

Tuesday - September 22, 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.

### **INTRODUCTION OF GUESTS**

Mayor Sitnick welcomed Ms. Nancy Wilson and Ms. Debbie Brown and their 6th grade students from Carolina Day School.

### **I. PROCLAMATIONS:**

#### **A. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 26-OCTOBER 3, 1998, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"**

Mayor Sitnick read the proclamation proclaiming the week of September 26 - October 3, 1998, as "Minority Business Development Week" in the City of Asheville. She presented the proclamation to Mr. Ronnie Blythe and Elena Williams, who briefed City Council on some activities taking place during the week.

#### **B. PROCLAMATION PROCLAIMING OCTOBER, 1998, AS "ASHEVILLE SISTER CITIES MONTH"**

Councilwoman Field read the proclamation proclaiming the month of October, 1998, as "Asheville Sister Cities Month" in the City of Asheville. She presented the proclamation to Mr. George Yates, President of Asheville Sister Cities, Inc., who briefed City Council on some activities taking place during the month.

#### **C. PROCLAMATION PROCLAIMING OCTOBER, 1998, AS "NATIONAL BREAST CANCER AWARENESS MONTH" AND OCTOBER 16, 1998, AS "NATIONAL MAMMOGRAPHY DAY"**

Mayor Sitnick read the proclamation proclaiming the month of October, 1998, as "National Breast Cancer Awareness Month" and October 16, 1998, as "National Mammography Day" in the City of Asheville.

#### **D. PROCLAMATION PROCLAIMING OCTOBER 5, 1998, AS "THE BOYS CHOIR OF HARLEM DAY"**

Mayor Sitnick read the proclamation proclaiming October 5, 1998, as "The Boys Choir of Harlem Day" in the City of Asheville. She presented the proclamation to Ms. Connie DeLand, President of the Asheville Community Concert Association Inc., who briefed City Council on some activities taking place during that day.

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#### **E. PROCLAMATION PROCLAIMING THE WEEK OF OCTOBER 4-10, 1998, AS "MENTAL ILLNESS AWARENESS WEEK"**

Vice-Mayor Hat read the proclamation proclaiming the week of October 4-10, 1998, as "Mental Illness Awareness Week" in the City of Asheville. He presented the proclamation to Mrs. Jack T. Benning, Past President and Board Member of the NAMI Western Carolina Inc., and Mr. Dan Lane, President of the NAMI Western Carolina Inc., who briefed City Council on some activities taking place during the week.

## **II. CONSENT:**

At the request of City Manager Westbrook, he asked that Exhibit A under Item D. be amended to delete from the auction list the 1977 American LaFrance Pumper CE175656 - Fixed Asset Number 13872.

### **A. RESOLUTION NO. 98-140 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH WHEELER CONSTRUCTION COMPANY FOR THE PROJECT KNOWN AS PIPELINE REPLACEMENT PROGRAM PHASE II - CONTRACT A, SOUTH ASHEVILLE/SOUTH BUNCOMBE WATER LINE**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Wheeler Construction Company (for work performed by contractor requested by the Engineering Department) for the project known as Pipeline Replacement Program Phase II - Contract A, South Asheville/South Buncombe Water Line.

The Regional Water Authority of Asheville, Buncombe and Henderson approved \$1,078,389.11 for the construction of these improvements. This project is known as Pipeline Replacement Program Phase II Contract A South Asheville/South Buncombe Water Line.

The final adjusting change order for this project is in the amount of \$102,582.95. This additional cost represents the additional qualities of bituminous pavement and other miscellaneous appurtenances that were necessary to comply with requirements and request by the Public Works Department and Water Maintenance Division of the Water Resources Department. Approximately 18% of the additional cost of bituminous pavement has been reimbursed by the Public Works Department as per agreement.

Staff recommends that City Council accept this change order to increase the total contract price for the Pipeline Replacement Program Phase II Contract A South Asheville/South Buncombe in the amount of \$102,582.95 and the City Manager to execute all necessary documents for this contract.

## **RESOLUTION BOOK NO. 25 - PAGE 9**

### **B. MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1998, RELATIVE TO A COMPREHENSIVE PARKING STUDY FOR DOWNTOWN, BILTMORE VILLAGE AND WEST ASHEVILLE AREAS**

### **C. ORDINANCE NO. 2511 - BUDGET AMENDMENT APPROPRIATING \$50,000 FOR RIVER DISTRICT DEVELOPMENT PLAN**

Summary: The consideration of a budget amendment, in the amount of \$50,000, to fund the River District Development Plan. -3-

City staff recommends that the City of Asheville partner with RiverLink to develop the river core area of the City along the French Broad River from Lyman Street North to the Norfolk and Southern Trestle. To begin the process, a development plan/study should be undertaken. RiverLink has been able to raise approximately \$100,000 (\$11,000 of the \$100,000 is from the City). The City would need to budget an additional \$50,000 for a total City contribution of \$61,000. RiverLink would commit \$89,000, for a total budget of approximately \$150,000.

Staff recommends funding the additional \$50,000 contribution by appropriating \$50,000 in additional revenue

from the cable franchise fee settlement agreement. This additional revenue is available due to a recent settlement with InterMedia regarding a dispute over the amount of franchise fees which should have been paid under the 1967 cable franchise agreement.

Staff recommends City Council appropriate an additional \$50,000 in expenditures and revenues for the River District Development Plan to be funded from the cable franchise fee settlement.

**ORDINANCE BOOK NO. 17 - PAGE 142**

**D. RESOLUTION NO. 98-141 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO SELL SURPLUS MOTOR VEHICLES, TRANSIT COACHES, OFF-ROAD EQUIPMENT AND OTHER SURPLUS PROPERTY AT PUBLIC AUCTION ON SATURDAY, OCTOBER 17, 1998, BEGINNING AT 10:00 A.M. AT THE PUBLIC WORKS COMPLEX, 161 SOUTH CHARLOTTE STREET**

**RESOLUTION BOOK NO. 25 - PAGE 10**

**E. MOTION SETTING A PUBLIC HEARING ON OCTOBER 13, 1998, TO REZONE THREE LOTS LOCATED ON BURTON STREET AT BUFFALO STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS**

**F. MOTION SETTING A PUBLIC HEARING ON OCTOBER 13, 1998, TO REZONE 418 AND 422 MCDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL**

**G. RESOLUTION NO. 98-142 - RESOLUTION ALLOWING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1998 GREEK FESTIVAL ON OCTOBER 2-4, 1998**

Summary: The consideration of a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Asheville Greek Festival at the City-County Plaza on October 2-4, 1998.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions. The Festival this year will be held at City-County Plaza on October 2-4, 1998. Local entertainment, food, and vendor displays will be available daily.

**RESOLUTION BOOK NO. 25 - PAGE 11**

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**H. RESOLUTION NO. 98-143 - RESOLUTION MODIFYING SCHEDULED CITY COUNCIL MEETING TO ANNOUNCE A COMMUNITY MEETING ON TUESDAY, SEPTEMBER 29, 1998, FROM 3:30 P.M. TO 5:30 P.M. AT THE SKYLAND VOLUNTEER FIRE DEPARTMENT LOCATED AT 9 MILLER ROAD, ASHEVILLE, N.C.**

**RESOLUTION BOOK NO. 25 - PAGE 13**

**I. MOTION DESIGNATING COUNCILWOMAN BARBARA FIELD AS THE VOTING DELEGATE AND MAYOR SITNICK AS THE ALTERNATE VOTING DELEGATE FOR THE 1998 ANNUAL LEAGUE OF MUNICIPALITIES BUSINESS MEETING ON OCTOBER 19, 1998**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinance on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda, with Item D being amended per the City Manager's request. This motion was seconded by Councilman Sellers and carried unanimously.

### **III. PUBLIC HEARINGS:**

#### **A. PUBLIC INPUT SESSION TO IDENTIFY UNIFIED DEVELOPMENT ORDINANCE ANNUAL REVIEW ISSUES**

Mayor Sitnick opened the public hearing at 5:34 p.m.

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

Mr. Gerald Green, Senior Planner, said on July 21, 1998, the Asheville City Council identified a number of items which were brought to their attention by the public, the Planning and Zoning Commission, and staff. City Council set a date to receive public comment on those identified items and instructed City staff and the Planning & Zoning Commission to study the feasibility of each item and come back to City Council with recommendations.

City Attorney Oast stated that after staff researches the issue and prepares a draft ordinance amendment, if appropriate, then the Planning & Zoning Commission will hold a public hearing and send their recommendation onto the City Council for their public hearing and action.

Mr. Green noted that this information is provided for Council's review and consideration during the public input session and that it has not been reviewed by any other body and there is no recommendation. He then gave a brief description of each of the items identified for consideration follows:

#### **· Revise Office District**

· Reduce size of buildings permitted in the Office District (currently 4000 sq ft footprint and 8000 sq ft total building size) and create a new Office II District which would permit a building size between that permitted in the Office District and that permitted in the Office/Business District (30,000 sq ft).

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#### **• Create a Mixed Use Planned Unit Development District**

• Create a Mixed Use Planned Unit Development District which would permit developments containing a range of uses from mixed density residential to office to commercial designed in a unified manner.

• Design flexibility would be a key component of this district, with incentives provided to encourage the attainment of community goals (walkability, provision for alternative modes of transportation, etc.).

#### **· Create an Open Space/Park Zoning District**

• Develop a zoning district designed to accommodate public parks and open spaces.

• The proposed zoning district will permit the development of parks and related public facilities and serve to protect these resources.

• The Open Space/Park District will be applied to publicly owned properties; privately owned properties will not be assigned this designation.

### · **Landscape Ordinance Revisions**

- Require all parking spaces within a parking lot to be located within 30' of a tree instead of 60' as required in the current ordinance.
- Require that trees and shrubs be planted within 8' of a vehicular use area, instead of 20', to count as parking lot landscaping.
- Establish a time limit within which parking lot landscaping intended to buffer the lot from the street must meet the required 3' height and within which berms and grade changes must be covered with vegetation.
- Establish a requirement for enhanced buffers where development abuts the interstate.
- Review the requirements for maintaining existing trees during the development process

### · **Standards for Churches**

- Limit churches to one sanctuary building and one other building per parcel of property in residential districts.

Staff recommended this be incorporated into the research they are doing on churches in residential areas. Regarding the small committee which will be looking at that, Councilman Cobb has agreed to serve on that committee, as well as Rev. Jerry Young, Trinity Baptist Church, and the minister of Malvern Hills Presbyterian Church. He will be looking for one more member of the religious organizations to be on that committee, as well as three members of the neighborhood to represent residential areas of the City and one person on the Planning & Zoning Commission. He said they hope to start meeting in the first half of October and move on this quickly so the Church and the rest of the community can move on with the decision regarding Trinity Baptist Church and other churches located in residential areas. He did note again that after the Committee makes the recommendation, it must go to the Planning & Zoning Commission for their review and recommendation and then to City Council for their review and action. He said that if the Committee finishes it's work at the end of October, the issue will not be before the Planning & Zoning Commission until their December meeting.

### · **Underground Utilities**

- Require utilities in all developments to be placed underground.

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### · **Broaden Permitted Uses in Community Business II District**

- Consider the addition of mini-storage facilities and automobile dealerships to the list of permitted uses in this district.

### · **Identify Additional Neighborhood Business Zones**

- Additional areas which are appropriate for neighborhood commercial opportunities should be identified for the application of this zoning district.

### · **Advertising on buses and taxis**

- Research ways in which standards may be established for advertising on buses and taxis.
- **Revisit the River District and draft changes to protect adjacent neighborhoods**
- Revise the River District to incorporate changes that will afford adjacent residential areas more protection. Included in this review will be an examination of the uses permitted in the River District.

Mr. Green said that a representative of the property owners along the River contacted him and asked that we not consider any revisions to the River District until the RiverLink Master Plan for the River Core area was completed, so that we can incorporate any recommendations of that planning effort into the revisions to the River District.

- **Require construction of sidewalks and/or dedication of easements for all new developments**
- Investigate the feasibility of requiring the construction of sidewalks or the dedication of sidewalk easements for all new development, both residential and non-residential.
- **Develop an intermediate Community Business district.**
- Develop an intermediate Community Business District to bridge the gap between the Community Business I District (6000 sq ft footprint, 12,000 sq ft gross floor area) and the Community Business II District (45,000 sq ft gross floor area).

He said that staff has identified some priorities based on comments from the public and Council and will discuss some of these items at the October Planning & Zoning Commission meeting. The high priority items for staff are: (1) issue dealing with churches in residential districts, (2) the creation of an Office II zone; (3) the creation of a Mixed Use Planned Unit Development District; and (4) the creation of an intermediate Community Business District. He said that closely following that is the creation of an Open Space/Park Zoning District. The other items will depend on the amount of research needed and the amount of time it takes for the Planning & Zoning Commission to review the working papers, the background information, etc.

Vice-Mayor Hay said that one reason to revisit the River District was the concern of the people who live along the Swannanoa River about the River District and how it affects their neighborhoods. He didn't think the RiverLink Master Plan would extend that far up the river. Mr. Green said that staff is working on a corridor plan for the Swannanoa River between Biltmore Village and Tunnel Road, but even that will not extend that far up. He felt that this portion of the item should remain on the list for consideration. Mr. Green said that he would place that in the second tier of priorities. -7-

Councilman Cobb felt that the definition of church should be changed as it was prior to adoption of the Unified Development Ordinance ("UDO") and Council needs to let staff and the Planning & Zoning Commission know what City Council wants the definition of church to be. Mr. Green said that with that pre-UDO definition, the interpretation was made by the Planning Director that that definition did not include day care, schools, etc. They were subject to the standards established under the old ordinance for day care, schools, recreation facilities, etc. The issue that we have to approach this time is to assure that churches can operate those facilities but that we are not upsetting that balance and creating a preferential treatment for them that we do not give other developers of those facilities.

Mr. Green said that the Committee (religious community, neighborhood representatives, etc.) will look at everything from the definition of church to the standards for churches in residential districts.

Upon inquiry of Councilman Cloninger, Mr. Green said that just because staff is looking at these items

identified above, does not mean staff would draft an ordinance amendment, or the Planning & Zoning Commission would recommend approval, or City Council would adopt the ordinance. It is just a review of the request that has been presented from the community.

Upon inquiry of Councilwoman Field, Mr. Green clarified what research would be done with regard to reducing the size of buildings permitted in the Office District.

Councilman Sellers asked how long the small committee would take to study the standards relative to churches since City Council has asked that this item be looked at quickly in order to accommodate Trinity Baptist Church and the community. Mr. Green said that he would advise the committee that this is a very high priority, however, he could not predict when, or if, some type of compromise could be reached. He said that all the issues addressing churches would be studied at one time.

It was agreed to by City Council that the study relative to churches should receive the highest priority and put on the fastest track for reviews and recommendations and then be brought back to City Council. Mr. Green said that he already has on the October Planning & Zoning Commission agenda a discussion of this so it may be possible that they will be able to give direction to the small committee that will be studying this issue. The Planning & Zoning Commission may then be able to act on something as quickly as their November meeting.

In response to Councilman Tomes, Mr. Green said that the Committee will look at all uses that are developed and operated by a church.

Vice-Mayor Hay said he would like to see the committee set as a goal to have a recommendation to the Planning & Zoning Commission at their November meeting.

Mr. Dave Payne, attorney representing Trinity Baptist Church, said that since they are attempting to provide information to assist the committee, etc., in relation to making decisions and recommendations, he said that his law firm, as well as Gibbs & Craze in Florida and Ohio, are more than willing to provide any of the requisite legal memorandums in relation to possible establishment, clause violations, etc. He said that they will attempt to get that information early next week so the City will have a good legal framework from where the Church is coming from. They are also concerned about the definition of church. Also, in order to assist the Planning & Zoning Commission and pursuant to a request by the City Attorney, last week he provided City Council with a letter wherein they made three suggestions in relation to a potential amendment to the definition. He encouraged the Planning & Zoning Commission to look at these potential definitions because they establish public policy in the State of North Carolina. (1) "A private, -8-

non-profit, tax-exempt institution, devoted solely to religious purposes." That definition was in place prior to adoption of the Unified Development Ordinance; (2) This definition, which excerpts a portion a N.C. Gen. Stat. sec. 105-278.3 (d) (1), is as follows: 'Church' means a place where religious worship is conducted. Although worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body." He stated that the second sentence of this definition is established public policy in the State of North Carolina; and (3) "Church is a structure or group of structures whose primary use is the furtherance of a religious purpose. A religious purpose is one that pertains to practicing, teaching, and setting forth a religion. Although worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body." He again said that this definition is verbatim from the State Statutes. He said that there will possibly be a further request in relation to a possible amendment, and that will have to be brought up by one of the Council members at another time. He strongly encouraged the Planning & Zoning Commission to look at these definitions, as well as the memorandums which they plan to submit in an effort to expedite this process.

Rev. Wendell Runion, Director and President of International Baptist Outreach Missions, said that the

Christian community is very concerned that the City would be discussing the definition of a church. Churches have been a positive effect on our community, not a detriment. The definition of a church is the biggest problem, and they should be given the liberty to operate as they have for the past 200+ years.

Ms. Lou McCarthy, resident on Shelburne Road, felt like the City spent seven years on the Unified Development Ordinance and everyone should have to abide by them. We must have laws and abide by them.

Ms. Laurel Eide, representing her neighborhood, responded to Councilwoman Field's inquiry about office zoning. She suggested an amendment to the Unified Development Ordinance to make restaurants in the Office Business districts comply with the daylight hours of 7:00 a.m. to 7:00 p.m. With this change, the neighbors would not hear loud noises, music, loud cars and possibly intoxicated people.

Mr. Mickie McHaffee encouraged the people of the Christian community to work with City Council.

President of the Cloisters Homeowners Association urged City Council to proceed with revisiting the River District as it relates to the concerns of the people who live along the Swannanoa River.

Mr. Larry Holt, Realtor with Tessier Associates and Vice-Chairman of the Legislative Committee of the local Board of Realtors, passed out to Council an article entitled "Home From Nowhere" written by James Howard Kunstler and published in The Atlantic Monthly. He summarized the article by reading the following portion "Post-War urban and suburban development in the United States can be summed up as follows: almost everywhere laws have prohibited the building of the kinds of places in which human beings have traditionally felt good and can afford to live. We know enough now to begin designing our way out of this situation and some architects and planners are trying to do so." He also recommended the City review the City Plan prepared by John Nolan in the 1920's which point he makes is that we need to develop a sustainable City. The Board of Realtors stands ready to work with the City in working through some of the difficulties they have with the Unified Development Ordinance.

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Upon inquiry of Ms. Carol Collins, member of the Community Council for Biblical Values, City Attorney Oast said that there will be at least two more opportunities for the public to comment on any proposed amendment to the Unified Development Ordinance relative to churches. One will be a public hearing before the Planning & Zoning Commission and the other will be a public hearing before City Council.

Ms. Collins encouraged the City make an effort to communicate with the religious community and the various churches making them aware of these meetings. She specifically asked that the Community Council for Biblical Values be given information on the meetings.

Upon inquiry of Mayor Sitnick relative to the number of comments from the community relative to the definition of church when the Unified Development Ordinance was being drafted, Mr. Green said that he did not recall a lot of comments during the public hearings. He said that a lot of the standards for churches grew out of the year or more that the Merrimon Avenue Baptist Church spent in mediation with representatives of the surrounding neighborhood. They were the ones that essentially drafted the definition and the standards for churches in residential areas. Those standards were first placed in the old Zoning Ordinance through an amendment to that ordinance. Then, they were placed verbatim in the Unified Development Ordinance. Again, since the church definition was not a "hot topic", the only meeting he recalled was where there were representatives from the neighborhood around the Merrimon Avenue Baptist Church to make sure that those standards remained in the Unified Development Ordinance.

Rev. Jerry Young, Trinity Baptist Church, felt that there weren't many comments about the standards for



churches was because churches were not notified. He said the changes were made without notice to the churches. He said he worked with the Planning & Zoning Commission in 1993-1995 and with City Council on their project on Shelburne Road and they were never notified that there was any indication that the standards for churches would be changed. He questioned Planning & Zoning when the advertisements were done and when the churches were notified and they could not tell them. He said most of what was done regarding the Unified Development Ordinance was done without notice. He said the only thing that was done was a public advertisement. He said there was no notice given to property owners. He urged City Council to restore their rights as a church.

Mayor Sitnick said that she recalled the Unified Development Ordinance meetings were uniformly advertised. She said that maybe some press releases can be done that clearly state everybody is impacted in the community by the Unified Development Ordinance and we encourage everyone to attend the public hearings.

Rev. Randy Young, Pastor of Parkway Baptist Church, stated the following three primary concerns: (1) the present definition of church is a First Amendment violation because of the limitations placed upon them; (2) regarding a conditional use permit, it is not City government's place to tell the Church whether they can receive a permit or not receive a permit; and (3) limit of one sanctuary and one other building per parcel.

Councilman Sellers suggested Pastor Randy Young be considered as the third member for the religious organization to be on the small committee looking at the churches in residential areas. Mr. Green said that he would be happy to consider Rev. Young along with others who have been identified.

Ms. Barber Melton, Vice-President of the Haw Creek Community Association and Vice-President of the Coalition of Asheville Neighborhoods, said that the church seems to be concerned with their limitations on growth, but their growth is an infringement on the neighborhoods. Churches need to be treated like any other business that outgrows their parcel - they go to where a parcel is located where they are not taxing the infrastructure and not -10

infringing on safety with traffic. They will support Council on a conditional use and they will try to help come to a peaceful solution. This does not only affect Trinity Baptist, it affects every neighborhood in the City and County as well.

Mr. Gene Covan, speaking on behalf of a local church, said that churches do a lot of good for a community but the laws will eventually start shutting churches down.

Ms. Ann Anderson felt that if the church doesn't have to obey the laws, then why should anyone obey the laws. Churches should set the example. She felt that churches should take a long hard look at how it's leading it's people to question laws that are trying to be fair to all people.

Mayor Sitnick closed the public hearing at 6:50 p.m.

Councilman Cobb said that it's a sad day when neighborhoods and churches don't get along. He said that everyone has rights and that the City should not be infringing on what the churches rights are. He said that Trinity Baptist Church, as far as he knows, has been a good neighbor for a lot of years. He hoped this can be resolved where everybody's right is protected.

Mayor Sitnick said that City Council and staff will welcome any comments as this process unfolds.

## **B. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY ON TOLULA LANE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE BUSINESS**

Mayor Sitnick opened the public hearing at 6:55 p.m.

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

Councilman Cloninger asked the City Attorney if there would be a conflict of interest for him since one of his partners in the law firm of which he is a partner in is married to a doctor who is also an owner in Victoria Investment Company. City Attorney Oast said that based on the information provided, he did not think there would be a conflict of interest. It does not appear to concern his own financial interest.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance rezoning a portion of property located on Tolula Lane from RS-8 Residential Single-Family High Density to Office Business District.

Victoria Investment Company is requesting a rezoning of a portion of a property on Tolula Lane from RS-8 Residential Single-Family High Density to Office Business.

The property totals approximately 2.3 acres, approximately 2 acres of which is requested to be rezoned. They have left out of their request a five foot strip along Tolula Lane and a ten foot strip along Choctaw Street. Both of those strips would remain zoned RS-8. The property is currently vacant and owned by the City of Asheville. Victoria Investment Company has an option to purchase the property. The topography of the site varies from sloping (from Tolula Lane) to nearly level. There is a stream which runs along the eastern boundary of the property, separating it from the commercial properties along McDowell Street.

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The RS-8 zoning district is a high density single-family residential district which permits residential development at a density not to exceed eight units per acre. The Office Business zoning district is intended for medium scale office uses and a limited range of business uses.

The Planning and Development staff is recommending denial of the rezoning request for the following reasons:

- Staff feels that introducing a commercial use or uses to the property would have a negative affect on the neighborhood, particularly the properties on the west side of Tolula Lane;
- The property and the existing trees which straddle the stream currently act as an effective buffer between the residential uses on Tolula Lane and the commercial uses on McDowell Street; and
- This is publicly owned property that has potential for future use as housing and/or public open space.

At their August 5, 1998, meeting, the Planning & Zoning Commission voted 5-1 to recommend denial of the rezoning request.

The petitioners have appealed the Planning & Zoning Commission's denial to City Council.

Councilman Tomes said that several years ago there were several black businesses and homes in that area. The City was moving through the urban renewal process and displaced all of the African Americans. Now the area has been taken over by commercial businesses and offices. He felt the City should stop infringing and uprooting African Americans and displaying them and then complaining because it becomes another slum area.

When Councilman Sellers asked if the City could put restrictions on the publicly owned property before it is sold, City Attorney Oast said that it is the City's property and one way that any property owner has to control the use of the property is to put deed restrictions on it, which we can do before it is purchased by Victoria Investments. The contract that we have with them right now does not contain that provision and if Council

were to direct him to do that, the contract would have to be re-negotiated. Even so, they would still need the rezoning they are requesting and Council cannot condition their rezoning on that, but they can provide for limitations on the use of the property through private deed restrictions.

Upon inquiry of Mayor Sitnick about if the City could do a conditional use permit for the property to be used only for parking, City Attorney Oast said that many cities have conditional uses available for non-residential off-street parking in residential zones. He doesn't believe the City has that, but it is certainly possible to amend our ordinance to include that type of language. If Council is considering that, he recommended that Council do it with more in consideration than just this particular parcel because that would affect future uses.

Mr. Phil Carson, attorney representing Victoria Investment Company, said that in May Council approved an option to purchase this property. His client has consulted with several of the neighbors and recognizes that the neighbors do have very real concerns. Because the neighbors said they did not want any traffic coming off Choctaw, they purposely left a way that there could be no access from Choctaw. They also left a five foot barrier between Tolula Lane and the property so that there could never be any access from this property to Tolula Lane if you granted the rezoning request. Victoria Investment Company is a good neighbor to the St. John's Church -12-

of God where they share parking with the Church. They are now in negotiations with them to continue that good relationship. Victoria Investment Company does not want the property for anything but parking and Council has the ability to restrict the property for that reason. Council also has the ability to restrict the property in other ways that are reasonable, i.e. saving the trees. Their architect has prepared a plan to save those trees. He urged Council to rezone the property so the medical center can have a place for their staff and doctors and patients to park. They are willing to work with the City and the neighborhood.

Vice-Mayor Hay asked if when the deed comes back to the City, would his client be willing to grant back to the City an easement for greenway development through that property. Mr. Carson said that as long as it's reasonable, they would be glad to do that.

Councilman Cloninger asked if Council is looking to rezone the property, would the procedure be that we would rezone it contingent upon certain deed restrictions plus an amendment to the option agreement currently in effect between Victoria Investment Co. and the City. City Attorney Oast said that if that is the course Council wants to pursue, then he would recommend Council continue the rezoning for a month to allow staff to develop the changes to the contract. He reminded Council that they can't consider specific uses for any rezoning and if they do allow the presentation by the architect, he suggested Council limit their consideration of that as to whether they want to direct staff to re-draft the contract.

Mr. Robert Camille, architect representing the doctors at the Mountain Neurological Center and Victoria Investments, passed out a drawing of the proposed parking lot. He said that before they ever approached the City about purchase of this property, they tried to contact every house along Tolula Lane and spoke to four out of six people. They asked if they would have any objection to the proposed parking lot and if so, what their concerns were. He felt they have made a good faith effort to work with the neighbors in terms of what they would like to see. He said the parking on the drawing is strictly diagrammatic. He said surface does not have to be asphalt, the parking can be more free flowing and the trees can be interspersed into the parking lot. He said they would be willing to put those into the contract. He said they are trying not to impact the trees along the Nasty Branch Creek. They do plan to put a foot bridge across the creek which would benefit not only the doctors, but also the church next door. He said they would like to continue to work with the neighborhood and develop this plan in any way they think is acceptable.

Upon inquiry of Mayor Sitnick, Mr. Camille said that they are asking for approximately 42 additional spaces. He said that the Church is getting ready to tear down their existing church and build a new church. Their new church doesn't have enough parking to satisfy their zoning requirements and this parking would be important

to them as well.

The following persons spoke against the rezoning for several reasons, some being, but are not limited to: the parking lot will ultimately destroy the community by taking away family oriented neighborhoods; a five foot buffer will not be enough space between the parking lot and the neighborhood (1) to control noise from the heating and cooling units, (2) to abate the heat from the asphalt parking lot, and (3) to buffer the excessive noise from the traffic on McDowell Street because the trees will be removed; the views will not be green for nature but concrete office buildings; all property on Asheland Avenue has been rezoned to allow offices and businesses and they do not want commercial and business to encroach into the neighborhood; the Victoria Investment Company has not yet replaced the trees taken down to build the present parking lot; there is a clear showing by the neighborhood that they do not want a parking lot on the property, even with restrictions; the neighborhood is well-kept; a parking lot will represent a foot in the door for more encroachment into the neighborhood; the quality of the neighborhood will not change for the better; Victoria Investments removed about 150 feet of mature trees that acted as an excellent buffer from McDowell Street; a parking lot will mean run-off of oil into the -13-

creek; there doesn't seem to be a need for additional parking now because there are a lot of vacant spaces in the present parking lots; the trees won't protect the neighborhood from the pollution; housing should be placed on the property; the neighborhood was not aware that a protest petition could be filed and staff should make an effort to inform people of their options; all the housing on Asheland Avenue is gone and the neighborhood does not want that to happen on Tolula Lane; and the African American neighborhood is well-established and the heritage should continue:

Ms. Shirley Young, East Riverside Urban Renewal Committee

Ms. Blanche Glenn, resident on Blanton Street

Mr. Gary Schwartz, property owner on Tolula Lane

Ms. Cynthia Steele, 317 Old Asheland Avenue

Mr. Brian Peterson, President of the Coalition of Asheville Neighborhoods

Ms. Clara Jeter, resident on Tolula Lane

Ms. Bishop, area property owner

Mr. John Silver, a partner in Victoria Investment Corporation, said that he felt they have done a good job with addressing some of the concerns the residents expressed, i.e., there is no access to Choctaw and they have kept a fairly significant buffer. He said they have put forth a significant effort financially and time-wise to preserve the original Sun Oil building and they will continue to keep this parking area as acceptable to the neighbors as they can.

At 7:32 p.m., Mayor Sitnick announced a short break.

Mayor Sitnick closed the public hearing at 8:03 p.m.

Councilwoman Field said that when looking for a connection between downtown and the river, she felt this property would be a good place for a greenway to be. She felt there should be creative ways to make this work. She sees this as an opportunity to use some paving tiles that grass can grow through, or the parking lot might be a playground for the children when the lot is vacant. She felt this was a zoning issue and not a racial issue. She asked that this matter be postponed until she has had an opportunity to visit the property.

Vice-Mayor Hay said that if Council decides to postpone the matter, he would like to see City staff put together an amendment to the option agreement that takes into account the concerns that Council wants addressed, so when it comes back for a vote, Council will have that option in front of them at the same time.

Upon inquiry of Councilman Cobb about the property being possibly used for a mini-park, City Attorney Oast said that when Council approved the option to sell the property that that question was put to the Parks & Recreation Department staff and they identified no need for it. Vice-Mayor Hay also noted that when Council checked about possible housing on the property, they were told that it had a very slim possibility of being used for housing.

Mayor Sitnick said that she had no problem with Council's request for a continuance in order to view the property, but just because the property exists doesn't mean it has to be built on and doesn't mean it has to be developed. As the property currently exists, it does seem like a good buffer between what is becoming a major thoroughfare and this neighborhood. She also pointed out that when the new McDowell Street bridge is completed, there is going to be an effort on the part of the N.C. Dept. of Transportation to re-route as much traffic off of Biltmore Avenue at the south end to McDowell Street and to make it a major connector to the downtown. That will significantly increase traffic on McDowell Street. When she visited the property she noticed that not only did the six residences on Tolula Lane have a chance of being heavily impacted by -14-

whatever happens on this piece of property, but the houses that share backyards with the houses on Tolula Lane will be severely impacted as well. She said that she would vote to deny the rezoning request for all the reasons she outlined, in addition to the Planning staff and the Planning & Zoning Commission's recommendation of denial.

Councilman Tomes said that he pastors in that area and is not trying to make this a racial issue, however, he has historical data and fact to back up his concerns. He felt that the property could be developed into a neighborhood park for neighborhood children. He will not support rezoning the property.

Councilman Field moved to continue this matter until October 13, 1998, without further advertisement, and that an amendment to the option agreement that takes into account the concerns that Council wants addressed be presented to Council at the same time. This motion was seconded by Councilman Cloninger.

City Attorney Oast said that he will have the amended option before Council on October 13, however, because this is an upset bid process, there may be an additional advertising time after that.

Councilman Cloninger hoped that the potential amended option would be a result of meetings which take place between the neighborhood and the architect. He did stress that City Council is not prepared to approve an amended option with deed restrictions, but just that Council just wants to look at it as a potential option.

City Attorney Oast said that any vote that Council takes now or in the future would be to rezone and not to rezone for a particular use, however, you can deed restrict it. He said that he would draft the deed restriction to run with the land.

The motion made by Councilwoman Field and seconded by Councilman Cloninger carried on a 6-1 vote, with Mayor Sitnick voting "no".

### **C. PUBLIC HEARING TO REZONE 196 DEAVER STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II**

Mayor Sitnick opened the public hearing at 8:15 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 the consideration of a request to rezone 196 Deaver Street from RM-8 Residential Multi-Family Medium Density District to Community Business II.

A petition has been received to rezone 196 Deaver Street (PIN No. 9638.15-74-0519) from RM-8 Residential Multi-Family Medium Density District to Community Business II.

The Technical Review Committee (TRC) reviewed this request and commented that direct access to this lot was from a 10 foot wide residential street with no right-of-way for widening. The street is not adequate to handle the traffic flow that may be generated from the permitted uses in the Community Business II District. The intersection of Deaver Street and Howard Street has sight distance limitations. Water service is inadequate and sanitary sewer service is not available for Deaver Street. The lot size is 0.25 acre.

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The lot is currently being used for commercial parking from the business that fronts

on Haywood Road. A mixture of commercial and residential structures exists in the surrounding area.

The Planning staff reviewed the rezoning request and recommended denial based on the comments from the TRC. At their August 5, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend denial of the rezoning of 196 Deaver Street from RM-8 Residential Multi-Family Medium Density District to Community Business II.

The petitioners appealed the Planning & Zoning Commission to City Council.

Mayor Sitnick closed the public hearing at 8:18 p.m.

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

Councilman Cobb moved to deny rezoning 196 Deaver Street from RM-8 Residential Multi-Family Medium Density District to Community Business II. This motion was seconded by Councilman Tomes and carried unanimously.

#### **D. PUBLIC HEARING TO REZONE FOUR LOTS ON LOUISIANA AVENUE FROM COMMUNITY BUSINESS I TO HIGHWAY BUSINESS**

#### **ORDINANCE NO. 2512 - ORDINANCE TO REZONE FOUR LOTS ON LOUISIANA AVENUE FROM COMMUNITY BUSINESS I TO HIGHWAY BUSINESS**

Mayor Sitnick opened the public hearing at 8:19 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 the consideration of an ordinance to rezone four lots on Louisiana Avenue from Community Business I to Highway Business.

The owner/applicant Emmett Ramsey has requested four lots (PIN Nos. 9638.05-18-9647, 9794, 9933 and 9638.05-28-0885) on Louisiana Avenue be rezoned from Community Business I to Highway Business.

The Technical Review Committee reviewed the request for rezoning to Commercial Business II (which was the initial rezoning request) and commented that direct access to these lots would be from Louisiana Avenue and the street is currently inadequate to handle the traffic flow that exists. It should be noted that uses in the

Highway Business District would be more intense and comments from Technical Review Committee on the previous request would be relevant to this request. To increase the volume of traffic that would be generated from the permitted uses in either Community Business II or the Highway Business District would require the developer to make improvements to the infrastructure (street). Since Louisiana Avenue is a state street, the N.C. Dept. of Transportation was contacted and the Transportation Improvement Plan indicates that Louisiana Avenue is just under a feasibility study and there is no target date for doing any widening. The property was zoned Commercial Highway prior to the adoption of the Unified Development Ordinance.

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The petitioner indicates that if his lots were rezoned to Highway Business, it would permit him to construct a warehouse for storage of equipment for repair and servicing of manufactured homes and decrease his truck deliveries from 1 - 2 trucks per day to 1 - 2 trucks per month (or about 220 truck deliveries per year).

The Planning staff reviewed the rezoning request and recommended denial based on the comments from the Technical Review Committee. At the August 5, 1998, Planning & Zoning Commission meeting, the Commissioners voted to table any action until their September meeting and have staff review the Highway Business District with the petitioner. Staff met with the petitioners on site on September 1, 1998, and reviewed the uses allowed for the various zoning classifications. At the September 2, 1998, Planning & Zoning Commission meeting, the Commissioners voted 4 to 2 to recommend approval of the rezoning to Highway Business.

Mr. Emmett Ramsey, petitioner, spoke in support of the rezoning so he can expand his business and build a warehouse. He stressed that when the warehouse is built, the number of trucks that travel on Louisiana Avenue coming and going from his business would be decreased.

Councilman Tomes asked if the warehouse were built, would it have to conform to the neighborhood. Mr. Ownbey responded that Mr. Ramsey would have to submit a site plan for a Level I review by the Planning & Development Department, which would include a review for buffering, parking, etc. Due to the topography, you would not be able to see the warehouse from the street.

Mr. Brian Peterson, resident in West Asheville, urged City Council to contact the N.C. Dept. of Transportation and urge them to start making improvements to Louisiana Avenue as well as Hazel Mill Road and Emma, because of more and more development in the area.

Mayor Sitnick closed the public hearing at 8:37 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. 2512. This motion was seconded by Councilman Tomes.

Mayor Sitnick said that whether or not City Council rezones this property, the City Council should make a request to the N.C. Dept. of Transportation that they look at improvements to Louisiana Avenue as soon as possible.

City Attorney Oast reminded Council that if the property is rezoned, it is being rezoned to allow all uses available in the Highway Business District.

The motion made by Councilman Sellers and seconded by Councilman Tomes carried unanimously.

**ORDINANCE BOOK NO. 17 - PAGE 144**

**E. PUBLIC HEARING TO REZONE 1720 AND 1724 OLD HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT**

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**ORDINANCE NO. 2513 - ORDINANCE TO REZONE 1720 AND 1724 OLD HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT**

Mayor Sitnick opened the public hearing at 8:37 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 the consideration of an ordinance to rezone 1720 and 1724 Old Haywood Road from RM-8 Residential Multi-Family Medium Density District to Office District.

The owners/applicants Phyllis Patton/Betty Boyte, William Godfrey and William Taylor have requested 1720 and 1724 Old Haywood Road (PIN Nos. 9628.17-22-0183 and 2095) be rezoned from RM-8 Residential Multi-Family Medium Density District to Office District.

During the Planning staff review, discussions indicated that this area has begun

its transition from the rural residential area to non-residential uses. With the development of the Lowe's superstore directly adjacent to these lots, the Office District would provide a transitional zoning pattern between the new commercial development and the established residential area.

The Planning staff reviewed the rezoning request and recommended approval. At the September 2, 1998, Planning & Zoning Commission meeting, the Commissioners voted 5-1 to recommend approval of the rezoning request.

Mayor Sitnick closed the public hearing at 8:42 p.m.

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

Councilman Tomes moved for the adoption of Ordinance No. 2513. This motion was seconded by Councilman Sellers and carried unanimously.

**ORDINANCE BOOK NO. 17 - PAGE 146**

**F. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE SUBDIVISION STANDARDS FOR A NON-RESIDENTIAL SUBDIVISION IN ORDER TO PERMIT MORE THAN FIVE LOTS TO BE ACCESSED BY A PRIVATE DRIVE FOR CENTREPARK BUSINESS PARK LOCATED ON PINEY MOUNTAIN ROAD**

Councilwoman Field asked if she had a conflict of interest because one of the owners, Mr. Johnson, occupies the same building as her employer. City Attorney Oast said that he felt there was no conflict of interest.

Councilman Cloninger asked to be excused from voting due to a conflict of interest because the firm of which he is a partner in is doing the real estate work for Centrepark Business Park. Therefore, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick opened the public hearing at 8:44 p.m. -18-



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 the consideration of a modification of the subdivision standards for a non-residential subdivision in order to permit more than five lots to be accessed by a private drive for Centrepark Business Park located on Piney Mountain Road.

The applicant/owner Danie Johnson/R.L. Coleman have requested a modification of the subdivision standards in order to provide additional lots for the development of the business park. The project was reviewed by the Technical Review Committee at their meeting on August 17, 1998. The petitioner outlined the 1994 group development known as Park Terrace East which indicated twelve separate buildings within the business park. After review, the Technical Review Committee recommended approval of the subdivision modification for a maximum of twelve lots.

The Planning staff reviewed the request and after review by the Technical Review Committee, recommends that the modification to the subdivision requirements be approved for a maximum of 12 lots. At the September 2, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend the subdivision modification for a maximum of 12 lots.

Mr. Danie Johnson, architect and representative of the owners of the property, spoke in support of the modification request.

Mayor Sitnick complimented the developer, builder and architect for working with the neighborhood before any problems existed.

Mayor Sitnick closed the public hearing at 8:50 p.m.

Councilman Cobb moved to approve a modification of the subdivision standards to permit for a maximum of 12 lots to be accessed by a private drive for Centrepark Business Park. This motion was seconded by Councilman Tomes and carried unanimously.

#### **IV. UNFINISHED BUSINESS:**

#### **V. NEW BUSINESS:**

##### **A. ORDINANCE NO. 2514 - ORDINANCE AMENDING THE MEMBERSHIP OF THE ASHEVILLE FILM BOARD**

##### **RESOLUTION NO. 98-144 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM BOARD**

Mayor Sitnick said that on April 28, 1998, City Council adopted Ordinance No. 2465 establishing an Asheville Film Board. Councilman Cloninger was appointed as the member of City Council to the Board to serve a three year term.

On August 25, 1998, City Council interviewed Sarah Blankenship, Eric Scheffer, David Quinn, Lee Huebner, Peter Loewer, Curtis Gaston, Barbara Pasternack, Lee Nesbitt, Pam Turner, William Olsen and Gayle Wurthner.

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On September 8, 1998, City Council interviewed Kathleen Bobak, John Cram, Rob Dame, Ashely Siegel, Jerry Birdwell, Bill Norwood and Katherine Talbot.

Mayor Sitnick said that the idea to establish an Asheville Film Board was (1) to have local board members to

work hand-in-hand and in cooperation with the Western North Carolina Film Commission and the N. C. State Film Commission. It has also been formed in order for the City of Asheville to create a board of people in our community to act as liaison to film crews that come to Asheville, either to film movies, television shows or commercials, and to act as ambassadors on behalf of the City to that industry. We hope (1) with time we will be able to do more marketing of the City of Asheville for the film industry; (2) to be able to do more of a aggressive job of recruiting films to the City of Asheville, again, working with the regional and state film commissions; (3) at some point to get a private developer to build and establish a film studio here, a post-production facility, so that as film crews come to Asheville to do their outdoor and indoor shots they can also consider wrapping their films here instead of taking their crews back to California or New York and wrapping them there; (4) at some point, to be to create a resource guide that specifically establishes the entities within the City that are here to work hand-in-hand with the film industry whether it's catering facilities, limousine facilities, seamstresses, costume makers, make-up artists, etc. There is that opportunity, again, to work with the regional commission to develop that resource guide; (5), in the future, to maybe lure a television series here, like Northern Exposure; and (6) to be able to also work with the local schools, the high schools and colleges in the region, to establish some training and some workshops for screen writers and scrip writers and actors and technicians. The movie industry has become very high tech, so we hope that becomes a part of our efforts. There are other things as time goes on, but those are the basic reasons for the City Council to establish an Asheville Film Board. She thanked the Council for their support of it.

She said that there were over 53 applicants for this Board and City Council interviewed 18 people for the Film Board. Council was quite amazed at the talent and the pool of people that exist in Asheville, who are currently working full-time in the film industry and who have relocated to Asheville mainly because they fell in love with Asheville. In an effort to help form this Board, she and Councilman Cloninger met and reviewed the applicants and the interview process. They have created a slate that they would like to recommend City Council. Their slate consists of: Kathleen Bobak, Ashely Siegel, Jerry Birdwell, Bill Norwood, Eric Scheffer, David Quinn, Peter Loewer, Curtis Gaston, Barbara Pasternack, Lee Nesbitt, Pam Turner, and Gayle Wurthner.

City Attorney Oast said that if there was an even number of the Board, City Council should designate that a quorum would be, in this case, seven or eight - either 50% of the Board or 50%-plus one.

After a short discussion, it was the consensus to add Katherine Talbot to the slate. It was also the consensus to add Mr. Steven Heller (who was unable to come in for an interview) to the slate as well.

Councilman Cloninger moved to expand the membership of the Asheville Film Board from seven members up to fifteen members. This motion was seconded by Councilman Sellers and carried unanimously.

It was the consensus of Council to leave the quorum at a simple majority, which would be eight on a fifteen member board. City Attorney Oast said that when the Board adopts their own rules or by-laws, they should state that on votes a simple majority would prevail.

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City Attorney Oast also said that the terms of office in the ordinance are staggered, and City Council will need to determine who will be given three year terms and who will be given two year terms.

Councilman Cloninger moved to appoint seven members shall be appointed to serve a two year term and eight members shall be appointed to serve a three year term, to be decided by the Board at its first meeting and to advise the City Clerk when the terms are assigned. This motion was seconded by Councilman Tomes and carried unanimously.

Councilman Tomes moved to approve the slate recommended by Mayor Sitnick and Councilman Cloninger.

This motion was seconded by Councilman Sellers and carried unanimously.

**RESOLUTION BOOK NO. 24 - PAGE 14**

**ORDINANCE BOOK NO. 17 - PAGE 148**

**VI. OTHER BUSINESS:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 8, 1998, AND THE WORKSESSION HELD ON SEPTEMBER 15, 1998**

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on September 8, 1998, and the worksession held on September 15, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

**B. CLAIMS**

The following claims were received by the City of Asheville during the week of September 4-10, 1998: Delbert Tochtermann (Traffic Engineering), Robert P. Anderson (Streets), Bernice Hammonds (Water), William Campbell (Water), Melba Wilson (Sanitation) and Linda Mitchell (Sanitation).

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

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

**A. DEFINITION OF CHURCH IN THE UNIFIED DEVELOPMENT ORDINANCE**

Rev. Jerry Young, Trinity Baptist Church, asked if one of the members of City Council would sponsor one of the three definitions of church, referred to in the letter Mr. Payne sent to the City Attorney, as an amendment to the Unified Development Ordinance ("UDO") thus expediting the process of resolving the issue concerning churches.

City Attorney Oast said any amendment to the UDO has to be reviewed by the Planning & Zoning Commission first. City Council cannot act on it independently. He also said that a member of Council may direct staff to introduce amendments to the UDO.

Councilman Cloninger felt the small committee, which will be looking at the entire subject of churches in residential areas, should look at all three definitions in addition to any other definitions.

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Councilman Sellers asked if there was some way the definition of church issue can be addressed separately from the churches in residential areas issue.

In response to Councilman Sellers' request, Rev. Young said that they understand what they are presently doing, they have full authority to do and they intend to continue their grading and develop the site. However, until the issue is settled, they are not sure if they want to spend \$3 Million for another building if they can't other buildings on the site. If the definition of church is left to the small committee to decide, debate, and come back, and have another hearing on, then it just strings them out further and increases the anxiety in their congregation. He said that Rev. Sexton pleaded with Council to not put Trinity Baptist Church in the place that they would have to seek legal action to solve the problem. He urged City Council to adopt one of the three definitions presented earlier by their attorney.

Councilman Cloninger didn't understand how a definition change would change the situation of Trinity Baptist Church since their rezoning request was denied. Rev. Young replied that if Council changes the definition of what a church is, it lifts the restrictions against day care, educational facilities and recreational facilities.

City Attorney Oast said that it is not required that City Council initiate text amendments, the Church can do that itself. They have to go to the Planning Department and fill out the appropriate form. However, he said that he cannot guarantee that it will come before City Council any quicker than it would otherwise.

Councilman Sellers said that if the definition were changed, he understands that Trinity would relax the lawsuit process. He said that since they are talking about spending \$3 Million today, but their overall 5-10-20 year plan is a \$16 Million plan. They don't want to put \$3 Million in not knowing if they can go with the \$16 Million plan. He thinks that if they can feel comfortable with the definition, they would feel better to go on with their project.

City Attorney Oast said he received the proposed definitions on Thursday or Friday and they have not had an opportunity to go through them to see whether they would accomplish what the Church wants to or not. The issue all along has been what non-worship type of activities the ordinance permits on church property if its in a residential neighborhood. He thinks what the church wants is a broader definition than currently exists in the Code.

Councilwoman Field said that day care is allowed in residential districts limited in size, recreational areas are allowed in residential areas and schools are allowed in residential communities by either conditional uses or uses by right subject to special requirements. She then asked the City Attorney if he had any opinion on whether any of the definitions submitted by Mr. Payne are part of the statutes. City Attorney Oast said that doesn't doubt that any of them are part of the statute, however, they are part of the tax statutes which have different consequences, than zoning ordinances.

Upon inquiry of Councilman Tomes about expediting the process with the definitions presented by Mr. Payne and the forthcoming legal memorandums, City Attorney Oast said that he would want to do his own research on this issue, however, any information he receives will be helpful.

When Councilman Tomes asked what some options would be to expedite the process, City Attorney Oast said that it is possible for City Council or Trinity Baptist Church to initiate a zoning ordinance text amendment that would put it on a separate tract from the UDO amendments Council directed Senior Planner Gerald Green to begin working on earlier, and it may be a faster tract.

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Rev. Young requested that City Council initiate the text amendment because he felt the Planning & Zoning Commission would respond quicker to City Council than to the Church.

Councilman Cloninger said that he could not knowledgeably recommend one definition over another at this meeting.

Councilman Cobb wanted City Council to define church and send it to the Planning & Zoning Commission.

Councilwoman Field agreed that one of the serious problems is the definition of church and Councilman Tomes indicated that the activities and the ministries of church are changing. She wanted to move forward as quick as possible to get this resolved. Therefore, she moved to direct the staff to come back to City Council at a worksession with a recommendation on the best way to move this forward as quickly as possible. This motion was seconded by Councilman Tomes.

Mayor Sitnick said that since the next meeting of Council is a community meeting and since City Council

wants to do this as quickly as possible, she suggested the City Attorney to create some language and that he fax it to the members of Council. City Council can then get back to the City Attorney with their thoughts and opinions on that language. Then, the City Attorney can have the language prepared and at least seen by Council prior to the meeting in two weeks, which may occur around the same time the small committee will be meeting.

Rev. Young said that they are spending thousands of dollars to have this matter researched and the definitions presented by Mr. Payne are the definitions for churches that have existed. He questioned what is unique to Asheville that they cannot agree on one of the three definitions.

Councilman Cloninger reminded Council that if any amendments are made to the UDO that the amendment will pertain to all churches, not just one. He felt that it would be quicker

if Council tells the small committee to look at all three definitions along with anything that staff may recommend.

Councilwoman Field said that after talking with Planning staff, they feel that their definition of church is what they want it to be. They have checked with other definitions in other development ordinances in the state and they feel like their definition is fine. Their concern is that if you allow churches to be defined as having activities such as day care or recreation that are done by the for-profit sector, that the non-profit sector will have an advantage over the for-profit sector. She personally believed that churches do more than that, but if it is sent to the staff, it would come back to City Council basically the way that it is now. She suggested that the City Attorney look at it and not staff and not a committee.

Councilman Tomes said that if you look at church as a business entity in the context that we understand secular businesses, we will never come to a definition of a church. You cannot look at the church in the context as we look at secular business. He stressed that we are dealing with spiritual concerns here that may include business skills and management, but it is not a business in the sense as we understand business in the American culture.

Mayor Sitnick said that she understands the biggest concern is expediency as it addresses the language that the Church would like to see addressed. This will take a specific amount of time and it's not going to take any more time than necessary because this Council and staff has been working very hard to create some kind of way for Trinity and other churches to do their business while taking care of our neighborhoods as well. Our purpose is not to delay this or to keep Trinity waiting or paying attorney fees. We would hope that the Church would allow City -23-

Council the little bit of time they need to come up with the proper group to work this out. Council can't do this tonight and if a member of Council wants to sponsor the request that Rev. Young is making, she will ask Council to do that now. Otherwise, let's ask the City Attorney to come back to Council with some kind of language and let the small committee come up with some kind of language. Then Council can review them both and come up with some language that is good for everybody. She did not think it could happen any sooner than two or three weeks anyway - no matter how it's done.

Rev. Young said that he was not concerned with two or three weeks, but he was concerned with three months to a year later, noting that this is what the Church asked for back in January.

Councilwoman Field said right now Trinity Baptist believes they are operating illegally because what they do is not as defined in the UDO. However, they are grandfathered in.

When Rev. Young suggested that the City tell their code enforcement offices that the Church is grandfathered, City Manager Westbrook responded that the letter received from the City to Trinity Baptist

Church was responding to complaints from neighbors. One of the zoning enforcement officers called the Church and asked if they were doing some of the activities the neighbors alleged. The Church responded that they were. The letter from the City to the Church asked that they clarify exactly what they were doing because that was not allowed in the current zoning classification.

Councilwoman Field clarified her motion to direct the City Attorney to come back to City Council with a recommendation on the best way to move this forward as quickly as possible, whether he recommends that we do all the church issues at one time, that City Council should define church and send it to the Planning and Zoning Commission, or that the small committee should deal with these issues.

Vice-Mayor Hay and Councilman Cloninger said that they would vote against the motion because they believe that the small committee process will be just as expeditious and will give Council better results than being on two different tracts at the same time.

Councilman Cobb said that in the 2010 Plan, the church is defined as a private non-profit, tax-exempt institution devoted solely to religious purposes.

The motion made by Councilwoman Field and seconded by Councilman Tomes carried on a 5-2 vote with Vice-Mayor Hay and Councilman Cloninger voting "no".

## **B. REQUEST FOR NON-ENFORCEMENT OF LAWS CRIMINALIZING CANNABIS USERS**

Mr. Dan Waterman, speaking on behalf of a group of concern citizens, addressed the issue of violation of their constitutional rights at the August 25, 1998, City Council meeting. He offered Council the option of placing their issue on the next open City Council's agenda.

When Mayor Sitnick asked what they wanted placed on the agenda, he responded that they wanted their resolution they presented to City Council on August 11. Mayor Sitnick said that she is not willing to place that matter on the agenda and when she asked other members of Council if they were willing to place it on an agenda, she heard no response.

Mr. Waterman said that their constitutional rights were violated on August 25, 1998, when they gathered at the Vance Monument in preparation to attend the City Council meeting. There were a large group of Asheville police officers there, one of which was filming them. They -24-

marched from the Monument to the City Hall Building. Because of the large group of people at the meeting on a separate issue before Council, the Fire Marshal stated that some people would have to leave the floor. Realizing that they were going to be recognized at the end of the meeting, they volunteered to move downstairs. While in front on the City-County Plaza, they were filmed by an undercover officer who later followed the group into the Council Chamber and filmed them there. He said that he went up to the officer and obstructed the view of his camera and the officer threatened him with arrest for obstructing and impeding an investigation. When he inquired who was being investigated, the officer remained mute. Since that time, they have inquired at the Police Department if there was an investigation going on and the Police Department claims there was no investigation. The Police Department said that officer was there to ensure their safety. He noted that the other group of people at the Council meeting that night were not being filmed.

Mr. Waterman said that this is the third time they have appeared before Council and asked for a response from Council. Even if Council does not agree with them, they certainly deserve to hear Council's voices and they have not heard them. They are tired of trying to elicit those voices from them. Because City Council has failed to respond to them, they have had to enlist legal help and hire legal counsel. City Council has the resolution, the information they have previously furnished to Council on cannabis, as well as their concerns. They have not received one indication that City Council is concerned with their concerns - not that Council is

in agreement with their concerns, but just that Council is concerned with their concerns. They are giving City Council an opportunity, again, to respond to their resolution and concerns. If City Council cannot pass their resolution, then they asked that City Council come up with an alternative way in which the Council can work with them and expand the dialog that they have opened up as far as their concerns. If City Council fails to respond to them, their next step will be to advise their legal counsel to draft a list of demands which will be sent to City Council. If Council fails to respond to their demands promptly and properly, it will cause them to take the other legal options that they have at their disposal. He said that any average citizen, especially with the topic as controversial as theirs, who shows up to give voice to their concerns and finds that they are put under the unfair and unbalanced scrutiny of the Asheville Police Department and filmed, might be deterred from exercising their right to free speech, their right of assembly, and their right to redress grievances. He did note that he was a former guardian ad litem but he was not willing to divulge where because apparently someone has been investigating him.

Mayor Sitnick said that a number of weeks ago, Mr. Waterman called and said they wanted to come in and speak with her because they wanted to introduce this resolution to Council. She explained why it took three weeks to get an appointment with her, noting that she is booked well into 1999. She also requested the City Manager block out an hour of his time as well to meet with them as well. She said Mr. Waterman, along with three or four other people, met in her office and talked about this resolution for an hour. Their voice was heard. Mr. Waterman's second statement was that City Council failed to respond - that we didn't have to agree with the group or adopt the resolution, but at least you wanted Council to respond. She said that the City Manager and her were very clear with them that day and they did respond to them. They were told that they did not chose to put this item on the City Council agenda for several reasons and she was very clear about those reasons. This City Council and this City did not have the authority to do what they were asking, nor would they ask the City's law enforcement officers to discriminate in the enforcement of the law. In Mr. Waterman's statement on why the City couldn't come up with suggestions, she noted that not only did they come up with several suggestions at the meeting in her office on that day, but at the first meeting when the group came to City Council, they came up with some suggestions. She has talked to a number of people who were there that night and who spoke, and have given them suggestions as well. As a matter of fact, several of them have come to her and said they didn't know why people were continuing to pursue this in front of City Council. She said that she believes so strongly in -25-

democracy that even though she didn't want to put it on City Council's agenda, she suggested that if Mr. Waterman could approach each Council member and if he could get a majority of them to agree with him, she would place it on the agenda.

Upon inquiry of Mr. Waterman on if City Council used this procedure in the past, Mayor Sitnick could not recall a specific instance, but did remember there were a couple of times when City Council didn't want to hear something unless there was a majority of Council who were interested. In fact, there have been Mayor's over the years who wouldn't put anything on the agenda unless there was a majority of Council interested in dealing with the issue.

Mr. Mickie McHaffee said that as a result of this issue being brought up, the downtown street people are taking the brunt from the Asheville Police Department.

#### **VIII. ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 9:58 p.m.

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CITY CLERK MAYOR

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