

Tuesday - November 24, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; 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: Councilman M. Charles Cloninger

## **INVOCATION**

Councilman Sellers gave the invocation.

## **I. PROCLAMATIONS:**

### **A. PRESENTATION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING AWARD**

City Manager Westbrook presented Finance Director Bill Schaefer with the Certificate of Achievement for Excellence in Financial Reporting Award. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. The City of Asheville is proud to have received this award for the 18th year.

He also presented R. Patricia Leckey, City Accountant, with the Award of Financial Reporting Achievement. Ms. Leckey was designated the individual primarily responsible for preparing the award-winning comprehensive annual financial report.

Mr. Joe Elkins, Ms. Valerie Brown and Ms. Barbara Smith were also recognized for their work in achieving the awards.

### **B. PROCLAMATION PROCLAIMING DECEMBER 1, 1998, AS "WORLD AIDS DAY" IN THE CITY OF ASHEVILLE**

Councilman Tomes read the proclamation proclaiming December 1, 1998, as "World Aids Day" in the City of Asheville and presented it to Ms Pam Kelly, Center Director for the Harvest House.

### **C. PROCLAMATION PROCLAIMING DECEMBER 10, 1998, AS "HUMAN RIGHTS DAY" IN THE CITY OF ASHEVILLE**

Councilwoman Field read the proclamation proclaiming December 10, 1998, as "Human Rights Day" in the City of Asheville and presented it to Mr. George Yates and Ms. Betsy Ewing, who briefed City Council on some activities taking place during that day.

## **II. CONSENT:**

### **A. RESOLUTION NO. 98-165 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER FOR THE LEASE BY PACK PLACE EDUCATION ARTS & SCIENCE CENTER INC. OF THE PROPERTY OWNED BY THE CITY OF ASHEVILLE AND KNOWN AS PACK PLACE EDUCATION ARTS & SCIENCE CENTER**

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Summary: The consideration of a resolution directing the City Clerk to advertise an offer from Pack Place Education Arts and Science Center, Inc. to lease the property owned by the City of Asheville and known as the Pack Place Education Arts and Science Center.

The City of Asheville owns the property on which the Pack Place Education Arts & Science Center is located. That property was leased to Pack Place Education Arts & Science Center, Inc. on December 13, 1988, for a ten (10) year term for the construction, operation and maintenance of the education, arts & science center.

The current lease with Pack Place Education Arts & Science Center, Inc. expires on December 12, 1998. Pack Place Education Arts & Science Center, Inc. has offered to lease the property again from the City for the continuing operation and maintenance of the education, arts and science center. Pack Place Education Arts & Science Center, Inc. desires to lease the property for more than ten (10) years.

N. C. Gen. Stat. sec. 160A-272 authorizes North Carolina cities to lease property for longer than ten (10) years if the lease is treated as a sale of property and is executed by following any of the procedures authorized for sale of real property in Article 12 of Chapter 160A of the North Carolina General Statutes. Of those procedures, N. C. Gen. Stat. sec. 160A-269 appears to be the most appropriate method for execution of a lease for more than ten (10) years for this property and requires that when an offer is made and the City Council proposes to accept it, a deposit shall be made with the City Clerk and the City Clerk shall publish a notice of the offer.

A deposit has been received and the general terms of the proposed lease are described in the notice.

City staff recommends the resolution directing the City Clerk to advertise the offer of the lease be adopted.

## **RESOLUTION BOOK NO. 25 - PAGE 42**

### **B. RESOLUTION NO. 98-166 - RESOLUTION AMENDING THE MINORITY BUSINESS PLAN TO INCLUDE THE ASSISTANCE OF MINORITY FIRMS IN THE DEFINITION OF MENTOR-PROTÉGÉ PROGRAM**

Summary: The consideration of a resolution to amend the Minority Business Plan in order to permit minority firms participation as mentors in the Mentor-Protégé Program.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan requires that "The Minority Business Commission shall establish a Mentor-Protégé Program." The Plan defines the Mentor-Protégé as "A program of the Minority Business Commission whereby *non-minority* firms provide assistance and mentorship to minority firms." (emphasis added) The Commission is currently working to implement the Mentor-Protégé program; however, they find the present program definition unnecessarily restrictive and exclusionary. There are many minority firms which have the experience, wisdom and commitment to serve as effective mentors; however, the current definition of the program unintentionally excludes their participation in the mentor role.

At their meeting on October 15, 1998, the Minority Business Commission recommended that the Plan's definition of the Mentor-Protégé program be amended to permit the inclusion of minority firms as mentors. Specifically revise the definition on page two of the plan as follows: -3-

**"Mentor-Protégé Program** – A program of the Minority Business Commission whereby minority and non-minority firms provide assistance and mentorship to minority firms."

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended

revision to the Plan was adopted by the Buncombe County Commission earlier this month.

City staff recommends City Council adopt the resolution.

#### **RESOLUTION BOOK NO. 25 - PAGE 44**

#### **C. RESOLUTION NO. 98-167 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING 110 MORRIS STREET**

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 110 Morris Street.

A bid from Carol Lynne Jones, in the amount of \$79,600.00, has been received for the purchase of 110 Morris Street. The bid is not less than the established minimum price of \$79,500.00.

110 Morris is a residential lot and house near the corner of West Asheville Park comprising 13,503 square feet of land. The property was acquired along with the park property and is under the Parks & Recreation Department's control. The house contains 1,336 square feet of floor space, three (3) bedrooms, one and one half (1 1/2) baths and a full basement with drive-in garage. The bidder, Carol Lynne Jones, intends to occupy the residence as her home. She is a graduate of the Affordable Housing Coalition's Homebuyer Education Class.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff and the Parks & Recreation staff recommends adoption of the resolution.

#### **RESOLUTION BOOK NO. 25 - PAGE 45**

#### **D. RESOLUTION NO. 98-168 - RESOLUTION AUTHORIZING THE CITY MANAGER AND/OR MAYOR TO APPLY AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO ASSIST WITH THE DEVELOPMENT OF HAW CREEK PARK**

Summary: The consideration of a resolution to apply for grant funds to assist with the construction of Haw Creek Park through the N.C. Dept. of Environment and Natural Resources.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Neighborhood Association's long term goal to build a park in the Haw Creek community. The park is a collaborative effort between the City of Asheville and the Haw Creek Neighborhood Association, who has committed to raise \$40,000 to assist with construction of the park. Haw Creek Park will be a passive park located on approximately 6.2 acres on Haw Creek Road, and will serve as a major destination along the proposed Haw Creek Greenway. Park features -4-

include a trail, picnic shelter, and paved parking. The grant funds will be used to add a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department is requesting \$100,000 in grant funds which requires a 50% cash match. Funds for the match are currently available in the Capital Improvement Budget designated for Haw Creek Park.

The Parks and Recreation Department recommends the City Manager and/or the Mayor be authorized to apply for the grant and enter into the agreement to assist with the development of Haw Creek Park.

**RESOLUTION BOOK NO. 25 - PAGE 46**

**E. ORDINANCE NO. 2528 - BUDGET AMENDMENT TO APPROPRIATE FUNDS TO THE POLICE DEPARTMENT IN SUPPORT OF A GRANT FUNDED PROJECT FROM THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM**

Summary: The consideration of a budget amendment, in the amount of \$50,000, to appropriate funds to the Police Department in support of a grant funded project from the NC Governor's Highway Safety Program.

The Police Department has been awarded a \$37,500 grant from the NC Governor's Highway Safety Program (GHSP). The grant is for the purchase of equipment to support the department's traffic safety program; specifically five in-car computers and five speed detection devices.

GHSP guidelines require a local match of \$12,500 for a total project budget of \$50,000.

The City Council, at their meeting on July 28, 1998, authorized the application for this grant.

City staff recommends City Council adopt the budget amendment appropriating \$50,000 to the Police Department budget.

**ORDINANCE BOOK NO. 17 - PAGE 183**

**F. ORDINANCE NO. 2529 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FOR THE 12TH YEAR OF THE FAIR HOUSING ASSISTANCE PROGRAM**

Summary: The consideration of a budget amendment to continue federal funding for the twelfth year of the Fair Housing Assistance Program.

On April 28, 1987, the City of Asheville was recognized by Department of Housing and Urban Development (HUD) as having a fair housing enforcement program which is substantially equivalent to that of the Federal Fair Housing Act. The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988.

The City has received approval from HUD of \$18,400 for the Fair Housing Assistance Program for the period October 1, 1998 - September 30, 1999. This will be the twelfth year of funding through this program. The program is administered under contract by the Asheville- -5-

Buncombe Community Relations Council which provides staff support to the Asheville-Buncombe Fair Housing Commission. The City Community Development Division serves as Lead Entity and monitors the program.

Community Development staff recommends adoption of the budget amendment.

**ORDINANCE BOOK NO. 17 - PAGE 185**

**G. RESOLUTION NO. 98-169 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT TO THE AGREEMENT WITH J.L. DEBALL-GIRMES TO EXTEND THE COMPLETION DATE FROM JULY 1, 1998, TO OCTOBER 1, 1998**

Summary: The consideration of a resolution authorizing the Mayor to enter into an amendment to the agreement with J.L. deBall-Girmes of America Inc.

Girmes applied for an Industrial Development Grant based on expansion plans that included investment in

facility and equipment at their Old Charlotte Highway site of \$2,000,000 by July 1, 1998, and \$7,000,000 within two years. An increase in new jobs from between 12 to 16 were to be provided by July 1, 1998, and up to 50 by January 1, 2000. On August 12, 1997, City Council awarded an Industrial Development Grant, in the amount of \$51,300, to J.L. deBall-Girmes of America Inc.

Due to unforeseen circumstances, certain equipment could not be delivered by the July 1, 1998, deadline. The equipment is now in place and Girmes has met all other requirements of the grant. They are requesting that the Grant Agreement be amended to change the completion deadline from July 1, 1998, to October 1, 1998. No other changes are requested.

Staff recommends that City Council (1) adopt a resolution authorizing the Mayor to amend the agreement with J.L. deBall-Girmes of America Inc. in order to extend the deadline in the agreement from July 1, 1998, to October 1, 1998, and (2) appropriate \$51,300 in accordance with the agreement.

**RESOLUTION BOOK NO. 25 - PAGE 47**

**H. ORDINANCE NO 2530- BUDGET AMENDMENT TO APPROPRIATE FUNDS IN ACCORDANCE WITH THE J.L. deBALL-GIRMES OF AMERICA INC. AGREEMENT**

Summary: See Item G above.

**ORDINANCE BOOK NO. 17 - PAGE 187**

**I. RESOLUTION NO. 98-170 - RESOLUTION CALLING FOR A PUBLIC HEARING ON DECEMBER 8, 1998, ON THE BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$18,500,000 GENERAL OBLIGATION REFUNDING BONDS AND DIRECTING PUBLICATION OF SAID PUBLIC HEARING AND FILING A DEBT STATEMENT**

Summary: Introduction of the Bond Order by the Finance Director and the consideration of a resolution which calls for a public hearing on the Bond Order, directs publication of said public hearing and directs the filing of a debt statement.

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At City Council's direction of November 10, 1998, the Finance Director has filed with the Local Government Commission an application for its approval of \$18,500,000 General Obligation Refunding Bonds of the City of Asheville, North Carolina.

The Bond Order briefly describes the bonds to be issued in regard to: purpose; maximum amount; taxes to be levied; provides for a sworn statement of debt; and states the effective date of the Bond Order. The Bond Order will be published and a public hearing convened for its consideration prior to its proposed adoption by Council on December 8, 1998.

The Resolution calls for a public hearing on the Bond Order to be held on December 8, 1998 at 5:00 p.m. in the Council Chambers of the City Building; directs the City Clerk to publish notice of the public hearing no fewer than 6 days prior to the public hearing and directs the Finance Director to file with the City Clerk (prior to publication of the Bond Order and along with the notice of public hearing) a statement of the debt incurred or to be incurred, the appraised value of property subject to taxation by the City and the net debt of the City.

City staff recommends City Council adopt the resolution.

**RESOLUTION BOOK NO. 25 - PAGE 48**

**J. INTRODUCTION OF BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$18,500,000 GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF ASHEVILLE, N.C.**

Summary: See Item H above.

**K. RESOLUTION NO. 98-171 - RESOLUTION DIRECTING PUBLICATION OF NOTICE OF INTENT TO APPLY TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BOND FINANCING**

Summary: The consideration of the following three resolutions: (1) directing publication of notice of intention to apply to the Local Government Commission (LGC) for approval of bonds; (2) directing the Finance Director to submit an application to issue bonds for consideration by the LGC; and (3) making certain statements of fact concerning the proposed bond issue.

Based upon recommendations by the Parks and Recreation Master Plan Steering Committee and the Greenway Steering Committee, Council directed staff to proceed with a referendum for the issue of \$18,000,000 Parks, Recreation and Greenway bonds. The resolutions are the first in a series of actions required by Council to effect issue of the bonds.

The general obligation bonds shall be for the following purposes and in the following maximum amounts: \$18,000,000.00 of bonds for the purpose of providing recreation opportunities through the preservation and acquisition of land for open spaces, natural areas, environmental enhancements and greenways, including rights-of-way and easements; providing new recreation facilities, playfields and playgrounds, including acquisition of land, rights-of-way and easements therefor; and renovating existing parks and recreation facilities.

The first proposed resolution directs the City Clerk to publish "Notice of Intention to Apply to the Local Government Commission for Approval of Bonds". The notice states the purpose of the bonds, their maximum amount and provides instructions to citizens or taxpayers -7-

of the City of Asheville who object to the issue of bonds to file a written notice of their objection with the LGC and City Clerk within 7 days of the publication of the notice.

The second proposed resolution authorizes and directs the Finance Director to submit an application to the LGC to allow the City of Asheville to issue not to exceed \$18,000,000 General Obligation Parks, Recreation and Greenway Bonds and allow the retention of Parker, Poe, Adams & Bernstein L.L.P. as bond counsel for the issue.

The third proposed resolution provides "statements of fact concerning proposed bond issue" in regards to: (A) the necessity of the proposed financing; (B) the amount of the bonds proposed; (C) past debt management policies; (D) past budgetary and fiscal management policies; and (E) increase in taxes and retirement of debt. These "statements of fact" are required in order for the LGC to make determinations necessary to approve the City's request to issue Refunding Bonds.

City staff recommends City Council adopt all three resolutions.

**RESOLUTION BOOK NO. 25 - PAGE 51**

**L. RESOLUTION NO. 98-172 - RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO APPLY TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE CITY'S PROPOSED GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BOND FINANCING AND TO SUBMIT SUCH APPLICATION TO THE LOCAL GOVERNMENT COMMISSION**

Summary: See Item J above.

**RESOLUTION BOOK NO. 25 - PAGE 52**

**M. RESOLUTION NO. 98-173 - RESOLUTION MAKING CERTAIN STATEMENTS OF FACT CONCERNING THE GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BOND**

Summary: See Item J above.

**RESOLUTION BOOK NO. 25 - PAGE 53**

**N. MOTION SETTING A JOINT PUBLIC HEARING ON DECEMBER 15, 1998, WITH THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION TO CONSIDER A LOCAL HISTORIC LANDMARK FOR BILTMORE INDUSTRY PROPERTIES AT 111 GROVEWOOD**

**O. RESOLUTION NO. 98-174 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN WACHOVIA LEASING CORPORATION AND THE CITY OF ASHEVILLE TO FINANCE THE ACQUISITION OF TWO FIRE TRUCKS AND A LOADER PACKER**

Summary: The consideration of a resolution authorizing the installment financing of two fire trucks and a loader packer.

The City of Asheville Fiscal Year 1998-1999 Capital Improvement Plan includes authorization in FY 98/99 for the purchase of two fire trucks (a severe service vehicle estimated -8-

to cost approximately \$120,000 and a pumper/telesquirt costing approximately \$255,000) and a loader packer for sanitation (approximately \$120,000); all of which are to be financed.

The Finance Department sought proposals from 30 firms to finance the purchase of a bulldozer for the Public Works Department. Twelve proposals were received, the best of which was submitted by Wachovia Leasing Corporation - - 3.74% interest plus \$250.00 closing cost. Wachovia Leasing Corporation has offered to extend those very favorable rates to finance other essential equipment authorized by our current budget.

Federal Tax laws make it advantageous for banks to lend to "bank qualified" governmental borrowers. As a result, banks can provide lower rates for loans to their "bank qualified" borrowers. For a local government to be "bank qualified" it must not contemplate issuing more than \$10,000,000 in tax-exempt debt in the calendar year in which the loan is made. The City of Asheville is "bank qualified" in 1998; however, we do not expect to be in calendar year 1999.

We do not anticipate delivery of the fire trucks and loader packer until normal competitive procurement can be completed for each of them; which will not occur until well into calendar year 1999. However, in order to take advantage of Wachovia's offer, the loan transaction must be closed not later than December 31, 1998. We propose to close the loan this year. We would then place the proceeds of the loan in escrow until each of the trucks is delivered, at which time funds would be drawn from escrow to pay the purchase price.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Wachovia Leasing Corporation for the purchase of two fire trucks and a loader packer and authorizes the City Manager to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

**RESOLUTION BOOK NO. 25 - PAGE 55**

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

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

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

#### **A. PUBLIC HEARING RELATIVE TO REZONING 720 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT**

##### **ORDINANCE NO. 2531 - ORDINANCE TO REZONE 720 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT**

Mayor Sitnick opened the public hearing at 5:14 p.m.

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

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Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone from District to District.

The owner and applicant, , has requested the rezoning of (PIN No. ) from RS-8 Residential Single-Family High Density District to District. The property is adjacent to an existing property which is presently used as a car wash. The applicant owns both pieces of land. The lot in question is 39.98 feet wide, and is a non-conforming lot in the RS-8 district in which it is currently located. The Unified Development Ordinance requires a minimum lot width of 50 feet at the setback line in the RS-8 District.

The Planning staff reviewed the rezoning request and recommended . At their November 4, 1998, meeting, the Planning & Zoning Commission voted to to recommend of the rezoning.

Mayor Sitnick closed the public hearing at 5:20 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. 2531. This motion was seconded by Councilwoman Field and carried unanimously.

#### **ORDINANCE BOOK NO. 16 - PAGE 189**

#### **B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE**

Summary: The revised definition of antenna, as recommended by the Planning and Zoning Commission, is closely linked to the telecommunications facilities ordinance. In fact, the new definition of antenna is incorporated into the draft telecommunications facilities ordinance. For this reason, and to avoid unnecessary duplication of efforts, staff would like the City Council to consider these items at the same time. The Planning and Zoning Commission, at their November 2, 1998, meeting, continued consideration of the draft telecommunications facilities ordinance until their December 2, 1998, meeting. As a recommendation from the Planning and Zoning Commission is required prior to consideration of an ordinance amendment by City Council, the City Council will not be able to consider this at their November 24, 1998, meeting. In order to



provide the opportunity for Council to deal with both these ordinance amendments at the same time, staff is requesting that Council continue the consideration of the ordinance amendment until your January 12, 1999, meeting.

Councilman Sellers moved to continue the public hearing until January 12, 1999. This motion was seconded by Councilwoman Field and carried unanimously.

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

##### **A. RESOLUTION NO. 98-175 - RESOLUTION ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATIVE TO THE DENIAL OF THE CONDITIONAL USE APPLICATION TO LOCATE A TELECOMMUNICATIONS TOWER AT 754 MERRIMON AVENUE**

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City Attorney Oast said that the order contains findings of facts and conclusions of law taken from City Council's discussion after their public hearing on November 10, 1998.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that, as he interprets the ordinance, the burden is on the applicant to establish that certain conditions been met. Based on Council's comments after the public hearing, Council did not think that some of the conditions had been met.

Since Councilman Cloninger was not at this meeting, Councilman Sellers asked if he had been given an opportunity to review the order. City Attorney Oast said that he did talk with Councilman Cloninger and Councilman Cloninger said that he had confidence in the Council to make sure the order was proper.

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

Vice-Mayor Hay moved for the adoption of Resolution No. 98-175. This motion was seconded by Councilman Sellers and carried unanimously.

Councilwoman Field did not believe that any cell tower could be in harmony with the scale, bulk and character of any area or neighborhood in Asheville. As long as that stays in as a condition in part of the conditional uses, she didn't see how City Council could site a cell tower anywhere in the community, except maybe in an industrial district. She asked the City Attorney to provide to Council clarification on that part of the conditional use process, with regard to cell towers.

#### **RESOLUTION BOOK NO. 25- PAGE 57**

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

##### **A. RESOLUTION NO. 98-176 - RESOLUTION IN SUPPORT OF NORTH CAROLINA ADOPTING PERMITTING PROCEDURES FOR AIR QUALITY IN THE SOUTHEAST**

City Attorney Oast said that at City Council request, he has prepared a resolution and summary of the Memorandum of Understanding ("MOU"). He said that the Buncombe County Commissioners adopted a similar resolution last week. At Councilman Cloninger's request, there is no reference to the unamended MOU. He felt that Councilman Cloninger's request was that since the State of North Carolina is primarily responsible for administering the law and would be responsible for administering the MOU, they should be the ones who decide how much time they need or how much time is advisable. He said that basically the MOU formalizes the process for involving land managers for several federal agencies in the air quality permitted decisions that are made in the State of North Carolina, primarily the Dept. of Interior and the Dept.

of Agriculture, and ensures that they get involved in the process and they have input into the state agency decisions if they wish to.

Dr. Richard Mass, UNC-A Environmental Quality Institute, urged City Council to sign a resolution asking Governor Hunt and the State of North Carolina to agree to sign onto the MOU to cooperate with the State of Tennessee on air quality permits in both states to protect the Class 1 air sheds of the Smoky Mountain National Park and other federal lands. He briefly reviewed the six addenda which the State of North has tacked on the agreement that the State of Tennessee has already signed. He said that four are amendments to the preamble and they don't affect the agreement. One is unclear and the other amendment (addendum 5) is one that -11-

basically everyone disagrees with and hopefully they will go back and change it. Addendum 5 is the only amendment that both the federal land managers with the National Park Service, the U.S. Forest Service and the Fish and Wildlife Service along with the State of Tennessee has disagreed with. It says there can only be a 30 day period from the time the application is made before federal land managers have to sign whether they will go along with it or not. All concerned believe that this is too short a time, noting that in the original MOU it allowed 60 days and he doesn't know why the State of North Carolina wanted to propose the shorter time frame. It basically precludes the possibility of having public input. He again asked City Council to endorse the MOU without the amendments with some type of notation that they disagree with Addendum 5 that shortens the comment period to 30 days.

Councilwoman Field suspected that the reason for the 30 days period was to speed up the process so that if indeed industry is impacted that there is some kind of deadline for when the agency has to respond.

City Attorney Oast pointed out that because we have a lot of national park land around Asheville that the federal land managers may view industries locating in this area as tending to affect the air quality of those areas more than industries in another part of the state for instance. He emphasized that this does not impose any stricter pollution discharge requirements on anyone, but it does mandate a process.

Mayor Sitnick said that essentially this is asking new industry to comply with existing regulations. There is nothing new imposed here. Given the fact that the Smoky Mountain National Park is one of the most polluted in the country, we need to be doing everything we can to ask new industry to comply. She felt that even 60 days is not that long of period of time when you consider 90 and 120 days in other pieces of federal legislation.

City Attorney Oast said that one of the reasons that the State of Tennessee desires a longer time period is that it provides more of an opportunity to work out differences and perhaps adopt some mitigating standards that maybe a 30 day time period may not allow for.

The following individuals spoke in support of City Council signing the unamended MOU for various reasons:

Ms. Hazel Fobes

Ms. Susan Kask, Economics Professor at Western Carolina University

Mr. Kim Carlyle

Mr. Mike Morgan

Mr. Keith Thompson, 1 Bridle Path

Dr. Harvard Ayers, Professor of Sustainable Development and Anthropology at Appalachian State (presented City Council with a book entitled "An Appalachian Tragedy")

Mr. Allen Frank

Mr. Ted Prosser, business owner and real estate developer

Mr. Hal Hogstrom, retired academic

Mr. Carlyle said that at Council's worksession on November 17, a suggestion was made that other groups, other than environmental groups, should be contacted to see if they would be willing to endorse City Council's signing the unamended MOU. He said that they now have signatures from the American Lung Association, BB&T Insurance Services, Hawk & Ivy Bed and Breakfast, Landmark Management Inc., Mike Byer Auto & Truck Repair, NC League of Women Voters, Physicians for Social Responsibility, and Western Carolina Women's Coalition, in addition to other businesses.

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

Councilman Tomes moved for the adoption of Resolution No. 98-176 which does not address any amendments. This motion was seconded by Councilman Cobb.

Councilman Cobb said that we have serious pollution problems and we will have to find a way to address them. He felt that it will take a concerted effort by the businesses and local citizens to work on this problem. He also felt that there should be some way to obtain money from the tourist business to help off-set some of the problems we have as a result of tourism.

Mayor Sitnick stated that the environment is no longer a political issue. This is not just about tourists breathing clean air and not just about luring new business and jobs, which is part of our responsibility and something we are committed and dedicated in doing. This is also about the people who live here being healthy. She was pleased to take this small step to encouraging our legislators on a state and federal level to create a very balanced and even-handed approach to compliance with the laws that we finally have in place. She appreciated the support from the environmental community, which she expected, and really appreciated the support from the business community.

After a brief discussion, Councilman Tomes agreed to amend this motion to adopt Resolution No. 98-176, with an additional note that the Asheville City Council is concerned about the issues raised in Addendum 5 which may have the affect of limiting public input in the process. Councilman Cobb agreed to amend his second. This motion carried unanimously.

### **RESOLUTION BOOK NO. 25 - PAGE 63**

Mayor Sitnick instructed the City Clerk to arrange for Dr. Maas and Dr. Ayers to make a presentation to City Council, in a future worksession, similar to their presentation they made for Leadership Asheville which was very informative.

### **B. RESOLUTION NO. 98-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A LEASE FOR THE ASHEVILLE MOTOR SPEEDWAY FOR 1999**

City Attorney Oast said that this resolution is the consideration of a resolution authorizing the City Manager to negotiate a lease for the Asheville Motor Speedway ("AMS") for 1999.

After meetings and discussions with NASCAR officials, RiverLink representatives, potential Speedway operators, representatives of the racing community, and City staff, the following facts, observations and recommendations have emerged:

1. The NASCAR sanction should be applied for by mid-December; NASCAR would prefer that an operator be identified prior to issuing the sanction.
2. RiverLink and its donors have indicated that their agreement to suspend the use restrictions for 1999 will depend on who the operator will be.
3. The recommended arrangement for operation of AMS in 1999 is for the City to lease it to an operator, with sufficient insurance, indemnity and other provisions to insure that the City, RiverLink and others are insulated from liability. Other provisions would deal with noise, environmental matters, and operational issues. The following is a general summary of proposed lease terms: -13-

Statutory Authority: G.S. 160A-272.

- Authorizes City to enter into leases for its property.
- If lease is for less than one year, no requirement for public notice, and City Manager may be delegated authority to lease (and presumably to negotiate).

#### Lease Period:

- Beginning December 1998 or January 1999, and ending October 1999.
- Establish racing calendar (historically every Friday night, April through mid-October).
- Establish practice days (historically open practice has been Wednesday, with some individual practice at other pre-arranged times).

#### Rental:

- Should be a straight rental, payable in monthly installments.
- No percentages – operator keeps profit, absorbs loss.

#### Liability Issues:

- Operator assumes all risks of operation.
- Blanket indemnity for City.
- Adequate insurance to be provided (determined by Risk Manager).
- Environmental issues: Lessee to operate safely; pay for Phase I assessment at end of lease.

#### Operational Issues:

- Noise: Must operate within applicable noise restrictions.
- Traffic: Must make adequate provision for traffic/parking.
- Maintenance: Structures, grounds to be maintained by lessee; City not responsible for repairs.
- Utilities: Lessee to provide.
- Concessions, Advertising, Medical, Access, etc.: All to be handled by lessee for period of the lease.

#### NASCAR Issues:

- Operator must obtain/maintain NASCAR sanction
- Operator must abide by all NASCAR rules and regulations

Other Matters:

- Lease subject to approval by RiverLink, other donors/predecessors in title.
- Final form to be approved by City Council prior to authorization to execute.

4. Because the lease would be for one year or less, the City Manager may be given authority to enter into it on the City's behalf. Also, the usual notice provisions are not applicable, which gives some flexibility in scheduling.

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5. RiverLink or its donors have indicated that a minimum rental of \$200,000 is a condition of their agreement for allowing operation in 1999. Council may adopt this as baseline rental or may establish other guidelines. Our information indicates that "move in" costs will be between \$30,000 and \$50,000. Council may also direct the Manager to negotiate the best agreement possible, keeping in mind the City's concerns and the conditions suggested by others whose approval is required.

6. This is not a matter for which competitive bidding is required. Our discussions with NASCAR indicate that word of the AMS situation has spread through the racing community, and that the individuals who are interested in operating AMS in 1999 have already contacted us. Moreover, there has been plenty of publicity through various channels. Council may direct staff to issue a Request for Proposals, but it appears unlikely that doing so would generate any more interest or additional proposals, and it would add time to a tight schedule.

Council should establish those guidelines that it thinks appropriate and authorize the Manager to negotiate within those guidelines. The resolution may authorize the Manager to enter into the lease, or for the lease to be presented to Council for final approval. The proposed resolution directs the Manager to return to Council for final approval.

City Attorney Oast emphasized that discussions have gone well and there are still a lot of things that need to fall in place. He asked that two additional lease provisions be included: (2) That the lease be so constructed to allow for use by other events during the 1999 season (that is consistent with the way it has been used in the past); and (2) There be a no sub-let provision.

Upon inquiry of Mayor Sitnick about whether the NASCAR sanctions have already expired, City Attorney Oast said that it is his understanding that the sanctions expire on December 31. NASCAR indicated that they have a strong interest in remaining in western North Carolina and that they would work with us to allow racing to continue in the area in perpetuity and next year at the Asheville Motor Speedway.

Councilman Sellers agreed with the City Attorney that all the meetings have been very productive and he would support adopting the resolution to keep moving forward.

Mayor Sitnick, on behalf of City Council, thanked the City Attorney for the excellent work he has done as a participant in the meetings and as a negotiator.

Councilwoman Field said that the City is very thankful to RiverLink for providing the City the opportunity to have park land on the river to provide for a greenway which we have been working on for a very long time. She personally has tremendous respect for what RiverLink has done to provide the City with this. However, she expressed concern that one of the anonymous donors requested that if the City did lease the property

that all of the proceeds of the lease be held by RiverLink. She personally felt that since this is the City's property, the City should certainly be as responsible a party as RiverLink for holding this money in escrow or however the City decides to use it. City Attorney Oast said that this issue is being negotiated, noting that the point the City is making is that whatever revenue that comes in from the operation of this would be earmarked for parks and recreation purposes and perhaps a large portion of it specifically for the area encompassed by this property.

City Manager Westbrook said that if Council gives him the authority to negotiate the agreement, it will have to be fair for the City, work for the racing community and RiverLink will -15-

want for it to be fair to them and their donors. He said that there will be compromise, but he will not come back to Council to recommend anything that will not work for the City. He said there are still a number of issues being worked out.

Mayor Sitnick felt there should be some type of recognition of the historical and cultural aspect of the speedway. Also, she recommended that when the negotiations come to fruition that we do have public notice and opportunity for public comment.

Councilman Tomes was elated to see the spirit of the community working together and commended all the parties involved.

Vice-Mayor Hay spoke in appreciation of Councilman Sellers' work on this issue.

Mayor Sitnick said that while the City is looking out for the City, the racing community and RiverLink, it would be her hope that when this is negotiated and when this race track goes on line again that we are committed to enforcing the noise ordinance out of consideration for the citizens of Asheville, as much as we are committed to having a win-win solution for the racing community.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast explained that if the City conveyed the property to someone else, the property would be subject to the same restrictions and it would be up to the donors whether or not to lift them for any amount of money.

City Attorney Oast thanked Representative Martin Nesbitt, Ron Crane, Karen Cragolin, Doug Wilson and Councilman Sellers for their cooperation in working on this issue.

Representative Nesbitt appreciated Council's work on this issue.

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

Councilman Sellers moved for the adoption of Resolution No. 98-177. This motion was seconded by Councilman Cobb and carried unanimously.

## **RESOLUTION BOOK NO. 25- PAGE 64**

At 6:40 p.m., Mayor Sitnick announced a short break.

### **C. RESOLUTION NO. 98-178 - RESOLUTION APPOINTING A MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Vice-Mayor Hay said that the term of Gene Ellison expired on November 13, 1998. This resolution will reappoint Mr. Ellison to serve an additional three year term, term to expire November 13, 2001, or until his successor has been appointed.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-May Hay moved for the adoption of Resolution No. 98-178. This motion was seconded by Councilman Tomes and carried unanimously.

## **RESOLUTION BOOK NO. 25 - PAGE 66**

### **D. RESOLUTION NO. 98-179 - RESOLUTION APPOINTING A MEMBER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE**

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Vice-Mayor Hay said that Margie Liverman has resigned her position on the ADA Compliance Committee, leaving an unexpired term until August 22, 2001. On November 10, 1998, City Council interviewed Richard Evans, Connie Barnette and Sherry Fitzpatrick.

Councilwoman Field felt that after interviewing Ms. Barnette, she felt she would be a fine candidate for the Fair Housing Commission.

Councilwoman Field nominated Sherry Fitzpatrick.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Sherry Fitzpatrick was unanimously appointed to serve the expired term of Ms. Liverman, term to expire August 22, 2001, or until her successor has been appointed.

## **RESOLUTION BOOK NO. 25 - PAGE 67**

### **E. RESOLUTION NO. 98-180 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Hay said that the terms of Bud Taylor (Regular), Dennis Hodgson (Regular) and Joseph Brady (Alternate) on the Board of Adjustment expire on January 21, 1999. Also, Allen Roderick has resigned as an Alternate, thus leaving an unexpired term until January 21, 2001.

On November 4, 1998, it was Council's intent to (1) reappoint Mr. Brady as an alternate member to serve an additional three year term, term to expire on January 21, 2002; and (2) reappoint Dennis Hodgson as a regular member to fill an additional three year term, term to expire January 21, 2002.

On November 10, 1998, City Council interviewed Lauren Malinoff, Chris Goodwin, Patricia Grant and Sondra Slosman.

Mayor Sitnick nominated Lauren Malinoff as a Regular member.

Councilman Sellers nominated Patricia Grant as a Regular member.

Councilman Cobb nominated Chris Goodwin as a Regular member.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted: Lauren Malinoff received four votes, Patricia Grant received one vote and Chris Goodwin received one vote. A resolution would be prepared to appoint Lauren Malinoff as a Regular member to serve a three year term, term to begin on January 22, 1999, and expire on January 21, 2002, or until her successor has been appointed.

Vice-Mayor Hay moved to reappoint Dennis Hodgson as a Regular member to serve an additional three year

term, term to expire on January 21, 2002, or until his successor has been appointed. This motion was seconded by Councilman Cobb and carried unanimously.

Councilman Sellers nominated Patricia Grant as an Alternate member.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Patricia Grant was unanimously appointed to serve as an Alternate -17-

member to serve the unexpired term of Mr. Roderick, term to expire January 21, 2001, or until her successor has been appointed.

Vice-Mayor Hay moved to reappoint Joseph Brady as an Alternate member to serve an additional three year term, term to expire on January 21, 2002, or until his successor has been appointed. This motion was seconded by Councilwoman Sellers and carried unanimously.

## **RESOLUTION BOOK NO. 25 - PAGE 68**

### **F. RESOLUTION NO. 98-181 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL**

Vice-Mayor Hay said that the terms of Bernadette Thompson and Cassandra Ingram expire on December 31, 1998. On November 4, 1998, City Council desired to waive it's rules relative to individuals serving only two full successive terms, and reappoint Ms. Thompson. This resolution will reappoint Ms. Thompson and Ms. Ingram to each serve an additional three year term, terms to expire December 31, 2001, or until their successors have been appointed.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-Mayor Hay moved to reappoint Ms. Cassandra Ingram to serve an additional three year term, term to expire December 31, 2001, or until her successor has been appointed. This motion was seconded by Councilman Sellers and carried unanimously.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-Mayor Hay moved to waive the rules relative to individuals serving only two full terms and reappoint Ms. Bernadette Thompson to serve an additional three year term, term to expire December 31, 2001, or until her successor has been appointed. This motion was seconded by Councilman Cobb and carried unanimously.

Councilwoman Field asked that the City Clerk notify the Chairs of individuals boards at the beginning of the quarterly appointment process that there are upcoming vacancies on their respective boards so that they have enough time to meet and submit their recommendations.

## **RESOLUTION BOOK NO. 25 - PAGE 69**

### **G. RESOLUTION NO. 98-182 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION**

Vice-Mayor Hay said that the terms of Jim Drummond, Joyce Harrison and Jim Barrett expire on December 31, 1998. On November 10, 1998, City Council interviewed Leslie Hennessee, Bill Branyon and Kim Moore. Steve Rice was interested in the vacancy, however, he was not able to attend on the interview date.

Councilwoman Field nominated Connie Barnette.

Vice-Mayor Hay nominated Steve Rice.



Mayor Sitnick nominated Kim Moore.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Connie Barnette (subject to her agreeing to serve on this Commission), Steve Rice and Kim Moore were appointed to serve as members on the Fair -18-

Housing Commission to each serve a three year term respectively, all terms to begin on January 1, 1999, and expire on December 31, 2001, or until their successors have been appointed.

#### **RESOLUTION BOOK NO. 25 - PAGE 70**

#### **H. RESOLUTION NO. 98-183 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND**

Vice-Mayor Hay said that the term of Jerry VeHaun expires on January 1, 1999. On November 10, 1998, City Council interviewed Lloyd Williams Sr.

Councilman Cobb nominated Lloyd Williams.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Lloyd Williams. Sr. was unanimously appointed to serve a two year term, term to begin on January 2, 1999, and expire on January 1, 2001, or until his successor has been appointed.

#### **RESOLUTION BOOK NO. 25 - PAGE 71**

#### **I. RESOLUTION NO. 98-184 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD**

Vice-Mayor Hay said that Jim Orr and Bill Stewart have resigned their positions on the Recreation Board, thus leaving two unexpired terms until June 30, 2000. On November 10, 1998, City Council interviewed Jamie Deveney, Frank Fishburne and Barbara Weinkle. Thomas House and John Moyer were both interested in the vacancy, however, they were unable to attend on the interview date.

Councilwoman Field nominated Frank Fishburne and Barbara Weinkle.

Vice-Mayor Hay nominated Thomas House.

Councilman Cobb nominated John Moyer.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted for two candidates: Frank Fishburne received four vote, Thomas House received four votes and Barbara Weinkle received three votes. Therefore, the resolution would appoint Frank Fishburne and Thomas House to serve as members on the Recreation Board to serve the unexpired terms of Mr. Orr and Mr. Stewart. Each term will begin immediately and expire on June 30, 2002, or until their successors have been appointed.

#### **RESOLUTION BOOK NO. 25 - PAGE 72**

#### **J. RESOLUTION NO. 98-185 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Vice-Mayor Hay said that there currently exists a vacancy on the River District Design Review Committee for a design professional, including, but not limited to, architects, engineers or qualified artists. On November 4, 1998, it was City Council's intent to appoint Robert Camille Jr. to serve a three year term, term to begin

immediately and expire on September 1, 2001, or until his successor has been appointed.

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After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-Mayor Hay moved for the adoption of Resolution No. 98-185. This motion was seconded by Councilman Sellers and carried unanimously.

### **RESOLUTION BOOK NO. 25 - PAGE 73**

#### **K. RESOLUTION NO. 98-186 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE TRANSIT AUTHORITY**

Vice-Mayor Hay said that the term of Nick Koon expires on December 31, 1998. On November 10, 1998, City Council interviewed Nick Koon and Robert Potter.

Councilman Cobb nominated Robert Potter.

Councilwoman Field nominated Nick Koon.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Robert Potter was unanimously appointed to serve a four year term, term to begin on January 1, 1999, and expire on December 31, 2002, or until his successor has been appointed.

### **RESOLUTION BOOK NO. 25 - PAGE 74**

#### **VI. OTHER BUSINESS:**

##### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 10, 1998, AND THE WORKSESSION HELD ON NOVEMBER 17, 1998**

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on November 10, 1998, and the worksession held on November 17, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

##### **B. FEES AND CHARGES COMMITTEE**

Councilman Cobb moved to request that the Fees & Charges Committee meet to revisit the fee that is currently being charged to use community centers. This motion was seconded by Councilman Sellers and carried unanimously.

##### **C. REAFFIRMATION OF CITY COUNCIL'S SUPPORT FOR CITY ATTORNEY OAST**

Because there have been a lot of comments about City Council's poor choice in having Robert Oast as the City's legal counsel, Councilwoman Field moved to reaffirm City Council's support of City Attorney Oast as City Council's legal counsel. This motion was seconded by Councilman Sellers. After each Council member voiced their praise, confidence and support of City Attorney Oast, the motion carried unanimously.

##### **D. ASHEVILLE AREA CIVIC CENTER COMMISSION**

Vice-Mayor Hay, liaison to the Civic Center Commission, read two resolutions adopted by the Civic Center Commission. One resolution supports the Future of the Asheville Civic Center Task Force's proposal to the City Council on enhancement of the Civic Center and -20-

appreciated the Task Force's efforts to sustain the future of the Civic Center as a strong force in entertainment, economic impact and unity within our community. The other resolution supports City Council's decision to disallow fee reductions for the use of the Civic Center by the Honda Hoot motorcycle rally, recognizing that the Honda Hoot is an exciting and beneficial event for our City and one that the Civic Center seeks to actively support.

## **B. CLAIMS**

The following claims were received by the City of Asheville during the week of November 6-12, 1998: Bell South (Water), Brian Hasmuck (Police) and Crystal Coomer (Streets).

The following claims were received by the City during the week of November 13-19, 1998: Bell South (Streets), Bonnie Grainger (Water), Kim Carnes (Water) and Roger McPeters (Sanitation).

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

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

### **A. BOARD APPOINTMENTS**

Mr. Mike Morgan asked City Council to consider adopting a policy to the effect that all members on boards should be U.S. citizens.

## **VIII. ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 7:25 p.m.

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CITY CLERK MAYOR

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