

Tuesday - April 20, 1999 - 3:00 p.m.

Worksession

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

**CONSENT:**

**Donation of Montford Hills Property**

Summary: The Parks and Recreation Advisory Board and staff are recommending that the City proceed with accepting the donation of property located in Montford Hills Community from the Neighborhood Housing Services.

The Parks and Recreation Advisory Board, at its February meeting, unanimously approved accepting the donation of property from the Neighborhood Housing Services. Several months ago, Neighborhood Housing Services approached the City of Asheville in regard to accepting eight parcels of property located near Westover Drive and Tacoma Lane in the Montford section. Staff has reviewed the potential use of this property and has determined that it could serve as a possible greenway connection in the future or as protection of open space land. Staff will continue working with the Legal Division in regard to the acceptance of this property contingent on securing a proper boundary survey, conducting a Phase I environmental assessment, and review of any deed restrictions. If, after this review, it still seems in the City's best interest to continue toward acceptance of this property, staff will proceed with securing the title.

The Parks and Recreation Advisory Board and staff are seeking City Council approval to continue the investigation of acceptance of donated property and to authorize the City Manager to enter into any agreements necessary for this transaction.

**Resolution Rejecting Bids on Two Vacant Lots on Sara Street**

Summary: The consideration of a resolution rejecting bids on two vacant lots on Sara Street and removing said lots from the surplus properties list.

On March 9, 1999, the City Council directed the City Clerk to advertise for upset bids on two vacant lots on Sara Street. The offer to purchase was from MGS, LLC, in the amount of \$10,700. The advertisement ran in the Asheville Citizen-Times on March 12, 1999, as provided in N. C. Gen. Stat. sec. 160A-269. Upset bids were received and the property was re-advertised.

Subsequent to the advertisement for upset bids, the Parks and Recreation Department staff identified a need to retain the property as a part of Riverside Cemetery for greenway access. The Parks and Recreation Department staff have requested that all bids be rejected and the properties be removed from the surplus properties list.

Community Development staff recommends adoption of the resolution

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**Budget Amendment for Reed Creek/Broadway Greenway**

Summary: The consideration of a budget amendment, in the amount of \$130,000, to appropriate grant funds from the State of North Carolina, Department of Environment and Natural Resources in the National Recreational Trails Fund Program to construct a greenway trailhead and ramp segment on the Reed Creek/Broadway Greenway.

The Broadway Greenway represents the next section in the City of Asheville's urban trail corridor linking the UNC-Asheville to the downtown business district. Phase I of the corridor was completed in 1997 with the first section of the Weaver Blvd. Greenway. The next section of Weaver Blvd. will be complete in 1998/1999. The City has been working for some time to develop the Reed Creek/Broadway Greenway along Reed Creek on the west side of Broadway. Eventually the corridor will link downtown neighborhoods to the Weaver Blvd./Glenn's Creek Greenway.

The focus of this grant will be the segment of greenway between Chestnut and Magnolia Streets. The greenway begins at Chestnut Street where a large, five points intersection is located. The grade change from Chestnut to Reed Creek is very steep. A ramp will be needed to provide wheelchair and bicycle accessibility to the greenway. Since it is a large, busy area, the entrance will need a strong visual statement which will accentuate where the greenway begins. The entrance is proposed to include signage, map, and benches.

The Parks and Recreation Department recommends the City of Asheville accept the grant funds on behalf of the Parks and Recreation Department into the Parks capital improvement budget for construction of the trailhead of the Reed Creek/Broadway Greenway.

### **Budget Amendment re: Speedway Lease Funds**

Summary: The consideration of a budget amendment to appropriate \$75,000 that was received from HMS, LLC, into a capital project in the Parks and Recreation Department for the lease of the Asheville Speedway for the 1999 season.

In January of 1999, the City of Asheville entered into an agreement with HMS, LLC to allow racing at the Asheville Motor Speedway for one more season. This agreement called for a lease payment of \$75,000 to be incorporated into a capital fund in Parks and Recreation that would go to the development of a master plan for the Speedway property. The purpose of this amendment is to appropriate these funds into the budget ordinance.

The Parks and Recreation Department staff recommends City Council approval of the budget ordinance amendment for \$75,000.

### **Authority for Clerk to Advertise an Offer to Purchase Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street**

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street.

The bid of Rex Ballard in the amount of \$139,000 for the purchase of Disposal Parcel 59X in the East Riverside Redevelopment Project is not less than the established minimum price of \$139,000.

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Disposal Parcel 59X is an Office zoned lot near the corner of Asheland Avenue and Phifer Street comprising 0.639 acres. The bid from Rex Ballard for Disposal Parcel 59X includes the proposal to incorporate the lot into the adjacent property currently owned by Rex Ballard. The development proposal consists of landscaping and parking consistent with the Unified Development Ordinance.

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.

Community Development staff recommends adoption of the resolution.

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

### **WEST ASHEVILLE RESOURCE CENTER UPDATE**

Ms. Debbie Ivester, Superintendent of Administration in the Parks & Recreation Department, said that this is the consideration of City Council's approval to proceed with the development of the upstairs portion of the City-owned building located at 970 Haywood Road for a Community Resource Center.

For several weeks, the Parks and Recreation Department, the Police Department, and several members from City Council have been working towards finding an alternate location for the Community Resource Center which is currently located at 415 Haywood Road. The current lease for this space at 415 Haywood Road will expire at the end of May, 1999. An extensive search has occurred along Haywood Road to find suitable property for the transfer of this site with the most viable location being in the old library portion of the City-owned building at 970 Haywood Road. The West Asheville Library currently has been using the space for programs sponsored by the library system as well as using the area for public meeting space for various groups. The staff's proposal before City Council is to utilize one-half of the upstairs space for the Community Resource Center with the other portion being available for library and public use. In addition, programs currently planned by the library will be incorporated into the schedule of activities at the West Asheville Community Center located in the basement of this building or at other alternate sites. The Parks and Recreation Department and the Police Department feel that this joint use of the facility is a good compromise for the community to serve the needs of not only the library patrons but also the overall citizens of the West Asheville community.

The Parks and Recreation Department and the Police Department are presenting this information to update Council on the plans to move the resource center.

Councilwoman Field, who was not opposed to this plan, advised City Council that this would be a policy change and perhaps setting a precedent because in the past the community has provided the space for the resource centers and the City provided the police officers.

Councilman Sellers spoke in support of this plan and felt that each community that requested a resource center would need to be looked at on a case-by-case basis.

Upon inquiry of Mayor Sitnick, City Manager Westbrook described the difference between a Police Resource Center vs. a Police Sub-Station.

Mayor Sitnick supported a flexible policy that allows Council to apply the best possible solution neighborhood by neighborhood and would look to staff for guidance in the future.

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Councilwoman Field noted that the City needed to be aware that there are some building code violations in the resource center.

Mr. Ed Sheary, Library Director for Buncombe County, appreciated the City for their cooperation in this matter in what they believe will be an interim solution for the Library losing its program room. He said that the Library and the County are proceeding under the assumption that this will be a continuing discussion with

City staff and City Council regarding the provision of a dedicated program room for the Library in the near future.

City Manager Westbrook said that no further direction would be required by City Council and that City staff will proceed with their plans to move the resource center.

### **PROPOSED CHANGES TO THE RECRUITMENT AND SELECTION PROCESS**

Councilman Tomes asked for City Council's support of amending the recruitment and selection process in the Civil Service Law so that we will not continue to hinder the work force in our community.

Mr. Kevin Wilson, Assistant Human Resources Director, reported to City Council of the status to date and the recommended future action regarding changes in the Civil Service Law relating to recruitment and selection.

City Council directed staff at its January 1999 Council Retreat to form a Task Force to examine elements of Civil Service Law to ensure that it continued to meet the needs of the City of Asheville. The Recruitment & Selection Task Force has met on the following dates: February 12, March 10, and March 24. The first meeting was attended by four of the five members of our legislative delegation. In addition, participation on this task force includes members of City departmental management, City Council (Rev. O.T. Tomes), Civil Service Board, the Firefighter's Association (president), line-level city staff, local NAACP (president), and Police Benevolent Association (president).

Different interests were expressed from the onset of the meetings. The main points that continued to surface were (1) lack of minority employee representation in various departments/ divisions across City government, and (2) review of the Civil Service Law specific to Recruitment and Selection process. There was much attention placed on the language in the law relating to the "Rule of Three", specifically the past history and perception of citizens that elements of the law could create a disparate impact on certain protected groups. The task force was not able to reach consensus on its recommendation with respect to this part of the law. The employee and Civil Service Board representatives support retention of the Board's role in the recruitment and selection process; the department managers wish to have more autonomy in recruitment and selection, and the representatives of the minority community desire such modifications as will help increase minority representation in the workforce.

There was general agreement with respect to deleting the provisions that are squarely inconsistent with State law: Section 8 requiring disclosure of eligibility lists, and Section 21 regarding political activity.

Staff recommends that the City Council seek amendment to the Civil Service Law to remove those provisions regarding Civil Service Board oversight of the recruitment and selection process. This oversight function will essentially be transferred to the City's staff by way of an administrative policy containing modern operational recruitment procedures to insure a systematic, consistent recruitment program, promote equal opportunity, identify and attract the most qualified applicants for all vacancies, and streamline and shorten the hiring process.

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This will require a fairly substantial revision of the Civil Service Law. Other changes are included to conform the law with current practice.

It is important to note that the Civil Service Board's role in hearing and reviewing employee disciplinary matters is being retained.

Assuming that these changes become law, staff is prepared to move ahead with appropriate modifications to the City's Personnel Policy and Affirmative Action Plan to insure that professional recruitment and selection

processes are immediately implemented.

The proposed changes are as follows:

- Section 1. Amended to reflect that the Civil Service Board is part of the government of the City, rather than a separate municipal corporation. To whatever extent it was legally necessary that the Civil Service Board be constituted as a separate corporation, there is no identifiable reason for that arrangement to continue. This has the effect of bringing the Civil Service Board under the umbrella of the City for legal processes. In this respect, the Board is an independent board, like the Board of Adjustment, with statutory duties only exercisable by it, but part of the City.

The Section 1 amendment also provides that the Civil Service Board's operational costs be part of the City's budget.

The Section 1 amendment also deletes the reference to a Director of Civil Service, whose functions are now performed by the Human Resources Director.

- Section 2. This Section has been rewritten to delete the reference to the Director of Civil Service, but to retain the method for selection of the Civil Service Board's membership, essentially continuing the current board in operation, with no interruption in their terms. The City Council appoints the Chair, as it previously appointed the Director of Civil Service. This amendment also addresses such things as eligibility for successive terms, and specifies that members of Council may not also be Civil Service Board members.
- Section 3. Amended to delete outdated referenced to "Clerk of Police Court."
- Section 4. Amended to refer to Section 5 for specification of the Civil Service Board's powers. The reference to employee discipline in this Section was repetitive of language in Section 5.
- Section 5. Amended to delete provisions for Civil Service Board involvement in the recruitment and selection process. These deletions are the primary means of implementing staff's recommendations, pursuant to Council's direction.

The proposed amendment also clarifies that the Civil Service Board may make regulations for temporary, part-time and probationary employees. The sections dealing with the Civil Service Board's ability to review disciplinary matters have been retained.

- Sections 6, 7, 8, 9, 10, 11 and 12 are recommended for deletion. These sections relate to the recruitment and selection process, which is being transferred to the City's staff. Section 8 contains the provision requiring disclosure of eligibility lists, which is inconsistent with State law.

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- Section 13. Amended to delete power to investigate citizen complaints against employees; this function has for a long time been performed by the department directors or City Manager. The Civil Service Board's function as an agency to which such complaints may be referred for investigation is retained. Any reports generated by an investigation are subject to the general laws regarding disclosure of records.
- Section 14. Changes are technical amendments to conform the law to the Civil Service Board's practice.
- Sections 15, 16, 17 and 18 are deleted because those provisions relate to recruitment and selection. Section 15 requires City Council to establish a pay plan, which is required by statute, G.S. 160A-162.

- Sections 19 and 21, prohibiting political activity by employees, are deleted because they conflict directly with G.S. 160-169 which allows it (within limitations).
- Section 20, prohibiting the requirement of a signed resignation letter as a condition of employment, is retained. The part dealing with political activity is deleted.
- Section 22 provides that it is the Civil Service Board's duty to administer the Act. The provision making a violation of the Act a criminal offense is deleted. Most of the deleted provisions related to fraud or cheating on the recruitment and selection process.
- Section 23, which gives citizens the right to maintain civil actions against the City for money paid in violation of the Civil Service Law, is deleted.
- Section 24 is rewritten to continue the classified service designation of affected employees.
- Section 25, which authorized the City to hire outside of the Civil Service process in the event of an emergency, is deleted.
- Sections 26, 27 and 28, dealing with the constitutionality and effective date of the Act, and repealing conflicting provisions, are retained with minor revisions.

Upon inquiry of Councilman Cobb, City Attorney Oast said that a public hearing is not required. It was his understanding, however, that the submittal deadline for the bill to be considered in this session was the following day and language needed to be inserted in that blank bill. If City Council decides to hold a public hearing, the bill would be subject to any amendments resulting from said public hearing. Also, if after the public hearing City Council decides not to proceed with this request, the bill can always be withdrawn from consideration.

Mr. Wilson outlined the employee statistics, noting that out of the 878 full-time employees, only 114 were minorities.

Mr. Wilson said that the Firefighters Association has come up strongly to say that they don't want any changes to the Civil Service Law whatsoever.

Mayor Sitnick reminded Council that one of their goals is to enhance cultural diversity and City government needs to reflect that desire of the Council in the city at large.

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City Attorney Oast said that one change to the information City Council has before them is that in Section 14, the language which is lined through which reads "or is denied any promotion or raise in pay which he or she would be entitled to," should not be lined through. That language will remain in the law.

It was the consensus of City Council to (1) instruct the City Attorney to submit the proposed Civil Service Law changes (with the amendment referred to by City Attorney Oast in Section 14) for inclusion in the draft bill; and (2) schedule a public hearing on this matter for April 27, 1999.

### **REPORT ON SEXUALLY ORIENTED BUSINESS REGULATIONS**

City Attorney Oast reviewed some court cases relating to sexually oriented businesses noting that it is very difficult when the courts are making hair-splitting distinctions. He said that the City is doing as much as they can under the zoning ordinance and we also have licensing requirements for entertainers and operators.

He said that the City has exercised its moratorium authority and our current temporary moratorium runs out on May 11. He asked Council to extend the temporary moratorium on new sexually oriented businesses until the end of June so that whatever regulations Council does seek can work their way through the Planning & Zoning Commission. He recommended that (1) we keep our current separation disbursement requirements, and (2) Council adopt something similar to what the City of Raleigh has, which is a combination of separation ordinance and the conditional use permit mechanism to give the City a greater degree of control over these establishments, not necessarily where they can locate, but the kinds of conditions they will have to satisfy if they do locate in certain places. Through the conditional use permit process, Council can impose conditions on that use that mitigate its potential adverse effects on the surrounding area.

He also recommended the following (which do not have to be reviewed by the Planning & Zoning Commission): (1) adoption regulations requiring that booths be open and visible to management; (2) adopt separation requirements between entertainers and patrons; (3) adopt clothing requirements for servers and people who administer massage and massage therapy; and (4) requirement that only one sexually oriented business be located per site.

Although State law allows cities the following authority, he explained why he is not recommending Council take action on: (1) regulation of ABC establishments even to the point of prohibiting alcohol sales at these establishments; and (2) the imposition of clothing restrictions for entertainers.

Upon inquiry of Councilman Sellers, Mr. Oast said that there are two adult businesses (as defined by our ordinance) located in the City of Asheville.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that escort services are not considered sexually oriented businesses as defined in our ordinance.

Mayor Sitnick stated that the two escort services advertised in the Mountain Xpress are located in Buncombe County.

Councilman Sellers stated that he does not have a problem with sexually oriented businesses in the City of Asheville or any other business in the City, provided they go through the proper permitting process.

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

### **ORDINANCE REGULATING PRIVATE PARKING LOT SIGNS**

City Attorney Oast said that this is the consideration of an ordinance requiring that private parking lots in the downtown area be designated as private.

Council and staff have received complaints about enforcement of parking restrictions on private parking lots, primarily related to the towing of vehicles from those lots. Research indicates that local regulation of "motor private carriers with respect to the transportation of property" is pre-empted by federal law. This preemption has been held to apply to non-consensual towing of vehicles from private lots. The effect of the federal law is that cities may not adopt regulations affecting the manner in which privately initiated towing is carried out. To the extent that the federal government does not prohibit local regulation of towing, it appears that, in order for the City to do so, specific authorization would have to be found in State law.

Some North Carolina counties are subject to a law that requires posting of lots as a pre-condition for towing from those lots. Buncombe is not one of those counties. However, there appears to be general authority by which the City can require that private lots be so designated, and to provide that failure to comply subjects

the offender (the owner or operator of the lot) to a civil fine. This does not mean that unauthorized vehicles parking in private lots may not be towed or that vehicles must be towed from lots that have signs. However, it may reduce the level of inadvertent unauthorized parking, and thus reduce the number of non-consensual tows.

This application of this ordinance is limited to the Central Business District ("CBD") zone east of the French Broad River; we have had very few complaints from other areas of town. At Council's meeting in March, some concern was expressed over the "all or nothing" approach that the original proposed ordinance appeared to take. Accordingly, revisions have been made to require the designation of all private parking lots in the CBD, and the hours during which towing is or may be enforced.

At a meeting of the Downtown Commission last week, it was suggested that uniform signs might aid in further reducing unauthorized use of private lots. Language has been included to permit the City to produce and provide such uniform signs, and to require their use, if available.

The ordinance will become effective sixty days after adoption.

Upon inquiry of Mayor Sitnick, City Attorney Oast suggested the sign be displayed in a conspicuous location near each entrance to the lot, no higher than six feet from the ground.

City Attorney Oast also said that one of the suggestions that came out of the Downtown Commission meeting was that if the City is able to produce signs that are of uniform sign and insignia, the City should do that and when those signs are available that we require their use. Incorporated in the ordinance is the City's ability to do that but not the requirement.

Upon inquiry of Councilman Cobb, City Attorney Oast explained the state law that requires each private parking lot to be posted as a pre-condition of towing. He said that the law gives the person performing the towing a lien on the vehicle that they tow. As he understand it, now, if someone tows from a private parking lot in Buncombe County then the tower cannot enforce the collection of his fee from the person whose vehicle is being towed. He can enforce the collection of his fee from the owner of the parking lot who contracted with the tower to perform the towing. -9-

Upon inquiry of Mayor Sitnick, City Attorney Oast said that there is an unfair and deceptive trade practices law and any complaints should be referred to the Attorney General's Office which has a separate division which deals specifically with towing complaints.

Mayor Sitnick also had complaints about people who rent parking spaces in private lots. They said that when they leave work at 6:00 p.m. and come back later in the evening for an event downtown, someone else is parked in their spot. City Attorney Oast said that that would be between the space owner and the lot owner and that there may be some contractual language that governs that.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the May 11 formal City Council agenda.

## **OTHER BUSINESS:**

### **Educational Access Channel Commission**

It was the consensus of City Council to wait for a recommendation from the Boards and Commissions Committee.

### **Cancellation of July 6, 1999, City Council Worksession**



It was the consensus of City Council to cancel the Tuesday, July 6, 1999, City Council meeting (worksession) due to the Fourth of July holiday.

## **State Building Code**

At the request of Councilwoman Field and upon concurrence of City Council, City Attorney Oast was directed to request the legislature, before the bill submittal deadline tomorrow, for a state-wide or at least a local bill to have a moratorium on the enforcement of the State Building Code that requires buildings that do not have a second exit be brought into compliance by the end of 1999 until the state adopts the new International Building Code with North Carolina amendments to that new Code. The new Code should have some options for a second exit.

## **Miscellaneous**

Mayor Sitnick said that (1) the yellow ribbon on the flag pole in front of the Fire Department is to remember the three prisoners taken in Kosovo; (2) the City Manager is working with the Director of Parks & Recreation on the WRATT Program (which recommends energy and waste reduction assessments); (3) she is working with the City Attorney on possibly formulating a policy or message acknowledging that people will drink so how can we get them not to drive; (4) the City Manager is sending a letter to the N.C. Dept. of Transportation requesting them to clean and repair the medians and islands in the City; and (5) Thursday, April 22, 1999, is "Honk Against Litter" and requested volunteers to staff the intersections.

## **RESOLUTION NO. 99-59 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ESTOPPEL CERTIFICATE FOR DAVIDSON HOTEL PARTNERS LIMITED PARTNERSHIP**

City Attorney Oast said that this is the consideration of authorizing the execution of an estoppel letter. -10-

He said that the City owns certain real property near the Airport on which is situated a Holiday Inn. Davidson Hotel Partners ("DHP") leases the property from the City and operates the motel. DHP proposes to assign the lease, which does not require the City's consent, and in connection with the assignment, has requested that the City execute an estoppel letter indicating that DHP is not in default on the lease. Although the City's approval is not required for the assignment, DHP has submitted information showing that the proposed assignee is Weber River, LLC, which is headquartered in Delaware, and has obtained a Certificate of Authority to operate in North Carolina. DHP has a substantial ownership interest in Weber River.

A similar estoppel letter was issued in 1994 and in 1997. At this time, he has not been able to determine if DHP is current on its lease payments because of the short time available, however he has no reason to think they are not current. This resolution authorizes the Mayor to sign the estoppel letter upon verification that DHP is current, which should occur tomorrow.

Staff recommends adoption of the resolution.

Councilman Tomes moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Field and carried unanimously.

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

Councilwoman Field moved to adopt Resolution No. 99-59. This motion was seconded by Councilman Tomes and carried unanimously.

## **RESOLUTION BOOK NO. 25 - PAGE 189**

**ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 4:50 p.m.

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CITY CLERK MAYOR

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