

Tuesday - September 28, 1999 - 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; Assistant City Attorney Patsy Meldrum; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: City Attorney Robert W. Oast Jr.

### **INVOCATION**

Councilman Sellers gave the invocation.

### **I. PROCLAMATIONS:**

#### **A. PROCLAMATION PROCLAIMING SEPTEMBER 26-OCTOBER 2, 1999, AS "ENOUGH IS ENOUGH WEEK" IN THE CITY OF ASHEVILLE**

Councilman Tomes read the proclamation proclaiming September 26-October 2, 1999, as "Enough is Enough Week" in the City of Asheville. He presented the proclamation to Ms. Bonnie Rose, who briefed City Council on some activities taking place during the week.

#### **B. PROCLAMATION PROCLAIMING OCTOBER 3-9, 1999, AS "METAL ILLNESS AWARENESS WEEK " IN THE CITY OF ASHEVILLE**

Councilman Cloninger read the proclamation proclaiming October 3-9, 1999, as "Mental Illness Awareness Week" in the City of Asheville. He presented the proclamation to Ms. Lynn Woods who briefed City Council on some activities taking place during the week.

#### **C. PROCLAMATION PROCLAIMING OCTOBER 3-9, 1999, AS "GET ORGANIZED WEEK " IN THE CITY OF ASHEVILLE**

Councilman Sellers read the proclamation proclaiming October 3-9, 1999, as "Get Organized Week" in the City of Asheville. He presented the proclamation to Ms. Cheryl Dodd who briefed City Council on some activities taking place during the week.

#### **D. PROCLAMATION PROCLAIMING OCTOBER, 1999, AS "URBAN TRAIL MONTH" IN THE CITY OF ASHEVILLE**

Vice-Mayor Hay read the proclamation proclaiming October, 1999, as "Urban Trail Month " in the City of Asheville. He presented the proclamation to Ms. Mitzi Tessier, Chair of the Urban Trail Committee, who briefed City Council on some activities taking place during the month.

#### **E. PROCLAMATION PROCLAIMING OCTOBER, 1999, AS "ASHEVILLE SISTER CITIES MONTH " IN THE CITY OF ASHEVILLE**

Councilwoman Field read the proclamation proclaiming October, 1999, as "Asheville Sister Cities Month " in the City of Asheville. She presented the proclamation to Ms. Mary Lasher, President of Asheville Sister Cities Inc., who briefed City Council on some activities taking place during the month.

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## **F. PROCLAMATION PROCLAIMING OCTOBER, 1999, AS "ALPHA DELTA KAPPA MONTH " IN THE CITY OF ASHEVILLE**

Councilman Cobb read the proclamation proclaiming October, 1999, as "Alpha Delta Kappa Month " in the City of Asheville. He presented the proclamation to Ms. Shirley McIntosh, District I Vice-President for North Carolina, who briefed City Council on some activities taking place during the month.

## **II. CONSENT:**

### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 14, 1999, AND THE WORKSESSION HELD ON SEPTEMBER 21, 1999**

### **B. RESOLUTION NO. 99-146 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO SELL SURPLUS MOTOR VEHICLES, OFF ROAD EQUIPMENT AND OTHER SURPLUS PROPERTY AT PUBLIC AUCTION**

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is to be held Saturday, October 16, 1999, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

City staff recommends City Council approve the resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

### **RESOLUTION BOOK NO. 25 - PAGE 311**

### **C. RESOLUTION NO. 99-147 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CONSTRUCTION ADVANTAGE INC. FOR FIRE STATION 4 ROOF AND RELATED REPAIRS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract for Fire Station #4 on 300 Merrimon Avenue.

In an effort to maintain City facilities, City staff, through the capital improvement process, has determined Fire Station #4 at 300 Merrimon Avenue requires roof replacement. City staff solicited sealed bids from seven Roofing Contractors, three of which were minority contractors, to supply and install a new roofing system. City staff received bids from three qualified bidders which are as follows:

Construction Advantage, Inc. \$34,474.00

Service One, Inc. \$37,070.00

Stroup Sheet Metal Works, Inc. \$41,480.00

City staff has reviewed all bids and determined that Construction Advantage, Inc. is the lowest bidder and, therefore, recommends acceptance of the base bid amount of \$34,474.00.

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Approved funding is available in the capital improvement project account to pay for this roof replacement for Fire Station #4.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract for \$ 34,474.00 with Construction Advantage, Inc., for this project.

**RESOLUTION BOOK NO. 25 - PAGE 312**

**D. RESOLUTION NO. 99-148 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ASHEVILLE PAVING COMPANY TO RESURFACE STREETS IN THE HAWTHORNE VILLAGE SUBDIVISION**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asheville Paving Company to resurface streets located in Hawthorne Village Subdivision in Asheville, North Carolina.

The City is in need of a contractor to provide paving and resurfacing services for streets in Hawthorne Village Subdivision. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for paving and resurfacing services were solicited and three responses were received. The bidders are listed below:

Company Bid

Asheville Paving Company \$43/Ton

(not to exceed \$47,000)

Tarheel Paving Inc. \$47/Ton

Lonesome Mountain Paving Company \$57/Ton

Asphalt Unlimited \$50/Ton

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the Resolution Authorizing the City Manager of the City of Asheville to enter into contract with Asheville Paving Company to resurface roads in Hawthorne Village Subdivision.

**RESOLUTION BOOK NO. 25 - PAGE 313**

**E. RESOLUTION NO. 99-149 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A FEDERAL AVIATION GRANT AGREEMENT**

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed \$1,076,956. This grant consists of the following projects: Y2K Verification, Master Plan Update, Wildlife Fencing, ARFF Road and Perimeter Security Road - Phase I.

**RESOLUTION BOOK NO. 25 - PAGE 314**

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**F. RESOLUTION NO. 99-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR A GRANT TO ASSIST WITH THE**

## **TRANSPORTATION OF ELDERLY INDIVIDUALS FOR RECREATIONAL PURPOSES**

Summary: The consideration of an application for a \$20,700 grant of state money routed through Buncombe County for transportation of elderly people to recreation programs in the area.

The City of Asheville has applied for \$20,700 for use in transporting elderly persons for recreational purposes. The Parks and Recreation Department will use this money for nutrition programs and additional transportation to events for seniors. These events include such things as a Labor Day picnic, in conjunction with the Council for Aging at Lake Julian and the UNC-A Holiday Concert at UNC-A Campus. These are new trips which the Department has not provided prior to this grant.

The Grant will take the form of a credit when applicable to costs incurred through the use of Mountain Mobility, and disbursements to the City when and if other transportation sources are used. This grant requires no matching amount on the part of the City.

City staff recommends City Council authorize the City Manager to apply for and enter into an agreement with Buncombe County for a grant to transport elderly people to recreation programs in the area.

### **RESOLUTION BOOK NO. 25 - PAGE 315**

#### **G. RESOLUTION NO. 99-151 - RESOLUTION ACCEPTING THE STREET NAMES OF McTINDAL CIRCLE, OAKEN COURT AND PEELER DRIVE LOCATED IN TWIN SPRINGS SUBDIVISION**

Summary: The consideration of a resolution accepting the new proposed street names of McTindal Circle, Oaken Court and Peeler Drive located in Twin Springs Subdivision.

The City of Asheville Community Development Division, owner of all lots in Twin Springs Subdivision, located on Broadview Drive in Oakley, has petitioned City Council to adopt the new street names of McTindal Circle, Oaken Court and Peeler Drive.

Community Development staff recommends adoption of the resolution accepting the new proposed street names of McTindal Circle, Oaken Court and Peeler Drive located in Twin Springs Subdivision.

### **RESOLUTION BOOK NO. 25 - PAGE 316**

#### **H. RESOLUTION NO. 99-152 - RESOLUTION AUTHORIZING THE MAYOR TO DEDICATE TO THE PUBLIC USE STREETS AND EASEMENTS IN TWIN SPRINGS SUBDIVISION**

Summary: The consideration of a resolution authorizing the Mayor to dedicate to the public use streets and easements on the plat for Twin Springs Subdivision.

The City of Asheville is the owner of record of a 12.353-acre tract of unimproved real property on Broadview Drive within the City limits. Prior to recordation of the final subdivision -5-

plat, the City of Asheville must dedicate to public use the streets and easements as shown on the plat.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.353-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm water drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when housing construction is completed.

Community Development staff recommends adoption of the resolution to dedicate the streets and easements in Twin Springs Subdivision to public use.

## **RESOLUTION BOOK NO. 25 - PAGE 317**

### **I. MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CONSIDER A NEW HEAD OF MONTFORD TRANSITION OVERLAY DISTRICT AND APPLICATION OF THAT DISTRICT TO NINE LOTS ON MONTFORD AVENUE, HILL STREET AND GUDGER STREET**

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

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

### **CHANGE OF AGENDA**

Councilman Cloninger moved to amend the agenda to change the order of public hearings. This motion was seconded by Councilman Sellers and carried unanimously.

### **PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD**

Mayor Sitnick opened the public hearing at 5:30 p.m.

Urban Plan Dan Baechtold said that this public hearing was advertised on September 17 and September 24, 1999.

Councilman Cloninger moved to continue the public hearing, without further advertisement, until November 23, 1999. This motion was seconded by Councilman Sellers.

Councilman Cloninger said that he is requesting the continuance because City Council will be considering revisions to the standards of wireless telecommunication facilities on November 9, 1999, and he feels it's important that those revisions be considered before any more petitions for cell towers are received. Also, he felt that since Council has not been given adequate time to review this information, the continuance would allow Council to study the request.

When Vice-Mayor Hay asked if Council were to make changes to the ordinance, would it affect this application, since the application was made before the changes were in effect, -6-

Assistant City Attorney Meldrum responded that generally applications are subject to the ordinance in effect when they are made. It would be up to the applicant to determine whether or not they would be subject to any amendments after the application was made.

Councilman Cloninger explained that the area the petitioner is asking to be allowed to erect a tower is near McGuffey's on Kenilworth Knoll, very near where BellSouth currently has a tower. We are trying to encourage co-location so that the phone companies will locate more than one antenna on a tower. As it stands now, if BellSouth, who has the current tower there, wanted to take down their tower and construct a new stronger tower that could accommodate more antenna, their tower would have to be reduced from 180 feet to 100 feet. However, one of the proposed revisions to the ordinance would states that where a company already has a tower that is 180 feet and they want to fortify that tower or replace the tower so that it can accommodate more antenna, then the City will let them maintain that same height, rather than requiring

them to reduce it to 100 feet. He said that if the proposed revision is adopted by City Council, then at least the petitioner would have the option of looking into the possibility of locating on the BellSouth tower, contingent upon BellSouth being agreeable as well. He felt Council should make that option available to applicants prior to Council ruling on petitions.

An attorney representing American Tower Corporation, petitioner, stated that the current telecommunications facilities standards were subject to extensive revisions and as a result, structure builders and carriers were on hold throughout all of 1999 unable to build out their structures until the ordinance was finalized. Now they have filed a tower application that meets that revised ordinance and he felt they have a reasonable expectation to have their application considered. They do not want to have to wait months for the Council to act upon the proposed ordinance revisions and whether BellSouth will allow them to tear down their tower and rebuild it is a very speculative issue. He felt this was an issue of fairness in that the tower application, as filed under the current ordinance in effect today, should be considered.

Mayor Sitnick noted that if the proposed ordinance passes, the City will be able to offer the co-location option which is something that City Council is very much in favor of having available.

Assistant City Attorney Meldrum asked City Council to be mindful of the provision in the Unified Development Ordinance which reads "a public hearing on the application shall be scheduled by the City Council following review and approval or conditional approval by the Technical Review Committee. The Asheville City Council shall consider the request within 35 days of receiving information regarding the conditional use request from the Planning and Development Director." She said that since City Council has opened the public hearing and after looking at the information, has determined that additional time is needed for review, she felt that City Council has met that provision.

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

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

#### **A. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE DEFINITIONS OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATION SIGNS, TO DETERMINE THE LOCATIONS OF COMMUNITY IDENTIFICATION SIGNS, TO AMEND REGULATIONS REGARDING SIGNS IN THE RIGHT -OF-WAY, AND TO AMEND REGULATIONS REGARDING THE ENFORCEMENT REMEDIES -7-**

Mayor Sitnick said that this public hearing was opened on Tuesday, August 10, 1999, and continued indefinitely until City Council had an opportunity to review the items in a worksession. These items were reviewed in the September 7, 1999, City Council worksession and on September 14, 1999, a motion was made to set the public hearing on these matters on this date.

Mr. Carl Ownbey, Urban Planner, said that this public hearing was advertised on September 17 and 24, 1999.

#### **ORDINANCE NO. 2615 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES INSERTING THE DEFINITION OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATION SIGNS**

Mayor Sitnick opened the public hearing at 5:44 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-2-5 of Chapter 7 of the Code of Ordinances of the City of Asheville defining Community Identification Signs and Community Facilities.

During June and July of 1999, the Planning and Zoning Commission held various work sessions and regular

meetings at which they discussed and recommended a wording amendment concerning the definition of Community Identification Signs and Community Facilities.

The Planning and Development staff presented for review the definition of Community Identification Signs and Community Facilities. When staff began amending other sections of the ordinance, we discovered that the terms "community identification signs" and "community facilities" were not specifically defined in the ordinance.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 2, 1999, regular meeting. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick closed the public hearing at 5:48 p.m.

Councilwoman Field moved for the adoption of Ordinance No. 2615. This motion was seconded by Councilman Tomes and carried unanimously.

### **ORDINANCE BOOK NO. 17 - PAGE 476**

### **ORDINANCE NO. 2616 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES DEALING WITH ON-PREMISE SIGNS: SINGLE TENANT DEVELOPMENT - COMMUNITY IDENTIFICATION SIGNS**

Mayor Sitnick opened the public hearing at 5:50 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-13-4 of Chapter 7 of the Code of Ordinances of the City of Asheville regarding On-Premise Signs/Single Tenant Development - Community Identification Signs.

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During June and July of 1999, the Planning and Zoning Commission (Commission) held various worksessions and regular meetings at which they discussed and recommended a wording amendment concerning the location and size of community identification signs.

The Planning and Development staff presented for review the location and size of community identification signs. The request was initiated through the Haw Creek Community after they were required by the City to remove their community identification sign and related community facilities panels. At that time, these particular signs were not permitted under the ordinance.

The Commissioners held two hearings concerning the location and size of Community Identification Signs (the Haw Creek community requested additional square footage for identification of community facilities) and recommended approval of the ordinance, with the maximum square footage of the Community Identification Sign to be equal to that of a subdivision or multi-family sign at 16 square feet based on initial community input and acceptance by community representation at the meeting. After the Commission's decision, it was determined that the proposed sign size does not meet the needs of the community in adequately identifying community facilities because the overall sign size (including the facility panels) would be too small.

After receipt of the letter from Mr. Pelly, the Planning and Development staff has reviewed the recommendation again with the community and agreed that since the purpose of the community identification sign would be to identify an area larger than a subdivision or multi-family development, the size and design should be larger. The revised staff recommendation is a total of 24 square feet to include the community identification sign and related community facilities panels with a maximum size of the community

identification sign to be 16 square feet. The Commissioners were informed about the staff recommendation at their September 1, 1999, meeting and by consensus, they indicated that they did not want to change their recommendation or see the issue remanded back to them.

At a worksession on this matter on September 7, 1999, the City Council received a report on the revised staff recommendation. Two ordinances are presented for consideration: (1) an ordinance incorporating the recommendation from the Planning and Zoning Commission ("Option One"); and (2) an ordinance incorporating the revised staff recommendation ("Option Two").

The Planning and Development Department recommends adoption of the ordinance incorporating the revised staff recommendation ("Option Two").

Mr. Frank Martin, representative of the Haw Creek Community Association, supported staff's recommendation of a total of 24 square feet which will be large enough to properly identify the community and also provide directions to their six local churches.

Councilwoman Field felt that the six foot maximum height of the sign is not realistic with our terrain.

After a brief discussion about possibly having a range of height, Assistant City Attorney Meldrum said that this particular type of sign is allowed within a City street right-of-way and the only way that it's allowed is upon issuance of an encroachment agreement by the Public Works Department, approval by the Traffic Engineer and permit from the Planning and Development Department. So, with that much review, you may be able to include a range of six to nine feet and let the height be determined based upon that review by City staff. She said that if Council wished to proceed in that direction, she would include the appropriate language in the Option No. Two ordinance. -9-

Mayor Sitnick closed the public hearing at 5:57 p.m.

Councilman Cloninger moved for the adoption of Ordinance No. 2616 (Option Two, as modified by Assistant City Attorney Meldrum). This motion was seconded by Councilman Tomes and carried unanimously.

#### **ORDINANCE BOOK NO. 17 - PAGE 477**

#### **ORDINANCE NO. 2617 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES DEALING WITH SIGNS PROHIBITED IN ALL ZONING DISTRICTS - SIGNS LOCATED IN THE RIGHT-OF-WAY**

Mayor Sitnick opened the public hearing at 6:00 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-13-3 of Chapter 7 of the Code of Ordinances of the City of Asheville concerning Signs Prohibited in All Zoning Districts - Signs in the Right-of-Way.

During June and July of 1999, the Planning and Zoning Commission held various worksessions and regular meetings at which they discussed and recommended a wording amendment concerning signs in the right-of-way.

The Planning and Development staff presented for review regulations concerning signs in the rights-of-way. This section generally prohibits signs in the right-of-way with the exception of certain specified signs. This amendment to the ordinance strengthens the methods of enforcement by staff, reduces clutter from three permitted signs to two, increases the number of sign faces from three to four by permitting double-face signs, and reduces the height of signs placed in the right-of-way from nine feet to six feet. It also requires review of permits for signs in the right-of-way by the Public Works Department, the City Traffic Engineer, the



Planning and Development staff, and written notification to the adjacent property owner. Specific wording is also incorporated to permit City staff to enforce this section of the ordinance within the N.C. Dept. of Transportation right-of-way.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 24, 1999, worksession. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Discussion surrounded the illegal posting of signs on utility poles and the process in which the Zoning Office uses when signs are taken down. Ms. Sharon Allen, Development Code Administrator, said that approximately 200 signs a week are being taken down.

Upon inquiry of Vice-Mayor Hay, Ms. Allen said that the ordinance does contain remedies for citing violators and they have used those provisions with repeat offenders.

Mayor Sitnick suggested the City work with the Coalition of Asheville Neighborhoods, who expressed a willingness to go from neighborhood association to neighborhood association to raise the funds, in order to purchase a kiosk that can be placed at the entrances to the neighborhoods to display signs like yard sales, lost dogs, etc. She understood that the Public Works Department could install the kiosks if they are located within the right-of-way.

It was the consensus of City Council that the ordinance be modified to include a range of six to nine feet and let the height be determined based upon that review by City staff. -10-

Mayor Sitnick closed the public hearing at 6:10 p.m.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2617, as modified. This motion was seconded by Councilman Cobb and carried unanimously.

#### **ORDINANCE BOOK NO. 17 - PAGE 479**

#### **ORDINANCE NO. 2618 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING ENFORCEMENT REMEDIES AND PROCEDURES**

Mayor Sitnick opened the public hearing at 6:10 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-18 of Chapter 7 of the Code of Ordinances of the City of Asheville concerning Enforcement Remedies and Procedures.

During June and July of 1999, the Planning and Zoning Commission held various work sessions and regular meetings at which they discussed and recommended a wording amendment concerning the enforcement of zoning violations of the Unified Development Ordinance (UDO).

The amendment was based on a request from City enforcement staff to add language to subsection 7-18-3 describing the contents of the notice of violation. This language was incorporated in the old zoning ordinance but was inadvertently left out of the UDO. The language is as follows:

The notice of violation may include, but not be limited to, an order to discontinue the illegal use of land, buildings or structures; require removal of illegal buildings, structures or uses or removal of illegal additions, alterations or structural changes; discontinue the illegal work being done; or require any other action to insure compliance with or prevent violation of this chapter.

A few other minor changes have been recommended as shown on the copy of the "Proposed Ordinance."

At the same time this language was requested to be added, the City Attorney's Office recommended relocating the language of subsections (e) and (f) from Section 7-18-3 to new Sections 7-18-4 and 7-18-5 as they described remedies for violations rather than the procedure for and content of notices of violation. The language of subsection 7-18-3 (e) has been relocated to subsection 17-18-4 (a). Other than two minor changes, the language is the same. The minor changes included the addition of the phrase "of a civil penalty" in the first line and the change from "shall" to "may" in the third line. As Section 7-18-2 (c) included criminal penalties as a remedy, a new subsection 17-18-4 (b) was added to set out the enforcement procedure which would be followed in the event of a criminal penalty.

The language in subsection 7-18-3 (f) regarding summary removal of signs/sign structures and remove orders for signs/sign structures was relocated to new Section 7-18-5. Other than a few minor changes, the language is the same. Those minor changes include substituting the word "City" for "Sign Administrator" and "director of building safety" in the first sentence of subsection 7-18-5 (a). In subsection 7-18-5 (b) the first four lines regarding the statutory authority were added. -11-

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 24, 1999, worksession and again at their July 7, 1999, regular meeting. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Assistant City Attorney Meldrum responded to various questions and comments from Council, some being, but are not limited to: the notice of violation wording in secs. 17-18-4 and 17-18-5; what the illegal use of land would constitute; and what is the prescribed period of time within which the violation should be cured,

Councilman Tomes was concerned that the public may not be aware of the provisions in this ordinance. Ms. Allen responded that once a complaint is received, an inspector goes out and tries to make contact with the violator. The inspector would then advise them of the requirements to either get a permit, or stop the violation. If they do not comply, then they follow up with a notice of violation. She stressed that this will mostly be used for repeat offenders and blatant abusers.

Mayor Sitnick closed the public hearing at 6:27 p.m.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2618. This motion was seconded by Councilman Cloninger and carried unanimously.

## **ORDINANCE BOOK NO. 17 - PAGE 481**

### **B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DEFINE THE POWERS AND DUTIES OF THE ASHEVILLE TREE COMMISSION**

#### **ORDINANCE NO. 2619 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO DEFINE THE POWERS AND DUTIES OF THE ASHEVILLE TREE COMMISSION**

Due to the order of the agenda, Assistant City Attorney Meldrum said that this amendment delegates the powers and duties of a combined commission (Tree/Greenway Commission) into one commission, the Tree Commission. By holding this public hearing, Council will be delegating powers to a commission that does not exist until Council adopts the ordinance under new business which separates the Tree/Greenway Commission into two separate commissions (Tree Commission and Greenway Commission). Therefore, to take action on this, Council will need to adopt this amendment to the Unified Development Ordinance subject to adopting the ordinance separating the Tree/Greenway Commission into two separate commissions.

Mayor Sitnick opened the public hearing at 6:27 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an amendment to the Unified Development Ordinance which would delete references to "Tree and Greenway Commission" and insert "Tree Commission" in its place. This public hearing was legally advertised on September 17 and 24, 1999.

The Planning and Zoning Commission has recommended approval of an amendment to Chapter 7 of the Code of Ordinances which will delete all references to the "Tree and Greenway Commission" and insert "Tree Commission" instead. The proposed ordinance amendment has been drafted in anticipation of Council designating the Tree and Greenway Commission as the -12-

Tree Commission and creating a separate Greenway Commission. With the adoption of the proposed amendment, the Tree Commission will assume those duties and responsibilities previously delegated by the Unified Development Ordinance to the Tree and Greenway Commission. Among these duties and responsibilities are:

- Having a representative serve on the Technical Review Committee;
- Reviewing and commenting on requests for reductions in buffer areas for churches located in residential zoning districts; and
- Review of plans for Level II and Level III site plan projects.

The proposed ordinance amendment would enable the Tree Commission to call upon Planning and Development Department staff for advice and assistance, as the Tree and Greenway Commission can do under the existing ordinance. Adoption of the proposed ordinance amendment is necessary to facilitate the creation of a separate Tree Commission and a separate Greenway Commission.

The Planning and Zoning Commission unanimously recommended approval of the ordinance amendment at their May 5, 1999, meeting. The Planning and Development Department staff recommends approval of the ordinance amendment.

Mayor Sitnick closed the public hearing at 6:31 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. 2619, subject to adoption of the ordinance separating the Tree/Greenway Commission into two separate commissions which will be considered under "New Business". This motion was seconded by Councilwoman Sellers and carried unanimously.

## **ORDINANCE BOOK NO. 17 - PAGE 485**

### **C. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A DUPLEX ON TOWN MOUNTAIN ROAD**

#### **ORDINANCE NO. 2602 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A DUPLEX ON TOWN MOUNTAIN ROAD**

Assistant City Attorney Meldrum reviewed with Council the conditional use permit process by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing,

Council will then debate the proposal and will take action on the request. It has been Council's practice to have two separate votes, one today to either grant or denial of the request. At the next formal meeting, staff would prepare a written Order summarizing the finding and conclusions either granting or denying issuance of the permit and there would be a separate vote on that written Order.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 6:32 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter. -13-

Assistant City Attorney Meldrum said that as documentary evidence is submitted, she will be noting the entry of that evidence into the record.

Mr. Mike Matteson, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Matteson said that this is the consideration of a Conditional Use approval and permit as outlined in the Unified Development Ordinance (UDO) to construct a duplex on a 0.34 acre parcel on Town Mountain Road. The property owner is Dr. Shing Kuai.

By use of a "Sketch Plan" dated July 8, 1999, (City Exhibit 4), Mr. Matteson described the property which is zoned RS-8 Residential Single-Family High Density. Duplexes are conditional uses within the RS-8 zoning district.

Conditional uses are uses which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed.

In addition to development standards for the zoning district in which they are located, conditional uses must meet certain general and individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare.

The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the UDO and are as follows:

1. That the proposed use or development of the land will not materially endanger the public health or safety;
2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
5. That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city;
6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

There is no indication that these general conditions will not be met by the proposal.

The following individualized conditions, which can be found in Section 7-16-2 (d) (4) of the UDO, apply specifically to duplexes in single-family residential districts:

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a. Use districts: RS-2, RS-4, RS-8.

The property is zoned RS-8.

b. Duplexes shall be located a minimum of 300 feet from all other multi-family uses (excluding dwellings with accessory apartments) on the same street in the single-family district.

There is not another multi-family use within 300 feet on the same street and within this single-family district.

c. Minimum lot area shall be 125 percent of that required for a single residential unit in the respective district.

The lot area exceeds this minimum requirement.

d. Parking shall be located in the rear and screened with vegetation from adjacent single-family uses.

The site plan addresses this condition.

e. The structure shall have a single front entrance and other entrances as required.

The proposed structure will have one entrance on the front and the second entrance on the side of the building.

f. Requirements of the N.C. State Building Code shall be met.

State Building Code requirements must be met in order for a building permit to be issued for the project.

At their August meeting, the Technical Review Committee recommended approval of the conditional use permit with a number of conditions which were met with the submittal of revised plans.

The Planning and Development Department staff recommends that City Council hold a public hearing to consider a Conditional Use approval and permit to construct a duplex on a 0.34 acre parcel on Town Mountain Road.

Mr. Alex Cochran, representing Dr. Kuai, said that basically this is building a small house in his back yard. At this time it is uncertain that this will be used as a duplex. He said it may be used for Dr. Kuai's family who will be coming to the United States from Japan. He asked that consideration of this permit be considered at this meeting because if it is approved, waiting another two weeks for approving the written order may make it difficult to break ground.

Vice-Mayor Hay said that in the past Council has had to hammered out different conditions and it was hard to give exact direction to the staff to draft the written Order. However, this may be a situation where Council can give exact direction to staff and it will not have to come back to Council for approval of the written Order.

Assistant City Attorney Meldrum said that if City Council would like to accommodate the petitioner, Council would need a motion to adopt findings that the general conditions and the specific conditions have been met and then staff will draft an Order to indicate that.

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There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:46 p.m.

Councilman Cloninger moved to adopt findings that the application complies with the general conditions as set forth in Section 7-16-2 (c) of the Code of Ordinances of the City of Asheville and finds that in addition the application complies with the specific conditions found in Section 7-16-2 (d) (4) of the Code of Ordinances of the City of Asheville. This motion was seconded by Councilman Sellers and carried unanimously.

In consideration of adoption of those findings, Councilman Cloninger moved to grant a conditional use permit to construct a duplex on a 0.34 acre parcel on Town Mountain Road. This motion was seconded by Councilman Tomes and carried unanimously.

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

As noted by this action today, Councilman Cloninger has shown that they are willing to approve multi-family units in single-family zoned areas where appropriate.

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

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

#### **A. RESOLUTION NO. 99-153 - RESOLUTION ADOPTING THE EDUCATIONAL ACCESS CHANNEL OPERATING GUIDELINES**

Mr. Tim Amos, Chairman of the Educational Access Channel Commission, said that the Cable Franchise Agreement adopted by City Council in August 1998 designates three initial access channels to be used for public, educational, and/or government programming.

In March 1999, The Asheville City Council approved Ordinance No. 2554 establishing an Educational Access Channel Commission to oversee the development of the educational access channel. The ordinance requires that operating guidelines for the educational access channel be approved by Asheville City Council. At their August 11, 1999, meeting, the Educational Access Channel Commission unanimously approved the operating guidelines. The Commission is prepared to launch the Education Channel upon approval of these guidelines by City Council.

The Commission also unanimously approved an overview, mission & objectives statement which is also included for informational purposes. Both documents are based upon information gathered from the guidelines and operating policies of access channels in other communities as well as input from Commission members, City staff, and Asheville City Council.

Staff requests that City Council adopt the proposed resolution approving the Educational Television Operating Guidelines as written.

Mayor Sitnick said that the educational programming will be the primary focus and that at no time shall coverage of athletic events exceed 40% of available programming hours. In addition, considering the growing international community in Asheville, and the fact that many languages are spoken in the schools and in the community at large, we make sure that the use of other languages is considered all the time and at every turn. If there is need for interpretation, that might be something to consider.

When Mayor Sitnick asked if the channel that carries the educational station be capable of closed caption, Cable Access Coordinator Jeff Reble said that the capability exists, however, -16-

it is not offered like on the other cable stations. He explained that closed captioning is a service that either needs to be purchased or be provided and oftentimes that takes the form of a typist actually creating the captioning which is then transferred over the air to the viewers at home.

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

Councilman Cobb moved for the adoption of Resolution No. 99-153. This motion was seconded by Councilman Tomes and carried unanimously.

## **RESOLUTION BOOK NO. 25 - PAGE 318**

### **B. ORDINANCE NO. 2621 - ORDINANCE AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES TO SEPARATE THE ASHEVILLE TREE/GREENWAY COMMISSION INTO THE ASHEVILLE TREE COMMISSION AND THE ASHEVILLE GREENWAY COMMISSION AND TO DEFINE THEIR POWERS AND DUTIES**

Mr. Irby Brinson, Director of Parks and Recreation, said that this is the consideration of an ordinance to establish a Greenway Commission to serve in an advisory capacity for the development of greenways in Asheville.

On October 13, 1998, City Council adopted the Greenway Master Plan for the City of Asheville. Part of that plan included the establishment of a Greenway Commission to serve in an advisory capacity within the City. This ordinance will establish a Greenway Commission made up of interested citizens to promote the establishment of linear park areas known as greenways. The Commission shall consist of seven members. The Executive Director of Quality Forward, Executive Director of Parks, Recreation and Greenway Foundation, Executive Director of RiverLink, and Chair of the Parks and Recreation Advisory Board will serve as ex-officio members of the Commission. Members of the Commission will serve three year staggered terms. In addition, this ordinance will split the greenway function from the Asheville Tree and Greenway Commission, establishing the Asheville Tree Commission as a separate entity from the Greenway Commission. The purpose of the Greenway Commission will be to recommend updates of the Greenway Master Plan, foster communication and coordination among citizens of the City for acquisition and development of greenways, identify potential sites to be acquired, and conduct research, planning and feasibility assessments to support the Greenway Commission. The Greenway Commission will report to the Parks and Recreation Director. The Greenway Commission will establish monthly meeting times and dates to conduct their business.

City Council will determine who on the Asheville Tree and Greenway Commission will serve on the Greenway Commission and will appoint additional members as needed to both Commissions.

The Parks and Recreation Department staff is requesting City Council's approval of an ordinance establishing the Greenway Commission.

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

Councilman Tomes moved for the adoption of Ordinance No. 2621. This motion was seconded by Councilwoman Field and carried unanimously.

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

### **C. RESOLUTION NO. 99-154 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION**

Vice-Mayor Hay, Chairman of the Boards & Commissions Committee, said that the terms of Max Haner, Lionel Williams and Jane Mathews expired on August 14, 1999.

The Boards & Commissions Committee recommended the reappointment of Mr. Haner and Mr. Williams and that the position of Ms. Mathews be interviewed for. On September 7, 1999, it was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Haner and Mr. Williams to each serve an additional three-year term, terms to expire on August 14, 2002, or until their successors have been appointed.

Vice-Mayor Hay moved to reappoint Max Haner and hearing no opposition, Mr. Haner was unanimously appointed to the Planning & Zoning Commission to serve a three year term, term to expire August 14, 2002, or until his successor is appointed.

Vice-Mayor Hay moved to reappoint Lionel Williams and hearing no opposition, Mr. Williams was unanimously appointed to the Planning & Zoning Commission to serve a three year term, term to expire August 14, 2002, or until his successor is appointed.

On September 14, 1999, City Council interviewed Anne Campbell, Barber Melton, Hedy Fisher, Ben Slosman and Jan Howard. Peter Alberice was interested in the vacancy, however, he was not able to attend the interview on September 14.

Councilman Cobb nominated Barber Melton.

Mayor Sitnick nominated Hedy Fischer.

Councilwoman Field nominated Ben Slosman.

Each Council member voiced praise about all candidates for the Planning & Zoning Commission. After each Council member voiced their nominations, they each spoke in support of their choices.

Barber Melton was supported by two Council members, Ben Slosman was supported by two Council members and Hedy Fisher was supported by three Council members. Since there was not a majority for any candidate, Vice-Mayor Hay suggested in an effort to reduce the field of candidates, each Council member state their number one and number two choices. The number one choices would be given two points and the number two choices would be given one point. Hedy Fisher received eight points, Barber Melton received eight points and Ben Slosman received five points. Vice-Mayor Hay then asked for a show of hands in favor of appointing Hedy Fisher. Mayor Sitnick and Councilmen Cloninger Sellers and Tomes raised their hands. Vice-Mayor Hay then asked for a show of hands in favor of appointing Barber Melton. Vice-Mayor Hay, Councilwoman Field and Councilman Cobb raised their hands. Therefore, Hedy Fisher was appointed to the Planning & Zoning Commission to serve a three year term, term to expire August 14, 2002, or until her successor is appointed.

### **RESOLUTION BOOK NO. 25 - PAGE 320**

### **D. RESOLUTION NO. 99-155 - RESOLUTION APPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY -18-**

Vice-Mayor Hay, Chairman of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Tourism Development Authority.



The term of Randy Fluharty as a member on the Tourism Development Authority expired on August 30, 1999. Mr. Fluharty has served two full successive terms and is therefore, not eligible for reappointment.

On September 14, 1999, City Council interviewed Chris Cavanaugh.

Vice-Mayor Hay moved to appoint Chris Cavanaugh and hearing no opposition, Mr. Cavanaugh was appointed to the Tourism Development Authority, to serve a three year term, term to expire August 30, 2002, or until his successor is appointed.

## **RESOLUTION BOOK NO. 25 - PAGE 321**

### **E. RESOLUTION NO. 99-156 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON**

Vice-Mayor Hay, Chairman of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson.

The term of Charles Worley as a member on the Regional Water Authority expires on September 30, 1999. Mr. Worley is eligible for reappointment.

On September 14, 1999, City Council interviewed Ted Patton.

The Boards & Commissions Committee recommended City Council reappoint Mr. Worley to the Regional Water Authority.

Mayor Sitnick nominated Ted Patton.

Councilwoman Field nominated Charles Worley.

Each Council member spoke in support of their choices.

Ted Patton received four nominations and Charles Worley received three nominations. Therefore, Ted Patton was appointed to the Regional Water Authority to serve a three year term, term to expire September 30, 2002, or until his successor is appointed.

## **RESOLUTION BOOK NO. 25 - PAGE 322**

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

#### **A. CLAIMS**

The following claims were received by the City of Asheville from August 20 - September 16, 1999: Mark Gibney (Streets), Mikola Zzaricheuskiy (Sanitation), Mary Ann Mason (Police), Corinne Kurzman (Water), Debra Sharp (Fire), BellSouth (Water), Buncombe County Sheriff Department (Finance), Westall-Chandley Lumber Co. (Sanitation) and Robin Hester (Sanitation).

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The following claims were received by the City from September 17-23, 1999: Charles Gantt (Streets) and Clarence Benton (Streets).

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

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

City Manager reported on his recent trip to Saumur, France, as part of a delegation of Sister City representatives. He presented the Mayor with a letter from the Mayor of Saumur along with a report of the some of the activity that took place during that trip.

City Council directed the City Manager to arrange a social for the local delegation to thank them for their help in getting a number of pieces of legislation through the General Assembly.

City Manager Westbrook updated City Council on the efforts being made by the City of Asheville with regard to the Hurricane Floyd Disaster Relief Program.

It was the consensus of City Council to place an item on the next worksession agenda about upcoming City Council meeting dates.

Ms. Carol Collins, representing Citizens for Property Rights, said that Buncombe County's Zoning Administrator Jim Coman was given the opportunity to report to City Council on their proposed ordinance on September 21, 1999, and that presentation is being aired on the Government Channel. The Citizens for Property Rights disagree with the position taken to endorse and promote the County's zoning ordinance. They feel the public deserves to hear both sides of the debate in Council's public education effort. They are tax payers and City Council is using public tax money to promote zoning in airing the video of Mr. Coman's presentation and they feel they should have equal time to make a presentation to City Council at the next worksession. They request this equal time to more fully inform voters of both sides of the issue and that it receive equal broadcasting time. Furthermore, if the City hosts an additional information meeting, either a public forum or in a City Council meeting session, they request equal time and opportunity to give that presentation. They feel that equal time and resources should be given to the opposing side.

Mayor Sitnick said that the City Council has not made any statement that they are endorsing the County's zoning ordinance at this time. However, after further review by City Council of the plan, they will then determine whether or not to support and endorse the ordinance.

It was the consensus of City Council to invite the Citizens for Property Rights to the next formal meeting on October 12, 1999, to make a 10-minute presentation under the item titled "Informal Discussion and Public Comment."

Upon inquiry of Ms. June Lamb, Mayor Sitnick said that no City funds were used for the City Manager's trip to Saumur, France.

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

Mayor Sitnick adjourned the meeting at 8:05 p.m.

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CITY CLERK MAYOR

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