

Tuesday - September 1, 1998 - 3:00 p.m.

Worksession

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

CONSENT AGENDA:

Contract for Infrastructure Improvements for Twin Springs Subdivision

Summary: The consideration of a resolution authorizing the City Manager to accept the lowest responsible bid of Tennoca Construction Company for the infrastructure construction of Twin Springs Subdivision.

Mattern & Craig Consulting Engineers, on behalf of the Community Development Division, opened bids for the infrastructure construction of Twin Springs subdivision on August 12, 1998. Infrastructure construction will include, but not be limited to, water, sanitary sewer, storm drainage lines including appurtenances, street, sidewalk, curb and gutter, and minor landscaping. The lowest bid received for the project was in the amount of \$498,537.00 from Precision Contracting, Inc. However, Precision Contracting, Inc. is properly licensed in North Carolina to do construction work to a limit of \$500,000.00. Precision's total work would not be allowed to exceed its licensing capabilities, which could effect performance on the contract should change orders be required. The amount of funds available for the project is \$544,512.00.

Community Development staff recommends rejecting the low bid from Precision Contracting, Inc. in accordance with N. C. General Statute Section 143-129 and awarding the contract to the next lowest responsible bidder, Tennoca Construction Company. Tennoca's bid was in the amount of \$511,153.50. Tennoca Construction Company, Inc. has an unlimited license in North Carolina. The City Attorney's office has concurred with the engineer's recommendation against accepting the bid from Precision Contracting, Inc. due to the bid amount compared to the limit of their contractor's license. Approval of the resolution will award the contract to Tennoca Construction Company for the infrastructure construction of Twin Springs subdivision.

The Community Development staff recommends adoption of the resolution authorizing the City Manager to accept the lowest responsible bid of Tennoca Construction Company for the infrastructure construction of Twin Springs Subdivision.

Asheville Metropolitan Planning Organization Public Involvement Process

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for assistance in developing a public involvement process specific to transportation related planning efforts.

As the Lead Planning Agency (LPA), the City of Asheville plays an integral part in how the Asheville Urban Area Metropolitan Planning Organization (MPO) functions. Since the administrative functions of the MPO are conducted from the Planning and Development Department, it is essential that requests for professional services go through City Council for approval. The Federal Highway Administration (FHWA) and the N. C. Dept. of Transportation (NC DOT) will reimburse the City of Asheville 80% of the cost of the contract. -2-

The public involvement process are the result of over two years of effort on the part of the Citizen's

Transportation Advisory Committee (C-TAC) to place a higher emphasis on how we solicit and gather input from the public. It is the desire of the C-TAC that with such a process in place, the recommendations made to the NC DOT, the FHWA and other agencies will be more reflective of the needs, wants and desires of the public in our area.

The contract is to assist in development of the process and train local citizens, staff and public officials in the process. Should we desire to solicit help from consultants to actually conduct the process, then we would prepare a contract specific to that endeavor.

The staff from the Planning and Development Department recommends adoption of the resolution authorizing the City Manager to enter into a contract with Parsons, Brinckerhoff, Quade & Douglas Inc. to provide for planning assistance to the MPO for the development and implementation of a public involvement program.

Set Public Hearing to Close Wilson Alley located between Hendersonville Road and Summit Street

Summary: The consideration of a resolution to set a public hearing to permanently close Wilson Alley between Summit Street and Hendersonville Road.

A petition has been received from Janet L. Young and Paul M. Young requesting that an Wilson Alley between Summit Street and Hendersonville Road (U.S. Route 25) be permanently closed to public use.

The petition received includes the affidavit of Janet L. Young and Paul M. Young, owners of parcels 9647-07-77-2987 and 4803. Janet L. and Paul M. Young own all of the property with frontage on the unopened alleyway between Summit Street and Hendersonville Road that has been petitioned to be closed.

Wilson Alley is a paper street and has never been used as a alleyway. There are no plans to utilize this alleyway. All utility companies will be contacted, the resolution of intent to close Wilson Alley will be advertised in a local paper, and the location will be posted with the resolution of intent to close.

The Public Works Department staff recommends adoption of the resolution of intent to permanently close Wilson Alley from Hendersonville Road to Summit Street.

After School Program Grant

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Health and Human Services to provide food service in the After School Program.

The Parks and Recreation After School Program provides supervised licensed child care, recreation, enrichment activities, and food service to children ages 5 to 12 during after school hours, teacher work days, and holidays at six program sites. Sites are located at Claxton, Dickson, Hall Fletcher, Jones, and Vance Elementary Schools; and Reid Community Center. Sites are licensed by the State of North Carolina with a child/staff ratio of 1 to 25. Snacks are provided in the afternoon, and breakfast and lunch is provided on holidays and teacher work days. Activities include arts and crafts, games, sports, science, music, homework time, and special events. Fees are based on the number of children from each family and frequency of attendance. Parks and Recreation will contract with Asheville City Schools for food service at a rate of \$0.95 per breakfast, \$1.75 per lunch and \$0.65 per snack. The grant will reimburse Parks -3-

and Recreation approximately one third of the cost of providing food service in the After School Program. The number of meals will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the Child and Adult Care Food Program.

Spivey Mountain Reservoir Project

Summary: The consideration of a resolution approving the Regional Water Authority's recommendation to award a contract to Taylor and Murphy Construction Company for the Spivey Mountain One Million Gallon Reservoir.

Sealed bids were received for the Regional Water Authority's Spivey Mountain Reservoir. This is the last phase of the Master Plan Phase II Project that will alleviate periodic water pressure problems in the extreme western section of our water distribution system, provide more reliable water service in the Leicester section of our water system and allow for future growth and development in both these areas. Contracts have already been awarded to Cooper Construction Company and Haynes Electric Construction Company for the pumping station and waterline installation components of this project.

Four bids were received with Taylor and Murphy Construction Company of Asheville, North Carolina submitting the low base bid and alternate bid of \$ 577,340 and \$ 532,340 respectively. All the bids received are listed below in the order of their bid:

COMPANY BASE BID ALTERNATE BID

Taylor & Murphy Construction Co., Asheville, NC \$ 577,340 \$ 532,340

Hobson Construction Co., Arden, NC \$ 634,000 \$ 582,500

Cooper Construction Co., Hendersonville, NC \$ 640,000 \$ 596,000

Wheeler Construction Co., Weaverville, NC \$ 750,000 \$ 750,000

The Regional Water Authority approved award of this contract to Taylor and Murphy Construction Company on August 18, 1998, subject to the approval by the Office of Minority Affairs. City staff recommends City Council's concurrence with the Authority's action.

Sale of Alcoholic Beverages at Great Smokies Craft Brewers Invitational

Summary: The consideration of a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Great Smokies Craft Brewers Invitational at the Martin Luther King Jr. Park on September 19, 1998.

The Great Smokies Craft Brewers Invitational is a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a smokey mountain twist. The Asheville Downtown Association in conjunction with Barley's Tap Room, the Radisson Hotel, Asheville Parks and Recreation and other local businesses have developed this festival to highlight the quality beers of the region. Over 30 brewers have been invited to present their high quality beers in a festival atmosphere at the Martin Luther King, Jr. Park on September 19, 1998. Local entertainment and food will be available from 1:00 p.m. - 6:00 p.m.. Proceeds from the event will benefit the Asheville Urban Trail project. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during this event on City property.

The Asheville Parks and Recreation Department recommends adoption of the resolution.

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

I-26 CORRIDOR BRIEFING

Mr. Gordon Myers, N.C. Board of Transportation member, along with other N.C. Dept. of Transportation ("NC DOT") representatives, updated City Council on the process NC DOT has been through the past seven years on the I-26 Corridor Project. NC DOT will be holding public hearings in November and January or February of next year on the specific routes of the proposed connector. He said the use of federal funds in this project necessitated a very distinct process that NC DOT went through with regard to choosing of the corridor. The decision on the corridor was not made by NC DOT but a group of citizens in the Asheville area in cooperation with the Transportation Advisory Committee. He said NC DOT was reacting to what has been recommended by the Committee and approved by the City Council.

Mr. Blake Norwood, NC DOT Planning Branch, passed out a timeline of the project and highlighted some specific points while reviewing the history of the project. He said the Asheville Connector Advisory Committee ("ACAC") recommended on a 6-3 vote to the Transportation Advisory Committee Alternative "A" (which is a widening of I-240 with a short connector by the Smoky Park over the river and tying into US 19-23). The three dissenting members were not opposed to the selection of "A" as the corridor of choice but expressed opposition to segments of the proposed project and voted against the motion. The summary of the rationale upon which recommendation was made was Alternative "A" (1) is the shortest, least disruptive route to residences; (2) is the least expensive in regard to right-of-way and construction costs; (3) will have the least adverse impact on environmental concerns; (4) is the only route that is a true, direct "connector" to I-26 and US 19-23; and (5) will do more to ease the traffic congestion on Smoky Park Bridge. He pointed out that if they were to go back and look at all alternatives again, they are looking at another five years added onto the life of this project. He felt NC DOT has moved forward cooperatively with the City of Asheville and the Asheville area with the desired alternative. He then explained the decision to make the Corridor eight lanes instead of six. He said that in 1996 NC DOT was talking about six lanes, however, the traffic volume that they were projecting was right on the line between six and eight lanes. The traffic projection analysis was re-done for a new design year and that analysis clearly shows over a six lane capacity on I-240.

Mr. Tom Kindig, NC DOT Planning and Environmental Branch, said they are working on the environmental assessment. He explained that as part of the environmental process they will be looking at noise impact, the air quality impacts of the project, and trying to reducing impacts on the relocations of residences and businesses affected by the project. All of the studies are on-going and hopefully they will follow-up with some of that information with a public workshop later this year. He said there will be a public hearing on the design based on the design plans. He said that construction on the first phase is scheduled to go to contract in the year 2002. He then pointed out some impacts related to six lanes versus eight lanes. He said there are several situations that do not meet the standards for an interstate highway and those will be corrected. There is a total of approximately 68 relocations through the section of the existing I-240. If we were to narrow back to six lanes, essentially we will only be reducing the right-of-way impacts on each side by about 12 feet. Some preliminary studies for a six lane facility show there would still be at least 58 relocations necessary.

Representatives from the NC DOT answered various questions and comments from Council, some of those being: will there be any provisions for noise walls or retaining walls; at what stage in the process will design decisions be made and will the community have input into those design standards; has any thought been put into air quality; are other cities subject to interstates going right through their towns; what information does the State use to assess the -5-

population growth and traffic projections; can there be a direct access from the interstate to the river; since there is a Housing Authority project that will be reamed with interstates, can we work with the Housing Authority to relocate those units of housing within scattered sits within the community, and then work with NC DOT to take that land and use it for some commercial use or something more appropriate for interstate activity; and what different routes the three alternative consist of.

Councilman Cobb stated his disappointment in the Alternative "A" route and felt that Alternative "K" route around the City was the best choice.

Mayor Sitnick felt that NC DOT should re-think the alternatives for the routes. Alternative "A" will transect a community that is already divided from the City by a river and an existing interstate.

Councilwoman Field hoped for an opportunity for creativity into the detailing of the bridge or structures. Mr. Norwood said that the City would probably be asked to participate in some of the cost but felt the idea was a good one.

Mr. Blake said that now is the time for the City to transmit to the NC DOT the City's desires, particularly with regard to the detailing on the bridges and the Housing Authority project. He did reiterate again that the City would need to be willing to participate financially.

Mayor Sitnick thanked Mr. Myers for the Wildflower Program on our interstates. She asked that if more roads are built, that the NC DOT look into the possibility of purchasing machinery necessary to vacuum the highways before they are mowed, thus helping to eliminate the litter on our interstates.

Vice-Mayor Hay felt that it would be interesting and beneficial to hear from the original Asheville Connector Advisory Committee. It was the consensus of Council to instruct the City Manager to schedule a worksession with ACAC representatives.

DISCUSSION OF TELECOMMUNICATION FACILITIES ORDINANCE

Councilman Cloninger introduced Mr. Paul Rosa, who is the consultant that City Council hired earlier this year to help improve our telecommunications ordinance. Mr. Rosa has been working on the past several months with staff with several goals in mind: (1) protect the aesthetic quality of the City; (2) assure service to all areas of the City; (3) promote stealth technology; (4) reduce the permitted height of telecommunications towers; (5) promote location of antennas on existing structures; (6) promote co-location of antennas; and (7) permit telecommunication facilities in more locations but in ways that do not make them unduly conspicuous or intrusive.

Mr. Rosa said that he has found out that the communities that have successful aesthetic outcomes regarding wireless issues is when there is (1) leadership; (2) clear vision of what is the aesthetic outcome they desire and the technical and wireless service levels they want in the community and (3) the political will to move in the direction of that vision. He then gave Council an overview of the features of the draft ordinance and how it achieves the goals set by City Council.

Upon inquiry of Councilwoman Field about the possibility of the City offering sites so we could have more control over them and also as a possible revenue source, Councilman Cloninger said that there is a public property provision in the ordinance.

Mr. Rosa answered various questions from Council as they related to wireless telecommunications facilities.

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It was the consensus of Council to send the draft ordinance to the Planning & Zoning Commission for their review, which will include a public hearing to gather input. The Commission will then make a recommendation to City Council based upon its review. This item has been scheduled to come back before City Council in the form of a public hearing on October 27, 1998.

RESOLUTION NO. 98-132 - RESOLUTION AMENDING THE RULE OF PROCEDURE FOR THE ASHEVILLE CITY COUNCIL WITH RESPECT TO THE TIME LIMITATIONS FOR PUBLIC ADDRESS TO

CITY COUNCIL

At Councilman Cloninger's request, City Attorney Oast drafted a resolution adopting amendments to Rule 7 of Council's Rules of Procedure regarding public address to the Council. Council's current rules for speaker time limits are the same for any item coming before Council, whether it is a scheduled public hearing, or a matter not appearing on the agenda. This was brought into focus during the discussion at the August 11 meeting regarding enforcement of marijuana laws, which came up under "Other Business."

The idea discussed at the August 18 worksession was to limit the time spent at meetings on issues coming before Council from members of the public, which do not otherwise appear on the agenda. The proposal was to limit to three the number of speakers on any one issue, and to limit those speakers to three minutes each. Alternatively, a spokesperson for a group would be allowed up to 10 minutes, but individuals would not be allowed to speak on the same issue.

The proposed amendments to Rule 7 do two things:

(1) Differentiate between (a) items of business that are on the agenda for Council consideration or action, and (b) unscheduled items coming before Council from the public.

(2) Establish different rules for each situation.

For items appearing on the published agenda, which are matters of Council business, the rules remain as 10 minutes for a group spokesperson and 3 minutes for an individual, with an unlimited number of speakers. He proposed amending paragraph (b) of Rule 7 to include a reference to new proposed paragraph (c) to make it clear that the usual time limits apply to items on the published agenda.

For items that do not appear on the published agenda, but are brought to Council by members of the public at the meeting, the proposed limits are no more than three speakers at no more than three minutes each or a spokesperson who is limited to no more than ten minutes.

Rule 7 (d), which provides that the Mayor may allow additional comments or additional time, as "appropriate for the orderly conduct of business," would continue to apply to all public address situations, as would Rule 9 d(b) which provides for the Mayor to insist that speakers be courteous and to consider and rule on Council members' objections made on this basis. This is generally consistent with the State law, G.S. 160A-67 and 160A-69, and the City Charter, Sec. 10, which establish the Mayor as the presiding officer of the Council.

Proper Use of "Other Business." : Another issue that Council may wish to discuss in connection with these proposed changes is whether "Other Business" is the appropriate place to receive general public comment. Typically, under regular parliamentary procedure, "Other Business" is the opportunity for members of the deliberative body (in this case the City Council), to bring up and discuss matters of interest or potential interest to the deliberative body. -7-

Examples would be the scheduling of roundtables and special worksessions, and requests for staff assistance or information on a matter of City business. Other Business is thus (conceptually, at least) distinct from matters brought to Council by members of the public.

Since Council's rules provide in Rule 8 for a place on the agenda for "Informal discussion and public comment," it appears that Council's original intent in the Rules was consistent with the concept of distinguishing between "Other Council Business" and other matters of interest to members of the public, but not necessarily Council business. In drafting the proposed amendments, he has observed this distinction and suggest that the "Informal discussion and public comment" section be included on the published agenda (some councils call this "public information"). Public comment is currently, asked for at the close of each meeting, so this addition to the agenda will conform to Council's current practice.

Technical Amendment to Rule 8: As a technical amendment, he has proposed adding "Consent Agenda" to the Order of Business established in Rule 8. This is consistent with Council's current practice.

It is recommended that Council differentiate in its Rules between matters of Council business or City business appearing on the published agenda, and matters brought before Council outside of the published agenda. The mechanism for doing this already exists, but Council needs to adjust its current practice. If Council wishes to impose different time limits for agenda items and non-agenda items, adoption of the proposed changes, or some variation of them, is recommended.

He said Mayor Sitnick submitted an alternative proposal which same time limitations and number of speakers would apply but only to matters that are not City Council business or that City Council can do nothing about. Mayor Sitnick said that she offered it as an alternative proposal to Councilman Cloninger's, but it is not the kind of change in the Rules of Procedure that she would like to see personally.

Councilman Cobb stated that City Council is not trying to limit people from coming to the meetings to speak, just trying to keep the meetings orderly. He felt that ten minutes is ample time for the person to state their case and for City Council to determine if the matter should be referred to a worksession, formal meeting, to City staff for further review, or if it is a matter which City Council has no control over.

City Attorney Oast said that regardless of which proposal, if any, is adopted, City Council can waive their rules and allow someone to speak for a longer time.

Vice-Mayor Hay did not see this proposal as a limitation on the public's access to City Council at all. If the expectation is a ten minute presentation, then the meeting can be more organized.

Councilman Cloninger felt his proposal actually encourages more people to participate in City Council under Other Business because they know they will not have to wait all night long to have an opportunity to speak.

Mayor Sitnick believed it is the people's right to address their government no matter what. She absolutely felt City Council should have time limits but in a democratic republic it is the responsibility of the government to listen to the public. Her concern is who do you pick, how many do you pick, who do you eliminate and how do you make that judgment. She didn't think that is what government is about.

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Councilwoman Field felt that limiting an issue to ten minutes is certainly not inappropriate. She's willing to listen to anyone for any length of time, however, City Council meetings can go for several hours and it's not humanly possible to make reasonable decisions and have intelligent thoughts when the meetings are so long. She could support the ten minute per issue proposal noting that people can come back as many times as they wish. She pointed out that City Councilmembers can be reached by phone or invited to meetings where the public can talk to them for any length of time.

Mayor Sitnick said that if a group of citizens come to speak to City Council, there might be occasions to serve all of us better to listen to them, hear them out and then take the appropriate action and be done with it. She felt if we can't have totally open government with the time limits, then she would want the proposal before us for one ten minute speaker or three/three minute speakers to only apply to issues that City Council can't do anything about and not to citizens that come before Council with issues that do pertain to City business.

Councilman Tomes hoped Council would be willing to suspend the rules and to be sensitive to that. He did not want to put up any barriers to people who want to address City Council.

Mayor Sitnick said she believed in totally open government with time limits and she believed we should hear from anybody and as many people in public comment period who want to speak to City Council.

Councilman Cloninger moved to suspend the rules and take formal action on this matter. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Mayor Sitnick voting "no". Mayor Sitnick explained her negative vote in that she did not feel City Council should take official action at a worksession.

Councilman Cloninger moved to adopt Resolution No. 98-132 which amends Rule 7 of the "Rules of Procedure for City Council" as follows:

1. By redesignating paragraphs "(c)" and "(d)" as paragraphs "(d)" and "(c)", respectively, and placing those paragraphs in alphabetical order.

2. By amending new paragraph (d) to read as follows:

(d) At each "regular" meeting and each "worksession" of the Council, under the "Informal discussion and public comment" section of the agenda, any group or person wishing to address the Council on any matter not previously considered during the meeting may do so. For matters coming before Council pursuant to this paragraph, the following limitations apply:

(i) No more than three persons (one at a time) may address the Council on any one issue, and no person may take longer than three minutes to complete a presentation.

(ii) In lieu of the limitation set forth in (i) above, a group may elect to designate a spokesperson who may take no longer than 10 minutes to complete a presentation on any one issue. -9-

As used herein, "presentation" means all forms of address, including speaking, use of audio or video materials, and distribution of literature. For presentations that cannot be completed within the limitations of this paragraph, written comments or other information may be delivered to the Council through the City Clerk.

3. By amending the first clause of paragraph (b) to read "Subject to the time limitations set forth in paragraph (c) below, ..."

• Amend Rule 8 of the "Rules of Procedure for City Council" as follows:

By adding "Consent Agenda" to the order of business set forth in Rule 8. It should appear between "Proclamations" and "Public Hearings."

This motion was seconded by Councilman Sellers.

After each Councilmember reiterated their feelings on the issue, said motion carried on a 5-2 vote with Mayor Sitnick and Councilman Tomes voting "no".

Mayor Sitnick said that on August 12 she sent a memorandum to City Council asking for suggestions on how City Council can shorten the length of the City Council meetings, both the formal and the worksession. She followed up with a memorandum on August 19 in which she proposed several ideas to shorten the meetings. She has not heard to date from any Councilmember and asked the City Manager to place this item on the City Council's mid-year retreat agenda for a brief discussion.

RESOLUTION BOOK NO. 24 AT PAGE 492

COMMUNITY MEETING

After discussion, it was the consensus of the City Council to schedule the Tuesday, September 29, 1998, community meeting in the South area. Because the MED Week banquet is scheduled on the same evening, the community meeting may be held earlier than the normal 7:00 p.m. meeting time.

Mayor Sitnick said that she would submit a revised list of suggested roundtable items to City Council on Friday and they can add to the list. She asked that they be prepared to suggest a topic for the next Mayor's roundtable which will be Thursday, November 19, 1998.

It was the consensus of City Council to postpone and/or possibly cancel the City Council worksession scheduled for Tuesday, October 20, 1998, until Wednesday, October 21, 1998, at 3:00 p.m., in the 1st Floor North Conference Room, due to the N.C. League of Municipalities meeting held in Charlotte, N.C.

REPORTS FROM BOARDS & COMMISSIONS

Upon inquiry of Vice-Mayor Hay, it was the consensus of City Council to place on the September 8, 1998, consent agenda a resolution confirming the appointment of Bonnie Love as the representative of the Minority Business Alliance to the Minority Business Commission.

Vice-Mayor Hay reported that there will be a series of public input sessions on the consultant's report regarding the future of the Civic Center.

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On behalf of Councilman Cloninger and herself, Mayor Sitnick asked City Council consider expanding the Film Board membership from six members (and the City Council representative) to eleven members (and the City Council representative) to allow the Board more people to chose from when tasks are assigned.

Mayor Sitnick asked that any Council member who may be late to pre-arranged board and commission interviews advise the City Clerk at least ½ hour before the first interview.

CLOSED SESSION

At 5:58 p.m., Councilman Cloninger moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract for the acquisition of real property - pursuant to G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Field and carried unanimously.

At 6:10 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:10 p.m.

CITY CLERK MAYOR
