

Tuesday - December 21, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF THE 1999 STATE 4-A FOOTBALL CHAMPIONS - REYNOLDS ROCKETS

Mayor Sitnick recognized Dr. Tony Baldwin, Principal of A.C. Reynolds High School, Football Coach Bobby Poss and four representatives of the 1999 State 4-A Football Champions - the Reynolds Rockets.

B. RESOLUTION NO. 99-191 - RESOLUTION RENAMING THE OLD FIRE STATION 4, LOCATED AT 300 MERRIMON AVENUE, IN HONOR OF HARLEY SHUFORD

Mayor Sitnick said that this is the consideration of a resolution naming Old Fire Station 4, located at 300 Merrimon Avenue, in honor of retiring Fire Investigation Supervisor Harley Shuford.

Asheville Fire Department Fire Investigation Supervisor Harley Shuford is retiring from his position after more than 30 years of service to people in Asheville and Buncombe County (and beyond) as a Firefighter , Fire Investigator and Fire Investigation Supervisor. He has determined the cause of hundreds (if not thousands) of fires during his career, and, in cooperation with the District Attorney's office, has established an arson arrest and conviction rate that is significantly above the national average.

Harley Shuford also played a crucial role in the development of the Asheville-Buncombe Arson Task Force, was unanimously selected as the Task Force's first director, and continues as director of the Task Force to this day. In large part because of Harley Shuford's contributions, the Asheville-Buncombe Arson Task Force has been selected by the U.S. Fire Administration as a model arson task force for study by other communities wishing to establish a local arson task force.

Harley Shuford is retiring from service, effective January 1, 2000. It is proposed that an appropriate City commemoration of Harley Shuford's service would be the naming of Old Fire Station 4, 300 Merrimon Avenue, in honor of Harley Shuford. (Old Fire Station 4 has served as headquarters for the Asheville-Buncombe Arson Task Force in recent years.)

The Fire Chief recommends adoption by City Council of the resolution providing for the naming of Old Fire Station 4 in honor of Harley Shuford.

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Resolution No. 99-191 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 363

CONTINUANCE REQUEST:

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

At the request of the applicant, City Council continued this matter from its November 23, 1999, meeting to its December 21, 1999, meeting in order to allow time for the applicant to conduct a balloon test at the site to simulate the height of the tower. This balloon test is scheduled for Friday December 17, 1999, between the hours of 8:00 a.m. and 5:00 p.m.

The City engaged a consultant to aid in the review of the application. The consultant is Paul Rosa of Digital Landscapes. Mr. Rosa has requested a continuance to provide additional time to analyze the results of the balloon test and prepare a report for the public hearing before City Council.

The applicant, American Tower, sent a letter to the City agreeing to the continuance. The applicant requests that City Council continue the public hearing to January 11, 2000.

Vice-Mayor Cloninger moved to continue the public hearing until January 11, 2000. This motion was seconded by Councilman Worley and carried unanimously.

II. CONSENT:

Councilman Peterson requested that Consent Agenda Item G. be discussed at the upcoming City Council retreat. He felt that to move the worksession to after 5:00 p.m. would enable more members of the public to attend.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 7, 1999, AND THE WORKSESSION HELD ON DECEMBER 14, 1999

B. MOTION SETTING A PUBLIC HEARING ON JANUARY 11, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING DETACHED GARAGES AS ACCESSORY USES

C. MOTION SETTING A PUBLIC HEARING ON JANUARY 11, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW BANKS TO BE INCLUDED AS RESIDENTIAL RELATED COMMERCIAL SERVICES IN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICTS

D. MOTION SETTING A PUBLIC HEARING ON JANUARY 11, 2000, TO ZONE HEATHBROOK AT BILTMORE PARK, PHASE II, AS RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

E. ORDINANCE NO. 2645 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE 92-17 (29 FUND)

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to reflect transfer of -3-

completed projects to fixed assets and to restate budgeted revenues and appropriations to better reflect what is expected to be received and spent.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. Staff recommends the following changes to the capital project ordinance:

Revenues:

- Investment earnings are increased to reflect additional unexpected interest received on the 1992 General Obligation Bonds and the 1996 Revenue Bonds.
- The Contribution From Other Funds (General Obligation Bonds), Sale of Water Revenue Bonds 1996, and State Clean Water Loan are adjusted to reflect transfer of completed projects to fixed assets.
- Contribution from other Funds - Water Resources and Appropriated Fund Balance are being deleted. These budgets were set up to reflect the Authority's contribution of \$5 million to the 1996 Revenue Bond Projects that was required in the 1996 Bond Indenture. This contribution was made in the 30 Fund (operating budget) and the 35 Fund (major capital projects) and will not be made to the 29 Fund.

Appropriations:

- General Operations/Bond Issue is being changed to \$1 million to reflect bond issue costs and some arbitrage payments. The Debt Service Reserve Fund and Capitalized Interest are being deleted. Debt Service and Interest has been budgeted and expended in the 30 Fund (operating budget).
- The Mills River Regional Water Resources Project, Water Distribution Master Plan, Leak Reduction/Mapping, and Pipeline Replacement Phase II are being decreased to reflect transfer of completed projects to fixed assets. There are also some excess funds remaining after closing projects that are being reprogrammed to other projects or deleted to offset decreases in revenue.
- Broadway Water Line (DOT), Pipeline Phase III, and Chemical Improvements have been completed and are being closed to reflect a transfer of the completed projects to fixed assets.

The Regional Water Authority approved these changes at their October 19, 1999, meeting.

Staff recommends approval of a resolution amending Capital Project Ordinance 92-17 to better reflect expected revenues and appropriations.

ORDINANCE BOOK NO. 18 - PAGE 67

F. RESOLUTION NO. 99-192 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY EASEMENTS OVER A PORTION OF PROPERTY ON GALAX STREET TO THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing the Mayor to convey easements over a portion of property located on Galax Street in connection with the Fairfax Avenue Asheville Master Plan Project.

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The subject property is located on Galax Street and backs up to property fronting on Fairfax Avenue. It is shown as Lots 51, 52, 53 and 54 on a plat recorded in Plat Book 154, Page 102, Buncombe County Registry (PIN 9638.17-22-2169) and contains 40,946 square feet. Due to its size, shape and topography it is suitable for subdividing into four buildable parcels.

Metropolitan Sewerage District of Buncombe County, North Carolina, has requested a Permanent Easement containing 171 sq. ft. along with a Temporary Construction Easement containing 561 sq. ft. over a portion of said Galax Street property. The easement would enable MSD to complete the sewer improvements in the Fairfax Avenue Asheville Master Plan project which will benefit the community as well as the subject property.

Approval of the resolution will authorize conveyance of the easement to MSD.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 364

G. ORDINANCE NO. 2646 - BUDGET AMENDMENT TO INCREASE FEDERAL FUNDING FOR THE FAIR HOUSING ASSISTANCE PROGRAM FOR FISCAL YEAR 1998-99

Summary: The consideration of a budget amendment, in the amount of \$40,400, to increase federal funding for the Fair Housing Assistance Program for Fiscal Year 1998/99.

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, using HUD Fair Housing Assistance Program (FHAP) funds. The City's Community Development Division serves as Lead Entity and monitors the program. On November 24, 1998, City Council approved a 1998/99 budget of \$18,400, equal to the HUD FHAP grant for the twelfth year of this program. HUD amended this in June 1999 adding \$25,000 to give a total of \$43,400.

The City has now received another grant agreement from HUD allocating a further \$40,400 in Fiscal Year 1999 FHAP funds. HUD has treated this as a second amendment to the 1999 agreement, because it is using last year's funds in a "catch-up" process. A budget ordinance is needed to appropriate the new funds. Our next FHAP grant will be for Fiscal Year 2000, using Fiscal Year 2000 funds.

Community Development staff recommends adoption of the budget amendment.

ORDINANCE BOOK NO. 18 - PAGE 71

H. RESOLUTION NO. 99-193 - RESOLUTION AUTHORIZING INSTALLATION AND OPERATION OF AN UNATTENDED SERVICE STATION FACILITY BY THE CITY OF ASHEVILLE PUBLIC WORKS DEPARTMENT

Summary: The consideration of a resolution authorizing installation and operation of unattended fuel facility at the City's service station.

The City's service station is operated by the Department of Public Works. Mark Combs, Director of Public Works, has asked for Fire Department assistance with meeting fire code -5-

standards so that the motor fuel pumps at the service station can be operated by vehicle drivers without an attendant. Those standards having been met, and the installation having been approved by the Fire Department's Life Safety Division, the State Fire Code now requires City Council approval.

The Fire Chief recommends City Council authorize installation and operation of an unattended fuel facility at the City's service station through adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 365

I. RESOLUTION NO. 99-194 - RESOLUTION ADOPTING THE 2000 SCHEDULED CITY COUNCIL MEETINGS

Summary: The following schedule of the meetings of the Asheville City Council for 2000 be, and the same is, hereby established as follows: (1) City Council Worksessions; 3:00 p.m.; 1st and 3rd Tuesdays of each month; 1st Floor North Conference Room; City Hall Building, Asheville, N.C. and (2) City Council Formal Meetings; 5:00 p.m.; 2nd and 4th Tuesdays of each month; Council Chamber - 2nd Floor; City Hall Building, Asheville, N.C. This schedule may be amended or modified by resolution.

RESOLUTION BOOK NO. 25 - PAGE 368

J. RESOLUTION NO. 99-195 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE MINORITY BUSINESS PLAN

Summary: This is the consideration of a resolution to amend the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, to expand participation in the Mentor-Protégé Program.

At their meeting on November 23, 1999, the Minority Business Commission recommended that the Plan be amended to enhance and clarify provisions of the Plan. (A copy of the Plan with recommended changes shown in red is attached hereto.) The most significant changes include a listing of the requirements of minority businesses for certification under the Plan (page 15). The requirements have not changed; but, have been listed in the Plan in order to make the public aware of the policy and process. The only other significant amendment (page 8) allows contractors the opportunity to submit all of the minority business forms necessary to document the level of "good faith effort" made during the time of the bid (as is done presently) or to submit only the MB Form 1 (the Utilization Commitment listing which minority businesses will be used as subcontractors) with the bid; then turn in the rest of the documentation within 72 hours after the bid opening. This change evolved as a result of a roundtable discussion held with utility contractors, City department directors and the Office of Minority Affairs. This does not dilute the good faith effort requirement that must be made during the initial bidding process; however, it does allow a little more time for completion of the paperwork to document that effort.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

The Minority Business Commission recommends City Council adopt the resolution. -6-

RESOLUTION BOOK NO. 25 - PAGE 369

K. MOTION SETTING A PUBLIC HEARING ON JANUARY 25, 2000, TO EXTEND THE CITY'S EXTRATERRITORIAL JURISDICTION IN AN AREA NORTH OF THE CORPORATE LIMITS AND INITIALLY ZONE THE PROPERTY RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

L. RESOLUTION NO. 99-196 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN CRESTAR LEASING CORPORATOIN AND THE CITY OF ASHEVILLE TO FINANCE THE ACQUISITION OF REVENUE CONTROL AND GATE EQUIPMENT

Summary: The consideration of a resolution authorizing the installment financing of revenue control and gate equipment for the City's parking decks.

The City of Asheville Fiscal Year 1999-2000 Budget for the Parking Services Fund includes authorization for the installment purchase of revenue control and gate equipment for the Rankin Avenue, Wall Street and Civic Center Parking Decks (amount to be financed \$295,474.00).

The Finance Department had previously sought proposals from 31 firms to finance the purchase of a fire truck and 4,000 trash cans. Twelve proposals were received, the best of which was submitted by Crestar Leasing Corporation - - 4.96% for five years. Crestar Leasing Corporation has offered to extend those very favorable rates to finance the revenue control and gate equipment purchase.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Crestar Leasing Corporation for the purchase of the revenue control and gate equipment and authorizes the City Manager, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Council adopt the resolution and enabling budget amendment.

RESOLUTION BOOK NO. 25 - PAGE 370

M. ORDINANCE NO. 2647 - BUDGET AMENDMENT TO FINANCE THE ACQUISITION OF REVENUE CONTROL AND GATE EQUIPMENT

Summary: See Consent Agenda Item "L" above.

ORDINANCE BOOK NO. 18 - PAGE 73

N. RESOLUTION NO. 99-197 - RESOLUTION FIXING A DATE OF PUBLIC HEARING ON JANUARY 11, 2000, TO CONSIDER THE VOLUNTARY ANNEXAION OF CONTIGUOUS PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BRAESIDE SECTION 5 OF BILTMORE PARK

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O. RESOLUTION NO. 99-198 - RESOLUTION AUTHORIZING THE REGIONAL WATER AUTHORITY TO ACQUIRE EASEMENTS BY EMINENT DOMAIN

Summary: The consideration of resolutions: (1) Authorizing the institution of legal proceedings to acquire an easement for waterline installation on part of Monte Vista Road; and (2) waiving a conflict in legal representation to allow the Water Authority's counsel to bring the action in the City's name.

(1) Eminent Domain – the Regional Water Authority of Asheville, Buncombe and Henderson will soon need to complete installing new water lines and extending its service to an area on the west side of town beyond the City limits that includes Monte Vista Road. A waterline is proposed for installation in the area between the road and the drainage ditch along Monte Vista Road. Other than the temporary inconvenience associated with construction, this installation will not impair the usability of the affected residential properties, which will be served by the new line.

Agreements have been reached with other property owners on Monte Vista Road and the property at 721 Monte Vista Road, owned by Oris and Elizabeth Balding is the only holdout. The Water Authority authorized the initiation of legal proceedings to acquire the property in its meeting on September 21, 1999.

Pursuant to the Water Agreement, any real property or interest in real property acquired by the Water Authority must be held in the City's name. By extension, any proceeding in eminent domain to acquire the property must be brought in the City's name, and the City's authorization is therefore required in order for the Water Authority to take this action.

(2) Waiver of Conflict – The Water Authority is specifically authorized, pursuant to Section VI. N. of the Water Agreement, to employ its own legal counsel. The Authority's counsel is the law firm of Van Winkle, Buck, Wall, Starnes and Davis. That firm is also counsel for parties who oppose the City in several pending legal proceedings, notably the billboard litigation, and regularly represents property owners in land use disputes with the City. Technically, representation of the City by Van Winkle in this eminent domain matter is a conflict that the City must waive. This is a minimal conflict and Van Winkle's representation of the City in this eminent

domain proceeding will not give them access to any information that could compromise the City's position in any matter where they represent parties opposing the City.

City staff recommends City Council (1) Adopt the resolution authorizing the institution of eminent domain proceedings in the City's name, as the Water Authority has requested; (2) If the City Council has no objection to the Water Authority's use of the law firm of Van Winkle, Buck, Wall, Starnes and Davis in this eminent domain proceedings, the resolution waiving the conflict should also be adopted.

RESOLUTION BOOK NO. 25 - PAGE 374

P. RESOLUTION NO. 99-199 - RESOLUTION WAIVING CONFLICT IN LEGAL REPRESENTATION TO ALLOW THE REGIONAL WATER AUTHORITY'S COUNSEL TO BRING AN ACTION IN THE CITY'S NAME

Summary: See Consent Agenda Item "O" above.

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Q. RESOLUTION NO. 99-200 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A WAIVER AND RELEASE OF BUILDING RESTRICTION TO ALLOW THE CONSTRUCTION OF AN ADDITION FOR THE COLBERN GEM AND MINERAL MUSEUM PROPERTY CONVEYED TO THE CITY OF ASHEVILLE AND LEASED TO PACK PLACE EDUCATION ARTS AND SCIENCE CENTER INC.

Summary: The consideration of a resolution would authorize the Mayor to execute a Waiver and Release of Building Restriction to allow the construction of an addition for the Colburn Gem & Mineral Museum on property conveyed to the City of Asheville and leased to Pack Place Education Arts & Science Center, Inc.

The City of Asheville owns property on which Pack Place Education Arts & Science Center, Inc. ("Pack Place") is located. Colburn Gem & Mineral Museum ("Colburn Museum") is located within Pack Place. Colburn Museum desires to expand the portion of the Pack Place building occupied by it into a portion of an area known as a "courtyard," which is identified as "Tract Two" on "Lot D" on that plat recorded in Plat Book 56 at Page 64 in the Office of the Register of Deeds for Buncombe County. She reviewed the approximate location of the portion of the courtyard on which the building would be constructed.

In the deed wherein Pack Plaza Associates Limited Partnership ("Pack Plaza") conveyed to the City of Asheville certain properties, including Lot D shown on the above-referenced plat, there is a provision wherein the City and Pack Plaza promised that they would not permit the construction of any permanent building or roof structure in, on or above the property identified as Tract Two of Lot D as shown on the above-referenced plat.

In a Memorandum of Understanding dated October 28, 1988, by and among the City, Pack Place and Pack Plaza, the City and Pack Place agreed that they would not construct any permanent building or room structures in the courtyards, including Tract Two of Lot D of the above-referenced plat.

Landmark Management, PBL Investment, LLC ("Landmark") is a successor to the interests of Pack Plaza. Landmark and Pack Place have agreed to permit the construction of the extension of the building for Colburn Museum. It is necessary to execute a document wherein the consent of the parties to the construction of the extension of the Colburn Museum can be recorded in the Office of the Register of Deeds for Buncombe County.

The City Attorney's Office recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 376

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.

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

III. PUBLIC HEARING:

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

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Mayor Sitnick said that this public hearing was opened on September 28, 1999, and continued until November 23, 1999. On November 23, 1999, the public hearing was continued until this date.

See Continuance Request above.

B. PUBLIC HEARING RELATIVE TO THE CONDITIONAL USE PERMIT FOR THE SWEETEN CREEK CONDOMINIUMS (THE CARLYLE) LOCATED AT 3195 SWEETEN CREEK ROAD

ORDINANCE NO. 2648 - ORDINANCE APPROVING THE CONDITIONAL USE PERMIT FOR THE SWEETEN CREEK CONDOMINIUMS (THE CARLYLE) LOCATED AT 3195 SWEETEN CREEK ROAD

Mayor Sitnick opened the public hearing at 5:19 p.m.

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

Ms. Stacy Merten, 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).

Ms. Stacy Merten, Urban Planner, said that this is the consideration of a conditional use permit as outlined in the Unified Development Ordinance (UDO) for the Sweeten Creek Condominiums (the Carlyle) located at 3195 Sweeten Creek Road. This public hearing was legally advertised on December 10 and 17, 1999.

Sweeten Creek Apartments, LLC, has submitted development plans for Level III site plan review. The project is a new 80 unit condominium complex consisting of two 3-story buildings and six 2-story buildings, with a combined total of 108,040 square feet. The developer has reduced the number of units on the site to comply with the UDO requirements for hillside area development. The developer has also obtained permits from the Army Corps of Engineers as there are designated wetlands located in the site. There will be one new driveway entrance off Sweeten Creek Road to serve the development. The Technical Review Committee (TRC) reviewed the plans at their meeting on July 19, 1999, and took action to approve with the following conditions:

- Plans must be revised to show compliance with the City's Hillside Area Development regulations.
- Provide figure for the total open space to be provided as well as a figure for the size of the largest contiguous area of open space. A letter from the Norfolk & Southern Railroad must be submitted which authorizes the use of a portion of the railroad easement for open space.
- The North Carolina Accessibility Code must be met for this project.

- A detailed final landscaping and buffering plan must be approved by the Planning and Development Department. Please note that the City strongly encourages the retention of as much existing vegetation as possible within the required buffer areas.
- Provide detail of the proposed fence which will screen the dumpster locations.

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- Recommend lighting to stay within a 16-20 foot height limit.
- Submit sewer plan to MSD for review and approval
- Plans must meet MSD rehabilitation requirements as outlined in the MSD allocation letter for the project.

City Council must take formal action as set forth in section 7-5-5(e) of the UDO, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed development is a new condominium development on a hillside with an average slope of 16.5%. The developer has reduced the number of units by 15 less than what would technically be allowed on the site, in compliance with the requirements of the Hillside Area Development Standards. The project has also received a permit from the Army Corps of Engineers as there are designated wetlands on the property. The impacts of the development 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.

The proposed development will enhance the successful operation of the surrounding community in its basic function by providing needed housing and adding to the mix of housing types available to the community.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The neighboring uses include a mobile home park to the north, and Ravenscroft Condominiums and Arbor Terrace to the south. The site backs up to the railroad on the west side. The plans show a buffer meeting the landscaping requirements of the UDO which will mitigate any possible negative impacts of the new development.

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.

The proposed project is located in an area zoned RM-16. The neighboring uses to the proposed development are also medium to higher density multi-family developments which conform to the zoning and are in character with the proposed development.

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.

The Asheville City Plan 2010 indicates medium density residential development in this area.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

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The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

A Traffic Impact Analysis (TIA) was prepared for this site as required by the UDO. The TIA considered the impact of this development and other projected traffic on the transportation system. The TIA acknowledged that there is an existing problem at the intersection of Sweeten Creek Road and Mills Gap Road, but concluded that the addition of new traffic from this development will only minimally impact this intersection. The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy and concur with the findings

A copy of the site plan was previously furnished to City Council for review prior to the public hearing.

The Planning and Development staff and the TRC find that the project will meet all the technical standards for development in the RM-16 zoning district if all of the attached conditions are addressed.

Mr. Jeff MaHaffey, representing Land Planning Collaborative, passed out 3 drawings (Applicant Exhibit 1) and spoke in support of this affordable housing option. He said that the purchase price would be approximately \$85-90,000 for each unit.

Mayor Sitnick closed the public hearing at 5:26 p.m.

Councilwoman Whitmire moved to approve Ordinance No. 2648, which approves the conditional use permit for Sweeten Creek Condominiums (the Carlyle) located at 3195 Sweeten Creek Road, subject to the conditions of the Technical Review Committee being met. This motion was seconded by Councilwoman Field and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ESTABLISH SUPPLEMENTAL DEVELOPMENT STANDARDS FOR LARGE RETAIL STRUCTURE

ORDINANCE NO. 2649 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ESTABLISH SUPPLEMENTAL DEVELOPMENT STANDARDS FOR LARGE RETAIL STRUCTURE

Mayor Sitnick opened the public hearing at 5:28 p.m.

Senior Planner Gerald Green said that this is the consideration of amending the Unified Development Ordinance which would establish supplemental development standards for large retail structures. This public hearing was legally advertised on December 10 and 17, 1999.

The Planning and Zoning Commission, at their November 10, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which -12-

would establish supplemental development standards for large retail structures. Structures subject to the

supplemental development standards are identified in the amendment as:

- Single tenant retail structures with a gross floor area of more than 75,000 square feet in the Highway Business District;
- Single tenant retail structures with a gross floor area of more than 100,000 square feet in the Regional Business, Commercial/Industrial, Industrial, and River Districts; and
- Multiple tenant retail structures with a gross floor area of more than 100,000 square feet in the Highway Business, Regional Business, Commercial/Industrial, Industrial, and River Districts.

Goals of the supplemental development standards are to:

- Employ high quality building design;
- Blend building design and layout with other site features;
- Avoid bland and monotonous building design; and
- Ensure that buildings contribute to the community character of the City.

To achieve these goals, the ordinance amendment establishes supplemental development standards addressing building design, building material and color, landscaping and buffering, lighting, pedestrian amenities and circulation, and customer entrances. Design professionals and developers are provided a great deal of flexibility in meeting the supplemental development standards through the provision of a variety of design standards from which they may choose. Meeting approximately 70% of the standards will result in a recommendation for approval of a basic retail structure; bulk retail structures will have to meet approximately 50% of the supplemental standards.

The amendment identifies large retail structures as conditional uses. During the review process they would be reviewed for compliance with the supplemental development standards. The amendment does not require an additional review process for these structures, as they are currently reviewed as conditional uses.

The Asheville Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Upon inquiry of Councilwoman Field, Mr. Green said that in the staff's presentation to City Council, they will address those issues identified to them as major concerns.

Councilwoman Field felt this amendment is a really good start on design based zoning and a way of assuring that a lot of people have input on what happens.

Councilman Hay said that this builds in a communication with staff and let's them tell developers what they would like to see and builds in a structure for that to happen. He understands that it will evolve over time and the points will be revised by staff as they learn more about what the community and Council wants to see.

Upon inquiry of Councilman Peterson, Mr. Green said that if the developers do not make an effort to change their design, staff would point out to City Council that the developer failed to comply with the supplemental development standards noting that the ultimate approval or denial rests with City Council. -13-

Upon inquiry of Councilman Peterson, City Attorney Oast said that staff is discussing the possibility of including the Planning & Zoning Commission in the process of reviewing conditional use permits, and when their review is complete, they will report their results to City Council.

Mayor Sitnick closed the public hearing at 5:51 p.m.

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

Vice-Mayor Cloninger moved to adopt Ordinance No. 2649. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

IV. UNFINISHED BUSINESS:

A. I-26 DESIGN CONCEPT

Planning & Development Director Scott Shuford said that at last week's worksession, Council directed him to develop a concept on how to obtain additional public input regarding the N. C. Dept of Transportation (NC DOT) corridor project. This direction specified that the added public input process be consistent with the Technical Advisory Committee's recommendation that NC DOT's project schedule be expedited.

Pursuant to this direction, he recommended the following process for allowing meaningful public input in a manner designed to not interfere with the project schedule. If Council is comfortable with this approach, staff will return with more specifics, as well as some general transportation planning information, at an upcoming Council meeting.

First, it is important to provide balanced technical expertise at the design forum. Transportation planning is a field undergoing many innovations and it is critical to take advantage of recent developments in the profession as part of this process. Consequently, he recommended that the City bring in an independent facilitator(s)/observer(s) to provide technical expertise and balance. There are a number of academic sources for this type of facilitator/observer; the use of a university professor insures that we have someone up to date on transportation planning innovations while eliminating the conflict of interest issue that may be applied, fairly or unfairly, to someone in the private sector.

Second, it is crucial that we organize the design forum around separate issues so we can offer input on a wide range of matters. He suggested we set up tables and work areas around the following seven issues. Each table would be staffed with experts in the area, including City staff, Land-of-Sky staff, NC DOT staff, our academic facilitator(s), and members of the earlier corridor design task force, with each table presenting a summary of ideas at the conclusion of the forum for NC DOT consideration.

- o West Asheville links (Amboy Road, Brevard Road interchanges; Virginia and Fairfax Avenue connections; etc.)
- o 8 laning issue
- o Bicycle/Pedestrian/Greenway/Transit issues
- o Outer Loop concept
- o Buffer issues
- o Boulevard treatment for peripheral roads (Patton Avenue, I-240)
- o River/Bridge issues -14-

Third, the forum should occur on a Friday and Saturday to maximize input, including Friday evening. Stephens-Lee or the Civic Center would be possible locations for the forum.

Finally, to fit with the NC DOT schedule, the forum will need to occur by mid-February.

Mr. Shuford said that the NC DOT has asked for a formal request for their participation in the design forum.

He suggested that, if the Council is comfortable with this proposal, that the Mayor write a letter to the NC DOT making that request.

Mayor Sitnick said that it was clear that there is a lack of consensus in the community regarding this project and a need on the part of the part of the community to ask questions and have concerns addressed.

Upon inquiry of Councilman Hay about the timing of the forum and the April NC DOT public hearing, Mr. Shuford said that if NC DOT is going to have an effective public hearing in April then we will need to give them time to look at the ideas and to actually take them through their engineering process in order to see if the ideas will work from a technical standpoint.

Councilman Hay said that he was told that there is a possibility of raising some private money to help pay for the forum and wondered how strict the NC DOT April public hearing date is. Mr. Shuford said the NC DOT is programming for that date but was unable to say how firm that date would be. If there is some slack in their schedule, he will certainly report back to Council.

Councilman Hay said that it was critical that we not lose any ground in proceeding with this project, however, a month or two at this critical stage may be a month or two well spent to make sure we get the most out of the forum and also that the NC DOT public hearing is as responsive as we want it to be from what we learn from the forum.

Councilwoman Field voiced concern over people raising funds to pay for the forum in that the public may think that the process was tainted. She had no problem in delaying the forum if that would make it a better process. But she did have a problem with delaying the forum in order to give people time to raise funds to help sponsor it.

Vice-Mayor Cloninger felt we could have a better forum if we get participation from a variety of groups, including a variety of financial support. He had no problem in asking foundations, non-profits, etc. to participate with the City financially with the forum.

Councilman Whitmire felt that it would be okay to accept financial help from foundations, however, not from the Chamber of Commerce, for example. She suggested some facilitators that Mr. Shuford might contact to help with the forum.

Councilman Peterson strongly suggested that Mr. Shuford invite the neighborhoods and business groups that will be directly affected by this project to the forum.

When Councilman Peterson asked what the outcome of the product from the forum would be, Mr. Shuford said that past forums have resulted in drawings which will then be transmitted back to the actual design professionals at the NC DOT for consideration.

Upon inquiry of Councilman Peterson about the role the NC DOT staff would be taking in this forum, Mayor Sitnick said that she was assured that the NC DOT staff would be present and would actively participate.

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It was the consensus of City Council to have the Mayor send a letter to the NC DOT requesting their participation in the design forum.

V. NEW BUSINESS:

A. RESOLUTION NO. 99-201 - RESOLUTION APPROVING AMENDMENTS TO "LEASE AGREEMENT" AND "PRESERVATION, OPERATION AND REHABILITATION AGREEMENT" FOR GROVE ARCADE

BUILDING

RESOLUTION NO. 99-202 - RESOLUTION AUTHORIZING NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR GROVE ARCADE

RESOLUTION NO. 99-203 - RESOLUTION AUTHORIZING THE CITY TO FORM A CORPORATION FOR THE PURPOSE OF PARTICIPATION IN OPERATION OF GROVE ARCADE PUBLIC MARKET RESTORATION WORK

RESOLUTION NO. 99-204 - RESOLUTION AUTHORIZING CONVEYANCE OF FACADE EASEMENT FOR GROVE ARCADE

Vice-Mayor Cloninger asked to be excused from participating in this issue since his firm represents the Grove Arcade Public Market Foundation. Therefore, Councilman Worley moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Whitmire and carried unanimously.

City Attorney Oast said that this is the consideration of Amendments to the Lease and Operating Agreement, and other documents, to allow for financing of improvements at Grove Arcade. He then reviewed the new structure of the Grove Arcade ownership and management. He also reviewed the current leasing structure of the Grove Arcade, the proposed new structure, and the highlights of the Grove Arcade transition.

In the Spring of 1997, the City acquired the Grove Arcade Building by Quitclaim Deed from the United States Government. The building was built originally as a public market and was so operated until 1942, when the federal government took it over in connection with the country's World War II efforts. The building's exterior windows and doors were bricked up by the federal government, which used the building until 1994.

- Summary of Activities: The conveyance to the City was essentially without consideration, but it was subject to significant restrictions on how the City could dispose of the building and how it could be used. The Grove Arcade Public Market Foundation (herein "GAPMF"), a non-profit corporation, was established for the purpose of rehabilitating Grove Arcade. In August of 1997, the City entered into a long term lease of the Grove Arcade building to GAPMF. The redevelopment proposal calls for the public market to be reestablished on the First Floor and a portion of the Mezzanine and for a combination of office and residential uses on the Third and Fourth Floors. GAPMF, with the permission of the City, subleased the balance of the mezzanine and the upper floors to Skelton Development of Atlanta to develop the office and residential uses.

The City's lease with GAPMF recognized that the financial structure for the rehabilitation was subject to change, depending on the availability of such things as tax credits and possible participation of other financial partners. While GAPMF remains ultimately responsible to the City for the debt service on the Certificates of Participation that were issued to finance the public market part of the renovations, the City has the authority to approve amendments as necessary to accommodate financial arrangements and participation by other developers. -16-

The uniqueness of the Grove Arcade rehabilitation project has made conventional financing difficult to obtain, and construction, has proceeded more slowly than anticipated. Marketing and leasing, however, have gone better than expected. After long negotiations involving GAPMF, Skelton Development, local and national financial institutions, real estate companies, and the United States Government, and after some changes in tax laws, a financial structure has finally been proposed that will: (1) allow GAPMF to take advantage of the significant tax credits available for the historic rehabilitation of the building; and (2) provide for substantial financial participation by another party on both the public market side and the residential/office side of the project.

Since a for-profit (taxpaying) entity was needed to take advantage of the available tax credits, the City Council earlier this year approved the assignment of the lease by GAPMF to Grove Arcade Preservation Inc., (herein "GAP, Inc.") a for-profit subsidiary corporation wholly controlled by GAPMF. This was to permit investments in the project and the utilization of legally available tax credits by a qualified New York Stock Exchange investor.

- Effect of Proposed Amendments: Under the current proposal, the investor will still participate in the project as before, but instead of those tax credits running through one for-profit subsidiary corporation, there will be two for-profit limited liability companies (herein "LLC"):

(a) One of the LLC's will be Grove Arcade Restoration LLC (herein "GAR"), consisting of GAP, Inc. as the managing partner and operating entity, and an investor corporation as a 99% financial participant. GAR will be responsible for developing the first floor, together with portions of the mezzanine and basement, of the Arcade Building as a public market in the same way that GAPMF proposed to do. Through GAP, Inc., GAPMF will still have full control as developer and manager of this part of the project.

(b) The other LLC will be the Historic Grove Arcade LLC (herein "HGA"), consisting of a management company controlled by Skelton Development as the managing partner and an investor corporation as a 99% financial participant. HGA will be responsible for developing the second, third and fourth floors of the Arcade Building, together with portions of the mezzanine and basement, in the same way that Skelton Development had previously been approved to do.

Each LLC will essentially be subject to the same agreements as are currently in place with GAPMF and Skelton Development, and each LLC will be managed and controlled by the entities that are currently developing the building. GAPMF will continue to be financially responsible to the City to the same extent as before. Negotiations between GAPMF and Skelton on the one hand, and the potential investor corporations on the other, for participation in the subsidiary LLC's are not yet finalized, but according to representatives of GAPMF, agreements in principal have been reached, and closing will occur by year's end if the City approves. The extent of the financial participation by the investor corporations is expected to be worth millions of dollars, and should kick the entire project into high gear, such that it will come on line, despite delays in the start of construction, well within the five (5) year provided for in the City's agreement with GAPMF. The proposed amendments will not extend this period.

One feature of the new proposal will involve the City becoming an organizational participant in the Grove Arcade development. In order to preserve the ability to use the rehabilitation tax credits, it is necessary that GAP, Inc., as the managing partner of the for-profit GAR LLC, have 21% participation by an entity that is not controlled by GAPMF. This could be any person or corporation, but GAPMF and its attorneys have suggested that, in order to ensure that the City remains apprised of all activities of GAR, the City would form a wholly-owned subsidiary corporation whose sole purpose is to participate with GAP, Inc. in the ownership structure of GAR. The City's participation would be for ownership purposes only, would be in the - 17-

nature of a limited partner, would not require any additional financial commitment by the City, and would not expose the City to any additional risk of loss in the event of financial problems. The City's ownership in GAR would be 21% of GAP, Inc.'s 1% interest.

- Non-Disturbance and Attornment Agreement: This is an item required by the investor corporations in order to protect their investment during the tax credit recapture period.

This is an Agreement whereby, if the covenants and restrictions of the Quitclaim Deed from the United States to the City are violated such that title to the Grove Arcade Building could revert in the United States pursuant to the Quitclaim Deed, the United States would continue to honor the existing leases of any party whose use

or occupancy was not the cause of the default or violation.

For instance, the Quitclaim Deed prohibits the City from selling the Grove Arcade Building except to another governmental agency that can assure the continued use of the building for historic monument purposes. In the unlikely event that the City were to violate this restriction, its title would revert in the United States, but the Agreement provides that the subleases would not be terminated. Rents under the subleases in this event would be paid to the United States.

Because of the degree of control that the City has over the project by virtue of the Lease Agreement and Preservation Agreement with GAPMF, and because of the working relationship between the City, GAPMF and the responsible federal agencies, the possibility of a default triggering reversion of the title in the United States appears to be remote at best.

One feature of this Non-disturbance and Attornment Agreement is that the United States is expressly agreeing to and approving the Lease, Subleases and Development Agreements, and essentially consenting to the activities described in all of them, and waives any breach of the conditions of the Quitclaim Deed (of which there have been none). This representation by the United States, in addition to protecting the subtenant LLCs, provides sound assurance to the City, by the only party that could enforce the applicable restrictions against it, that the restructuring authorized pursuant to the amendments is not inconsistent with the Quitclaim Deed or the Program of Preservation and Utilization, and that the City's possessory interest is not compromised by the amendments.

It is anticipated that within six years, GAPMF will reacquire its full ownership interest from the investor in GAR, and that Skelton will acquire the ownership interest in HGA. At that point, the ownership structure will revert to its original form.

In order to accomplish all of this, several things must occur:

(1) certain amendments to the Operating Agreement and the Lease between GAPMF and the City must be approved to permit the above described ownership and operating structure. The major features of these amendments include:

(a) the subleasing to the LLCs GAR and HGA, by GAPMF must be approved;

(b) the City may not unilaterally terminate the lease with GAPMF for five (5) years (currently, there is no such limitation). This five (5) year non-termination provision is necessary for purposes of the tax credits. In the unlikely event that termination becomes necessary, it will be possible by mutual consent. The City gives up none of its other remedies to enforce the Lease. -18-

(c) the City must agree that the use restrictions in the Quitclaim Deed from the United States are being complied with in the new arrangement; federal officials responsible for oversight have indicated that the new arrangement will not violate the restrictions

(d) the City must agree to the sublessees using their leasehold interest as security to obtain financing (the Lease and Operating Agreement specifically contemplate this);

(e) The City agrees to a starting date for renovation work of 36 months after the date of its Lease to GAPMF (currently, that date is 18 months, and some work has in fact already begun). This will not extend the five (5) year time period for substantial completion of the improvements, which is provided for in the City's Agreement with GAPMF.

(2) the City must agree to a "Non-disturbance and Attornment Agreement," which essentially provides that the United States will honor the subleases to the LLC's if some default occurs that would cause the title to

the building to revest in the United States (this is a standard feature of commercial subleasing arrangements);

(3) the City must agree to formation of a corporation to participate with GAP, Inc. in the ownership of the GAR LLC for the public market phase of the projects, or some other arrangement.

- Non termination: Of the changes summarized above, the one that will affect the City most significantly is giving up the right to terminate its lease with GAPMF for a period of five years, beginning at or about the effective date of the amendment, and continuing until early 2004. This five year non-termination period is a requirement of federal tax law, apparently to insure that the investor who is using the tax credits remains financially committed to the historic preservation project long enough to get it done, and does not simply collect the tax credit and move on. The rationale is apparently to guarantee that a historic preservation tax credit actually results in historic preservation.

Currently, the City may terminate its lease with GAPMF upon 180 days written notice for any failure by GAPMF to comply with the terms of the lease or operating agreement, or for any breach of covenants or restrictions applicable to the property. Such a breach would include, among other things:

(a) failure to make any payments provided for in the lease or operating agreement (these payments include assessments and taxes, utilities and operating expenses, and debt service on the certificates of participation);

(b) abandonment of the premises;

(c) failure to maintain adequate insurance

(d) failure to perform the renovations according to approved plans; and

(e) failure to maintain its non-profit status. Any of these failures constitutes an "event of default," which triggers a process that can result in termination of the lease. - 19-

If the lease were to be terminated under the current arrangement, then GAPMF would have no obligation to make any further payments thereunder. While the City could proceed against the bonds and insurance maintained by GAPMF to recover some of its loss, the City would still be bound by its preservation agreement with the federal government to rehabilitate the building (failure of which could result in loss of the property), and would still be responsible for the debt service on the COPs. About the only advantage the ability to terminate holds for the City is that if GAPMF does not proceed with the rehabilitation work, the City can step into GAPMF's position or replace GAPMF with another developer. The ability to terminate does not, by itself, accomplish the rehab work or guarantee financing for it.

Under the proposed arrangement, the LLCs must invest in the project and perform the rehab work in accordance with the preservation plan, or the tax credit is lost, together with the value of any improvements that were made. Since the tax credits are used all at once but the improvements are made over time, the loss of the credits, either by failure to complete the work or by abandoning the project before the expiration of five years, is financially catastrophic for the investor. Not only must the value of the credits be repaid to the IRS, with interest and substantial penalties, but the value of any completed work is potentially lost because it becomes the City's property under the lease.

Moreover, if either of the LLC's or GAPMF fails such that GAPMF cannot make its payments on the debt service (which is also an event of default under the current lease), then the investor corporations are bound to the City for 50% of GAPMF's obligations with respect to the debt service on the COP's.

In essence, while the City loses the ability to "punish" an event of non-compliance by unilaterally taking

GAPMF out of the project (and in the process assuming responsibility for the rehab work), what is gained is:

- (a) strong financial incentive for completing the work as planned;
- (b) stronger financial disincentive for not completing the work as planned; and
- (c) better security for the City's debt service obligation.

"Punishment" for non-compliance can still occur, but it is now backed up with significant financial leverage besides simply being removed from the project, and will be administered by the IRS. The new arrangement also enables participation by entities whose financial resources are substantial. If the project is successful, the City winds up with a boost to its downtown economy in the form of more consumer traffic, more jobs and a restored structure of national architectural and historic significance.

The new proposed arrangement is not risk free. By authorizing the subleases and giving up its right to terminate the lease with GAPMF, the City creates another layer between it and the developer of the project. Despite the financial consequences, the corporate investors could still pull out of the project, leaving the City with an incomplete building and a debt, as could happen with the current arrangement. If they do pull out, they will lose the millions of dollars they invested in order to claim the tax credits. The loss of direct control will be somewhat made up, at least on the public market side, by the City's participation as a partner in the controlling interest of the GAR LLC. On the whole, while some degree of control over the project is lost it appears that the proposed arrangement significantly improves the financial prospects of the project and involves less risk than the current arrangement, both because there will be more money available to complete the project, and better recourse available to the City if the project is -20-

not completed. Finally, as noted above, even with the proposed amendment, GAPMF is responsible to the City for compliance with the terms of the lease.

In anticipation of closing, the investor corporations will immediately make a "bridge loan" of several hundred thousand dollars to provide for immediate resumption of work on the building until the loan is closed and funds are disbursed next month. This occurred on Friday, and the contractors are expected to be back at work on Monday.

These arrangements are still being worked out in anticipation that the transaction can close completely by the end of the year. In anticipation of closing, what will be needed from the City is approval to proceed with the items enumerated above, and authority for the Manager and the Mayor to execute appropriate documents. Through its ability to approve subleases, the City will have final approval over the new financial participants in the subsidiary LLCs. If Council agrees to the formation of a subsidiary corporation, the incorporation work will be done by GAPMF's attorneys, or otherwise paid for by GAPMF.

This is a complicated transaction, but this proposed structure is one that is fairly routine among entities that use tax credits to assist in financing expensive construction or rehabilitation projects. The terms of the City's agreements with GAPMF will not be changed in any way that compromises the City's position with respect to GAPMF's financial obligations to the City. Overall, the City's position, both financially and in terms of getting the project completed, appears to be enhanced by the proposed arrangement. If Council wishes to proceed authorize the changes that will effectuate the new arrangement, adoption of the following resolutions is recommended.

- o The first resolution authorizes the amendments to the lease and operating agreements;
- o The second resolution authorizes the Manager to enter into the non-disturbance and attornment agreement;
- o The third resolution authorizes City staff to proceed with formation of a corporation to participate

- in GAR, in accordance with the limitations noted in this Staff Report; and
- o The fourth resolution authorizes conveyance of a facade easement for the Grove Arcade.

Mr. Oast responded to several questions and comments from Council, some being, but are not limited to: what are the limits on the profit-making activity; who pays for the accounting requirements; will the residential units or condominiums built by Skelton Development be in the affordable range; what does the word attornment mean; what remedies would the City have if a breach of the contract occurred; what the effect of electric de-regulation would do to CP&L; what rights does CP&L have if in 2-3 years GAPMF cannot perform their part; is there an annual review process that takes place annually with CP&L; when did the five year date for "substantial completion" of the public market improvements start; can anyone sit on the corporation formed by the City; after the end of the five year period and the GAPMF re-acquires the full ownership of the building, will be GAR LLC be dissolved; and, who will the tenants be paying their rent to.

Councilman Hay was concerned about the project being abandoned with no improvements even being made to the building. He wondered if there was a way to tie the termination to the investment, that is, that we waive our right to terminate as of the time the investors make their commitment to the project.

Mr. Aaron Zaresky, Executive Director of the GAPMF, said that the investor has already committed that upon signing there will be approximately \$700,000 in funds transferred immediately and they are anticipated to sign later next week. -21-

Councilman Hay then confirmed that then the expenditure of money is contemporaneous with the waiver of the right to terminate.

Councilwoman Whitmire said that CaroHome is currently participating in two other projects in the community for affordable housing tax credits. So, we have an investor who is committed to our community, not for just five years, but for 30 years. This is a company that believes in Asheville and are committed.

Upon inquiry of Councilwoman Field, Mr. Lou Bisette, attorney for GAPMF, said that the units would be leased for a period of five years and after that time, they would be sold as lease-hold condominiums.

Mr. Bisette said that the GAPMF was formed as a non-profit entity to try to find a way to restore and save this national historic treasure and it has taken a long time and a lot of effort to get to this point, which will close next week. The investor, CP&L, is a North Carolina, reputable company and is in great financial shape. CP&L and Wachovia Bank will be putting something in excess of \$10 Million into this project.

Councilwoman Field said that she would vote in favor of this, however, several merchants from existing businesses in downtown asked her the following questions which she would like answered so she can respond back to them: (1) Has the City Council looked into the impact of 70 new businesses on the existing businesses in downtown; (2) The GAPMF has committed to no chain stores. What assurance do we have that this will be true? We have worked hard and for a very long time to make a successful downtown; (3) The GAPMF has committed to not compete with existing businesses within a certain radius of the building. What is to say that this will be adhered to? (4) The failure of the project will be devastating to existing businesses in downtown. The majority of the merchants see this is a lose-lose proposition in that if the Public Market fails, the rest of downtown fails. They believe that the only way it can succeed is if the Public Market competes with other downtown businesses and encourages chain stores, which is exactly what most of the people don't want them to do; (5) Why is the City building 300 parking spaces for a project that is not yet made any contribution to downtown while turning a blind eye and a deaf ear to merchants who have committed to downtown for up to 10-20 years and have been paying taxes for 10-20 years. We need parking right now in the Pack Square and Biltmore quadrant of the City. (6) Why has the GAPMF totally ignored the downtown community while marketing their project based on how much they will do for our downtown?

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

Councilman Worley moved for the adoption of Resolution No. 99-201. This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 378

Councilman Hay moved for the adoption of Resolution No. 99-202. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 385

Councilwoman Whitmire moved for the adoption of Resolution No. 99-203. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 386 -22-

Councilman Worley moved for the adoption of Resolution No. 99-204. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 387

B. REPORT ON BILTMORE PARK HIGH TECH FLEX BUILDING

Mr. Dale Carroll, President of the Advantage West Regional Commission, said that they are involved in a collaborative project at the Biltmore Park Technology Center for a high tech flex space building. The unique partnership involves the City of Asheville, the non-profit development corporation through Advantage West, and also Biltmore Farms Inc. The need for this project was originated through a study in order to attach high technology companies to Western North Carolina. The 100 Technology Drive building was put in place at the Biltmore Park Technology Center and reported that it has in fact created high tech client traffic for our region. His staff has worked with an environmental technology company from Atlanta, we have worked with a medical technology company from New York, and currently there is a computer technology company that is considering space there. He also reported that Carolina Television Inc. has purchased one-half of the 100 Technology Drive building and is going to be expanding the studios for WLOS-TV. Equally important, they will be increasing their technical infrastructure in the park and at the building with microwave communication ability, with satellite communication ability and by strengthening the fiber optic telecommunication backbone for broad-band technology. All of this will help continue to momentum in the kind of client traffic we are seeing. This would not be possible without this product being available. In this fast-paced business world today, you must have the high tech flex space if you want to target effectively those kinds of companies.

Mr. Jack Cecil, President of Biltmore Farms, thanked City Council and staff for their cooperation in what was, at the time, a fairly unique deal that brought together a public body, a public non-profit, and a private sector.

Councilman Worley said it was nice to hear a success story, but also pointed out that it doesn't happen without some degree of risk. The City took a risk when it approved the investment in this project and Biltmore Farms took an even bigger risk in building the project.

C. PROPOSAL FROM PAUL AND JAMES YOUNG RELATIVE TO ACQUIRING PROPERTY NEAR THE ASHEVILLE REGIONAL AIRPORT TO OPERATE A MOTOR SPEEDWAY

Due to a conflict of interest, Councilman Hay excused Vice-Mayor Cloninger from participating in this matter. This motion was seconded by Councilman Worley and carried unanimously.

City Manager Westbrook said that Paul and James Young are interested in discussing the possibility of either acquiring or leasing property located on the northeast by Airport Road, on the southwest by the French Broad River and on the northwest and southeast by the Buncombe-Henderson County line from the City of Asheville to operate a motor speedway. In order to determine the feasibility of developing a motor speedway on this particular tract, they are requesting access to the property for up to 90 days to conduct certain tests on the property.

Mayor Sitnick said that to set the record straight about letters and comments, the City did not offer the Youngs the subject property at the Airport for possible development of a racetrack.

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Mr. Lou Bisette, attorney representing Paul and James Young, said that their only request is for City Council to let the Youngs go onto the subject property for a period of up to 90 days to perform some tests to see if the property might be an adequate location for a new Asheville speedway. He said they are not requesting any commitment from the City in reference to acquiring the property. They realize the Airport, area residents and the Federal Aviation Administration have an interest in that property. But again, they are only requesting that they be allowed to go on the property and do some drillings to see if a racetrack would even work. If the property tests out and everything else falls into place, the Youngs would be interested in discussing the possibility of either acquiring this property from the City or leasing it. They would construct a facility which would be a very nice modern speedway and the investment would be in the several millions of dollars. It would operate basically Friday and Saturday nights for a period of four hours ending at 11:30 p.m. during April through September. There are noise abatement techniques that would be used and there would be a 100-foot buffer dedicated along the French Broad River which could be used for walking trails or greenspaces. He noted that Paul and James Young operated the Asheville Speedway this past final year in a first class manner. While passing out photographs of the property, Mr. Bisette talked about the property and it's history. For the past year the Youngs have been searching for a tract of land which might be suitable for the development of a new Asheville speedway. After months of searching, they have located this tract of property which is owned by the City of Asheville and contains approximately 54 acres. This property has been owned by the City since the 1950's and it is not in the lease of the property from the City of Asheville to the Airport Authority. The area is in the floodplain and located in close proximity to the end of the Airport runway. It would be good for a project such as this because it's located near some very large roads which would accommodate a lot of traffic. Racing has broad support in Asheville, Buncombe County and Western North Carolina, noting that NASCAR racing has more spectators than any other sport in the United States.

Mr. James Young said that they have been searching for a place not only to relocate a speedway but to have a community center noting that they want to have something that involves something more than just motor sports. They would like to participate in projects with the fair, Blue Grass Festival, church revivals, etc. Their plans consist of a driving course which would include a high speed driving course that they would make available to law enforcement agencies of Western North Carolina for training of high performance driving and a drag strip. If this project is completed as they would like, they want a lot of community involvement. They would like to go to 10 area high schools that have automobile mechanic classes and fund up to \$5,000 per school, if they wished to participate, and start a program where they can drag cars against each other on a closed course, under supervision, and with proper medical attention close by. Kids now drag race on the streets and it's not safe. This would provide the kids with an opportunity to come to where it's legal to see how fast their cars can go. They would also like to make the track available in the summertime one night a week to have a cruise-in, with patrolmen on duty. They would also like to go to the Buncombe County and Henderson County Sheriff Departments and make a donation of \$5,000 each for them to build a drag car and they could have cops and kids drag racing. He felt that anything they can do to promote respect and responsibility for the youth today is great. They are not asking for any tax breaks because it will be totally privately funded. He said that if this is accepted by City Council, then he would be more than happy to meet

at the Fletcher Town Hall and answer all their questions.

Mr. Robert E. Turner , Chairman of the Regional Airport Authority, reported on the statistics regarding the Asheville Airport and the benefits of the Airport to our region. He said the Airport Master Plan of August 1993 is the preeminent planning document for the Airport Authority and has been accepted and approved by the Federal Aviation Administration ("FAA") for the 20 year period through 2013 as a guide for future development at the facility. Because the Airport is hemmed in on the east by highways and development, the Master Plan calls for west side development to provide for long range expansion for a variety of future aviation-related uses -24-

including a proposed parallel runway of a minimum of 6,800 feet in length designed to air carrier standards, air freight facilities, additional general aviation facilities and air field service facilities. The subject property has clearly been identified and approved by the FAA as suitable and appropriate for future development of aviation facilities, in support Asheville Regional Airport Authority's mission to provide facilities for aviation services meeting the needs of Western North Carolina. In light of this planning, the Regional Airport Authority adopted a resolution on December 20, 1999, which requested that the City of Asheville not permit any non-aviation related activities on such real property and that such real property be reserved and preserved solely for the use of the Asheville Regional Airport.

Upon inquiry of Mr. Richard Lantrip, President of the High Vista Homeowner's Association, City Attorney Oast said that the City can dispose of real property in several ways, but all of the ways that would be applicable with this property would involve the opportunity for upset bids. He said that the City would have to sell it to the highest bidder.

The following residents spoke in opposition to locating a speedway near the Airport on City owned property for several reasons, some being, but are not limited to: extreme noise levels; a race track is not suited for, and would be detrimental to, the congested and high growth corridor between Buncombe and Henderson Counties; the quality of life in the surrounding area will be compromised; major benefits will accrue to the developers of the race track, but will be a significant detriment to the residents of the surrounding area; Henderson County Commissioners took appropriate action to protect groups (not only in Henderson County, but in Buncombe County) from the adverse impact of a race track and they request the City of Asheville take appropriate action as well; property values up to 10 miles away will be decreased ; current development activities underway will be negatively impacted; future residential developments in this area will be negatively impacted; future needs of the Airport must be given priority status; it would be more prudent to consider the proposed land for an upscale industrial park that would benefit both counties; a rack track would add very little to the economic growth of the workforce; a race track would only generate more traffic; Fletcher is highly concerned of any type of development, growth, changes, growing pains that they will be seeing surrounding the communities; there is already a \$10 Million race track being built only 11 miles from East Asheville in Canton, N.C.; soil sampling testing is only first step towards acquiring the land; noise from the planes is neither consistent nor a nuisance and the sound for the takeoff of a jet is less than 20 seconds and does not occur frequently - noise from a race would be much louder and for several hours at a time; and Westfelt Park is a resource in the area that enjoys fishing, picnicking, etc., and that character will be destroyed:

Mr. Richard Lantrip , President of the High Vista Homeowner's Association

Mr. Jamie McArthur, President of Wildwood Homeowner's Association

Councilman Byrd, Town of Fletcher

Mr. Bob Chapman, member of Residents Opposition Airport Race Track (presented

pictures of the race track being built in Canton, N.C.)

Ms. Hilda Hamilton, member of the River Port Homeowner's Association

Mr. Al Cutter

Mr. Ukiah Morrison

Mr. Charles Swenson, resident in the Wildwood development

The following people spoke in support of allowing soil testing to be performed on the property near the Airport in hopes that it might be suitable for a race track. Reasons include, but are not limited to: the Airport doesn't need to expand; stock car engines are the less polluting engines there are with regard to pollution; the race track will provide a place for young people to go; noise will not be extreme because the area already has the noise of airplanes landing and taking off daily; the request is only for testing on the site; no special privileges are being asked for other than what was done at the Asheville Motor Speedway; noise decibels will not be any -25-

higher than they were in West Asheville; progress is being made in finding mufflers to lower the noise decibels even more; the site is in the floodplain and would not be suitable for major commercial development; the topography, two highways and the Agricultural Center are located between the site and the residential communities, thus helping to defuse the noise of the race track; the race track will pay taxes to the City; diversity should be encouraged; an industrial park in a flood plain area is not a wise investment; site is not long enough for a runway; the site can be used as a joint parking lot for patrons of the Asheville Airport and the race track; the testing of the soil will be valuable to the City and save taxpayers money; and the race track will only have a minor impact on traffic because of the major interstate:

Mr. Mike Fryer, member of Speedway '99

Mr. Kermit Tolly, member of Speedway '99

Mr. Drew Weeks

Mr. Don Yelton, No Holds Barred

Mr. Dean Bonessy, area resident

Councilman Peterson preferred to postpone action on this matter until some questions were answered, i.e., asked what exactly is in the floodplain, what can be built on that property, and what exactly does the Airport Authority have planned for that site.

Councilwoman Field understood that this site is about 60 feet below the present one runway and if they do have it in their Master Plan, how they intend to get up that 60 feet. She remembered from an earlier presentation that there is already a second runway planned on properties that the Airport already owns. She wondered why we need another race track if there is already one being built 11 minutes away from Asheville. If a race track is not being built in Canton, she was curious about what was being built on that site. She was strongly supportive of the racing community having a place to race in Asheville.

Councilman Worley's major concern was where does this property fit in with the long-range Airport expansion. If this property legitimately fits into the long-range Airport expansion plans, then he would be very hard-pressed to do something different with it. He would like to see the plans from the Airport Authority in order to see how the Airport has treated that property in the long-range planning that has taken place to date. If it doesn't fit in with those plans, then he would entertain some other use.

Councilman Hay was satisfied by the strong statement by the Airport Authority about whether the Airport

needs that land. He felt that by looking at the maps, any expansion plans to the west by the Airport would have to take into account that piece of land. He felt the Youngs did a tremendous job of running the speedway last year and he appreciated the way they have dealt with the City. He doesn't think the City has encouraged the Youngs at any point about this particular piece of property because he thought the City has always seen this as part of the Airport property. He hated to hold up the possibility that something else can happen out there or to offer any encouragement down that line at this point because quite frankly, he didn't think it heads anywhere. The sooner we tell the public that, the sooner the Youngs can be looking for a different site, the sooner the neighborhoods can relax, and the sooner the Airport Authority can go forward with their long-range planning.

Mayor Sitnick said that she was also very supportive of the racing community. She said that there are enough questions from Council at this point to delay taking action at this meeting.

It was the consensus of City Council to bring back this issue at the formal meeting on January 11, 2000, in order to get the Council's questions answered and the additional information requested. The City Clerk will compile a list of the questions posed by Council. The following groups were asked to participate in the dialog at the January 11, 2000, meeting: a representative -26-

of the Airport Authority, the petitioner, the developer, a representative of High Vista Homeowner's Association, a representative of Wildwood Homeowner's Association, and a representative from the Resident Opposition Airport Race Track.

At 9:00 p.m. Mayor Sitnick announced a break.

D. BRIEFING ON THE CITY'S Y2K PREPAREDNESS

City Manager Westbrook said that the City is prepared and has tested all of its facilities. He then reviewed the City's operational plan and contingencies for the Y2K event. The following Department Directors and other personnel will be at the Emergency Operations Center, as specified in the plan below: Mark Combs, Public Works Director; Irby Brinson, Parks and Recreation Director; Tom Frederick, Water Resources Director; John Rukavina, Fire Chief; Will Annarino, Police Chief; Terry Summey, Building Safety Director; Bill Schaefer, Finance Director; Jim Westbrook, City Manager; Doug Spell, Assistant City Manager; and Robin Westbrook, Public and Community Information Coordinator. Other Department Directors and key personnel already contacted by the Department Directors will remain on standby during the event period.

The operational plan is as follows:

1. Appropriate City staff and the Communications Center will be placed on operational alert beginning December 22, 1999. Operational alert for the purpose of the Y2K will be defined as a general heightened awareness of the Y2K situation and heightened alert status of individuals involved in normal, routine communications and other services provided by the City. The City of Asheville Emergency Operations Center will be on the Fourth Floor of the Municipal Building.
2. On Monday, December 27, 1999, at 0800 hours, the City will be placed on a Level I alert. A Level I alert is defined as the Communications Center being set up and prepared for any emergency. All operating departments will place appropriate people on standby alert during this period of time. At least Level I alert will be continued through January 5, 2000, at 1800 hours.
3. On December 31, 1999, at 1800 hours, the City will be placed on a Level II alert. Level II is defined as key Department Directors and other staff occupying the Emergency Operations Center and being prepared to manage the Y2K and weather emergency. All other Department Directors and key staff will be on standby and available by pager, cell phone, telephone or other means. The City will terminate the Level II alert when

no further action is needed with regard to the Y2K and/or weather event.

4. The Emergency Operations Center will be placed on Level III alert, which is defined as full-scale operational emergency response, at such time as notified by the City Manager, the Assistant City Manager or other appropriate City official in response to large-scale Y2K problems and/or weather emergencies.

Five community centers have been selected as emergency centers. Those five centers are as follows: West Asheville, East Asheville, Montford, Murphy-Oakley and Stephens-Lee.

Each community emergency center will be stocked with emergency supplies and have generator capability for electricity.

City facilities, where appropriate, will be locked and secure during a Level II operation of the Emergency Operations Center.

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E. MOTION TO CONFIRMING TOM SOBOL'S REAPPOINTMENT TO SERVE AN ADDITIONAL THREE-YEAR TERM ON THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

City Manager Westbrook said that this is the consideration of a request from Buncombe County to permit Mr. Thomas Sobol to serve an additional three year term on the Water Authority from October 1999 through September 2002.

The Water Agreement between the City of Asheville and Buncombe County prescribes that each member of the Regional Water Authority be appointed for a three year term, and prescribes that the concurrence of the Water Authority, the City Council, and the Buncombe County Commissioners is required for members to serve additional terms.

The Water Authority By-Laws amended in 1986 by the joint concurrence of the City, County, and Authority, provided that a member of the Authority could serve up to two consecutive terms. Under these by-laws, it has been the practice of the Authority that the appointing authority (the City, Buncombe County, or Henderson County) could re-appoint a member to the Water Authority to a second consecutive term but not longer than two consecutive terms. Several re-appointments have been made since 1986 by both the City and County under these By-Laws. One of these was Mr. Tom Sobol, who was appointed to the Water Authority by Buncombe County in 1993 and reappointed in 1996. He completed two consecutive three-year terms in September 1999.

The County Attorney presented a request to the Water Authority in October 1999 to permit Mr. Sobol to serve a third term. At the regular meeting in November, the Water Authority endorsed this request. The Buncombe County Commissioners reappointed Mr. Sobol as a County representative to the Water Authority for a third term at their December 7, 1999, meeting. Under the terms of the Water Agreement, the City Council must concur in the decision to authorize Mr. Sobol another term.

The staff advises that the City Council exercise strong discretion in the review of all requests for Water Authority members to serve additional terms, to avoid setting a broad precedence that the same members can serve unlimited terms. In this particular case, Mr. Sobol has been a member of the County Commissioners since 1984, and has also served the community over a long period of time in the areas of tourism development and economic development. Should Council agree to reappoint Mr. Sobol, it should be clear that the appointment is for one term and is specifically made in view of the unique circumstances and experience of Mr. Sobol.

Councilman Peterson and Councilwoman Whitmire felt that City Council should follow their policy of only serving two full successive terms and not make any exceptions to the policy.

Councilman Worley noted that the City Council rules apply to City Council appointments and this is actually a Buncombe County appointment. He noted that the City Council is only being asked to concur with the recommendation of the Water Authority and the County Commissioners. The County Commissioners want a member of their Board on the Authority and to not reappoint Mr. Sobol would necessitate their reshuffling other Board appointments. He felt that Mr. Sobol has provided good, dedicated service to the Authority and would recommend concurring with the reappointment.

Vice-Mayor Cloninger supported the concurrence as well in that we should allow elected bodies broad discretion as to who they want to serve on their boards and commissions. He felt that if the County Commissioners made a similar request to City Council, City Council would -28-

want to honor that request. Also, our boards and commissions policy is not set in stone and City Council has, from time to time, extended a particular re-appointment to a third term for unique circumstances.

Councilwoman Field doesn't agree with the concept of term limits because she feels it is a disservice to the community to take someone off of a board who has performed good service for a number of years.

Upon inquiry of Councilwoman Field about if the City Council can re-appoint Mr. Sobol to serve until his term has ended on the County Commissioners, City Attorney Oast said that since he is a Buncombe County appointment, Council's ability to make the re-appointment for less than a full term is limited.

Councilman Hay said that he would support the concurrence to allow Mr. Sobol to serve an additional term. He agreed with the reasoning of fresh faces and fresh points of views on boards, however, the County Commissioners want a Commissioner on the Authority and it makes sense that it be Mr. Sobol.

Mayor Sitnick agreed with Councilman Hay and stressed that City Council is only being asked to concur with the recommendations of the Water Authority and the County Commissioners.

Councilman Worley moved to confirm Tom Sobol's reappointment to serve an additional three-year term on the Regional Water Authority of Asheville, Buncombe and Henderson due to the unique circumstances and experience of Mr. Sobol. This motion was seconded by Councilwoman Field and carried on a 5-2 vote, with Councilman Peterson and Councilwoman Whitmire voting "no".

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 3-16, 1999: Lori Huntley (Water), Evan Beveridge (Water), Carolyn Harwood (Fire), David Peter (Water), Steve Banner (Parks & Recreation), Terry Bencar (Water), Michael Jarvis (Inspections), Kathy Norins (Inspections), Rex Snodgrass (Inspections) and Beverly Reid (Sanitation).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Peter Dawes felt that City Council was setting a precedent in allowing Mr. Tom Sobol to be reappointed to serve an additional three year term on the Regional Water Authority. He felt that perhaps Mr. Sobol should be been appointed as an ex-officio member. He felt that the Authority needed fresh ideas.

Mr. Don Yelton suggested City Council help in any way that they can to help clean up property owned by Mr. Ellis Harold Roberts on 5 Woodlawn Terrace.

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VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:02 p.m.

CITY CLERK MAYOR
