in the Legal Department. Due to a miscommunication between herself and the City Attorney, she was of the understanding that these records would be copied and available to hand out. They have not been completely copied and that is being done now. As the record, as it stands, is available for public inspection immediately.

Councilman Cloninger requested that the words "For now," be deleted from the beginning of the fifth paragraph in the statement because he felt that might lead to a misunderstanding.

Councilman Cloninger moved to adopt the statement as previously read by Mayor Sitnick, with the deletion of the words "For now" beginning in the fifth paragraph of the statement. This motion was seconded by Mayor Sitnick and carried unanimously.

Mayor Sitnick said that "this morning when it came to my attention that InterMedia was going to back down from its appeal and its Motion to Stay, I instructed the City Attorney to have copies of all of the records ready to hand out to the press, not within one minute, but within one second of the release of that information from InterMedia, that they were withdrawing their appeal. And I am sorry that there was some kind of miscommunication. I'm very upset about the fact, and very angry that those records are not ready immediately for the press. The file is ready for inspection - the records are being copied now."

D. BOARD OF ADJUSTMENT

Councilman Cloninger asked for a report regarding the variance granted by the Board of Adjustment for property on Merrimon Avenue in March of 1998. He felt Council needed to look at two things - (1) the vote itself and whether Council can take any action as to that specific vote; and (2) whether we need to make any changes to the Board of Adjustment authority.

Mr. Gerald Green, Senior Planner, said that it was his understanding that the only appeal from the Board of

Adjustment decision to the Superior Court of Buncombe County. He felt City Council has no other alternative other than appealing that to the Court.

City Attorney Oast said that it is clear that City Council has standing to appeal from a Board of Adjustment determination on an interpretation by the Planning Director, and that is an issue that the Board has yet to consider. As to the variance issue, he would have to investigate that. Ordinarily standing requires that you be an adjacent property owner or that your property value be affected. He explained that there is another issue coming before the Board of Adjustment in May regarding an appeal on the scheduled use of the property. He asked that any further advice be given in closed session.

Councilman Cloninger wanted to make sure that no deadlines would pass before Council could take any action.

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Mr. Green explained that Council could place a limit upon the extent of a variance which could be granted, so this magnitude of variance could not be granted in the future.

Vice-Mayor Hay stated that he would also like to see a report on this issue. He felt the issue looked more like a rezoning rather than a variance based on a hardship. He felt this raises an issue about the authority of the Board of Adjustment.

Mayor Sitnick suggested the Planning Department bring in an expert to instruct Board of Adjustment on what their authority is and responsibilities are on the Board.

E. INTERSTATE 26 CORRIDOR IN WEST ASHEVILLE

Councilman Cobb was concerned about the I-26 corridor project and the environmental and social impact coming right through the middle of Asheville. He felt City Council should take a position with the N.C. Dept. of Transportation ("NC DOT").

Councilwoman Field explained the amount of citizen involvement that the NC DOT used in coming up with the location of the corridor. She felt the City should sit down with them, rather than challenge them, and see how we can solve any problems and find out what some of the other options are.

Mayor Sitnick agreed with Councilman Cobb noting that there are going to be many citizens impacted and the City needs to take some precautions to make sure that the timing of how one thing impacts on another is done so that people whose homes are going to be taken or cut off are protected from noise, construction dirt, etc. She felt that some kind of City-oriented dialogue was necessary at least to allow people an opportunity to be educated.

Councilwoman Field suggested the Citizens for Transportation Advisory Committee, which was originally the connector committee, be part of the process. They are in the process of doing some long range planning and public participation.

Mayor Sitnick instructed the City Manager to come back with a recommendation on the best way to proceed with Council's concerns, with perhaps one day meeting and one night meeting.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:48 p.m.

CITY CLERK MAYOR
