

Tuesday - July 25, 2000 - 5:00 p.m.

## Regular Meeting

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

Absent: Mayor Leni Sitnick

## **INVOCATION**

Councilman Peterson asked for a moment of silence for Asheville Firefighter Danko Maurice McQueen who died in a motorcycle accident on Sunday, July 23, 2000; and Mr. and Mrs. Taylor Odom and three of their six children who died in a car accident on Monday, July 24, 2000.

## **ADDITIONS TO THE AGENDA**

City Manager Westbrook asked that the following items be added to the agenda: (1) two resolutions authorizing subordination of City-backed loans on Mountainside Apartments under the Consent Agenda; and (2) a resolution conferring the Mayor's powers and duties upon the Vice-Mayor in the absence of the Mayor under Other Business.

## **I. PROCLAMATIONS:**

## **II. CONSENT:**

Councilman Hay asked that Consent Agenda Item H be pulled from the Consent Agenda for discussion.

City Manager Westbrook said that the developer of Nettlewood Professional Park has asked that Consent Agenda Item C be deleted from the agenda. It was the consensus of City Council to removed that item from the agenda.

## **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 11, 2000, AND THE WORKSESSION HELD ON JULY 18, 2000**

## **B. RESOLUTION NO. 00-114 - RESOLUTION AWARDDING THE BID FOR DISPOSAL PARCEL 104 IN THE EAST END COMMUNITY IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to execute the necessary documents for the conveyance of Disposal Parcel 104 of the East End/Valley Street Community Improvement Project to Queen E. Young in the amount of \$5,900.

On July 11, 2000, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 104. The advertisement ran in the Asheville Citizen-Times on July 14, 2000, as provided in N. C. Gen. Stat. sec. 160A-269.. No response was received. Therefore, the offer to purchase from Queen E. Young in the amount of \$5,900 was not upset and the sale to Queen E. Young should be approved.

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Community Development staff recommends adoption of the resolution.

**RESOLUTION BOOK NO. 26 – PAGE 79**

**C. RESOLUTION ACCEPTING THE NEW STREET NAME OF "NETTLEWOOD DRIVE"**

This item was deleted from the Consent Agenda.

**D. RESOLUTION NO. 00-115 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BLUE RIDGE CENTER TO PROVIDE A SOCIAL WORKER TO WORK WITH THE ASHEVILLE POLICE DEPARTMENT**

Summary: The consideration of a resolution authorizing the City Manager to contract with Blue Ridge Center for the provision of a social worker to work with the police in carrying out the activities of the Social Work and Police Partnership Grant.

The Asheville Police Department has received a grant through the North Carolina Department of Crime Control and Public Safety, Governor's Crime Commission for a Social Work and Police Partnership Project. The grant calls for the City to contract with Blue Ridge Center to carry out project activities. The grant provides \$49,000 as a professional service fee for the City to pay to Blue Ridge Center for the provision of a social worker. The social worker will work with juveniles to reduce runaway behavior.

Funds are allocated in the Police Department Professional Services Budget, 115-3502-421-3010.

City staff recommends the adoption of the resolution authorizing City Manager to enter into the contract with Blue Ridge Center.

**RESOLUTION BOOK NO. 26 – PAGE 80**

**E. RESOLUTION NO. 00-116 - RESOLUTION AUTHORIZING INSTALLATION AND OPERATION OF AN UNATTENDED SERVICE STATION FACILITY BY SAM'S CLUB MEMBERSHIP WAREHOUSE**

Summary: The consideration of a resolution authorizing installation and operation of an unattended fuel facility at Sam's Club Membership Warehouse on Patton Avenue.

Sam's Club Membership Warehouse will operate an unattended service station at 645 Patton Avenue. They have asked for Fire Department assistance with meeting fire code standards so that the motor fuel pumps at the service station can be operated by vehicle drivers without an attendant.

The Interim Fire Chief recommends City Council authorize installation and operation of an unattended fuel facility at Sam's Club Membership Warehouse through adoption of the resolution.

**RESOLUTION BOOK NO. 26 – PAGE 81**

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**F. ORDINANCE NO. 2729 - BUDGET AMENDMENT TO REFLECT ADDITIONAL REVENUE AND OFFSETTING EXPENSES IN THE TRANSIT SERVICES OPERATING BUDGET**

Summary: The consideration of a budget amendment in the amount of \$110,000 to reflect additional revenue and offsetting expenses in the Transit Services operating budget.

The City of Asheville received additional funds from North Carolina Department of Transportation for operation of a transit system. These funds were received in the FY 1999/2000 fiscal year. In order to appropriately account for these funds in the fiscal year in which they were received, it is necessary to amend

the FY 1999/2000 budget. This amendment will take effect before FY 1999/2000 is officially closed.

City staff recommends City Council adopt the budget amendment in the amount of \$110,000 to reflect additional revenue and offsetting expenses in the Transit Department budget.

**ORDINANCE BOOK NO. 18 – PAGE 423**

**G. RESOLUTION NO. 00-117 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT TO METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, N.C., ACROSS PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MALVERN HILLS PARK**

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to the Metropolitan Sewerage District to install a sewer line across City-owned property located in Malvern Hills Park.

Staff has been working with representatives of the Metropolitan Sewerage District, in coordinating consideration of the installation of a sewer line, using trenches construction running through a parking area near the tennis courts at Malvern Hills Park. There are no trees, landscaping or improvements in the area, only pavement for parking and a paved walking trail. The Parks and Recreation Department staff have agreed that the easement, along with special provisions agreed to by MSD, will in no way limit the potential use of the property for a park.

City staff recommends that the Mayor grant an easement for an existing sewer line to the Metropolitan Sewerage District in order to install a sewer line across City- owned property located in Malvern Hills Park.

**RESOLUTION BOOK NO. 26 – PAGE 84**

**H. MOTION SETTING A PUBLIC HEARING ON AUGUST 8, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR RIVERBEND MARKETPLACE FOR DEVELOPMENT ON THE OLD SAYLES BLEACHERIES SITE LOCATED AT 437 SWANNANOA RIVER ROAD**

This item was removed from the Consent Agenda for discussion.

**I. RESOLUTION NO. 00-118 - RESOLUTION AUTHORIZING THE MAYOR OR VICE-MAYOR, THE CITY ATTORNEY AND THE CITY CLERK TO EXECUTE AN AGREEMENT SUBORDINATING THE DEED OF TRUST GRANTED BY ASHEVILLE-MOUNTAINSIDE, L.L.C., FOR THE BENEFIT OF THE CITY OF ASHEVILLE FOR A LOAN MADE PURSUANT TO THE HOME INVESTMENT PARTNERSHIP PROGRAM**

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Summary: The consideration of two resolutions authorizing subordination of City-backed loans on Mountainside Apartments.

Asheville-Mountainside LLC is the owner of McCormick Heights Apartments (previously known as Mountainside Apartments), a low/moderate income apartment complex. Asheville Mountainside undertook extensive renovation work on the apartments (100 units). The work was financed in part with loans through the HOME and CARROT programs administered by the City's Community Development office, and the City holds Deeds of Trust as security for the loans. Neither loan is a first tier loan. Wachovia Bank holds the first tier construction loan.

The construction work has now been completed, and Asheville Mountainside wishes to obtain permanent financing by paying off the Wachovia construction loan, and obtaining financing from Mechanics and Farmers Bank. They have requested that the City subordinate its deeds of trust from the HOME and CARROT loans

to the deed of trust that will secure the permanent financing.

This is a routine request in federally subsidized housing rehab work, and grows out of a requirement by the Mechanics and Farmers Bank as a condition of obtaining permanent financing; the HOME loan specifically contemplates subordination. The City's position with respect to its loans will not be materially impaired.

If Council agrees for subordination of the HOME and CARROT loans, adoption of the resolutions is recommended.

#### **RESOLUTION BOOK NO. 26 – PAGE 85**

#### **J. RESOLUTION NO. 00-119 - RESOLUTION AUTHORIZING THE MAYOR OR VICE-MAYOR, THE CITY ATTORNEY AND THE CITY CLERK TO EXECUTE AN AGREEMENT SUBORDINATING THE DEED OF TRUST GRANTED BY ASHEVILLE-MOUNTAINSIDE, L.L.C., FOR THE BENEFIT OF THE CITY OF ASHEVILLE FOR A LOAN MADE PURSUANT TO THE C.A.R.R.O.T. PROGRAM**

Summary: See Consent Agenda Item "I" above.

#### **RESOLUTION BOOK NO. 26 – PAGE 87**

Vice-Mayor Cloninger 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 Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

#### **ITEM PULLED FROM THE CONSENT AGENDA**

#### **MOTION SETTING A PUBLIC HEARING ON AUGUST 8, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR RIVERBEND MARKETPLACE FOR DEVELOPMENT ON THE OLD SAYLES BLEACHERIES SITE LOCATED AT 437 SWANNANOA RIVER ROAD**

Chief Planner Gerald Green said that on July 24, 2000, the developers for Riverbend Marketplace requested the Board of Adjustment continue their request for a variance until they had an opportunity to work with City staff. The Board of Adjustment continued the variance

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request until the Board's September 25, 2000, meeting. However, the Board is considering holding a special meeting to consider this request sooner than it's September 25 meeting date. The developer has also requested City Council postpone their public hearing on the issuance of the conditional use permit until after the Board of Adjustment renders a decision on their variance request.

Even though the City Council would like to move forward with consideration of this matter as quickly as possible, it was agreed that City Council should not hold their public hearing until after the Board of Adjustment renders it's opinion and more information from staff is received.

Councilwoman Field asked the City Attorney to research how other communities have banned large structures, like a Super Walmart, in their area.

With regard to the August 1, 2000, tour of the Sayles Bleacheries site, it was the consensus of City Council to postpone that tour until a public hearing date is set to consider the conditional use permit. The tour will be a special meeting of City Council and the public can be present, however, no comments from the public will

be taken.

It was the consensus of City Council to hold their August 8, 2000, formal City Council meeting in the Council Chamber, 2<sup>nd</sup> Floor of the City Hall Building – not at the Asheville Civic Center as previously discussed.

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

#### **A. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY ON ROBERTS STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CB-1 COMMUNITY BUSINESS I DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)**

##### **ORDINANCE NO. 2730 - ORDINANCE TO REZONE PROPERTY ON ROBERTS STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CB-1 COMMUNITY BUSINESS I DISTRICT**

##### **ORDINANCE NO. 2731 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY ON ROBERTS STREET (CONDITIONAL USE ZONING)**

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

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Vice-Mayor Cloninger opened the public hearing at 5:15 p.m.

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Mr. Gerald Green, Chief 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). This public hearing was advertised on July 14 and July 21, 2000.

Mr. Green said that this is the consideration of (1) an ordinance to rezone one lot of 1.65 acres on Roberts Street from RM-8 Residential Multi-Family Medium Density District to Community Business I - CU (Conditional Use); and (2) issuance of a Conditional Use Permit for an artist studio, workshop, gallery and three upstairs apartments at this location.

On July 5, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of this rezoning request. The applicant, Sam Stark, wishes to build a new building on a currently vacant lot (PIN No. 9638.08-98-1689) and use the building for his glass blowing workshop and gallery. Planning staff feels that this type of request is a good use of the conditional use zoning tool.

The property is currently zoned RM-8 and is part of an RM-8 District that covers the "Chicken Hill" area of the West End/Clingman neighborhood. The property is currently vacant. The property across the street is a large vacant tract of land zoned Commercial Industrial (map used is part of City Exhibit 3) . The Commercial Industrial property has the potential to be developed to a high intensity use. Therefore, a transition area is needed between the very high intensity use and the low intensity residential use. The proposed use of the property as an artist studio and gallery serves this purpose. With conditional use zoning, the site plan and

building design are regulated to ensure that this use is low-impact, and provides the desired transition area.

The proposed site plan and building elevation shows a two-story building with a pedestrian-oriented street front façade (map used is part of City Exhibit 3). The plan proposes a mix of uses by including one upstairs apartment and the potential for two additional upstairs apartments on a third story. Roberts Street could eventually contain a mix of small-scale commercial and residential uses that serve and blend in with the existing neighborhood. A master plan for the area is now underway that might identify some of these possibilities.

Mr. Green said that since the time of the Planning and Zoning Commission meeting to consider this request, the applicant has added a catering kitchen to the list of his proposed uses as part of this development. That would be a low intensity use and staff is supportive of that request.

Planning and Development staff recommends approval of a motion to rezone property located on Roberts Street from RM-8 to Community Business I -CU and approval of a conditional use permit with the following conditions: 1) Uses will be limited to an artist studio, workshop, gallery, a catering kitchen, and three upstairs apartments; and 2) Site alterations will be limited to the proposed site development plans and building elevation drawings, with the potential for an addition of a third-story to incorporate additional apartments.

Councilman Peterson asked what limitation would there be on the applicant if, in the future, he wanted to convert the entire building into some sort of retail space, thus removing the mixed uses. City Attorney Oast explained that it would have to come back to City Council for an amendment to the conditional use permit.

Mr. Sam Stark, applicant, spoke in support of this request and stressed that he had every intention on keeping the mixed uses in the building.

There being no request from the applicant for rebuttal, Vice-Mayor Cloninger closed the public hearing at 5:27 p.m.

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

Councilwoman Field moved to adopt Ordinance No. 2730 to rezone property on Roberts Street from RM-8 Residential Multi-Family Medium Density District to CB-1 Community Business I District (conditional use zoning). This motion was seconded by Councilman Worley and carried unanimously.

#### **ORDINANCE BOOK NO. 18 – PAGE 425**

Councilman Worley moved to adopt Ordinance No. 2731 granting the conditional use permit for property on Roberts Street (conditional use zoning), with the following conditions: (1) Uses will be limited to an artist studio, workshop, gallery, a catering kitchen, and three upstairs apartments; and (2) Site alterations will be limited to the proposed site development plans and building elevation drawings, with the potential for an addition of a third-story to incorporate additional apartments. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature reflecting the findings that the Code requires regarding conditional use standards and reflecting information presented by staff and subject to the conditions suggested by staff. This motion was seconded by Councilwoman Field and carried unanimously.

#### **ORDINANCE BOOK NO. 18 – PAGE 427**

#### **B. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY ON CARSON CREEK DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT, AND**

## **ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)**

### **ORDINANCE NO. 2732 - ORDINANCE TO REZONE PROPERTY ON CARSON CREEK DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT**

### **ORDINANCE NO. 2733 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY ON CARSON CREEK DRIVE (CONDITIONAL USE ZONING)**

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

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Vice-Mayor Cloninger opened the public hearing at 5:30 p.m.

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). This public hearing was advertised on July 14 and 21, 2000.

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Ms. Merten said that this is the consideration of (1) an ordinance to rezone a lot at 627 Carson Creek Drive from RM-16 Residential Multi-Family High Density District to Office District, and (2) issuance of a conditional use permit.

The Planning and Zoning Commission, at their July, 5, 2000, meeting, reviewed and recommended approval to conditionally rezone a 1.64 acre tract located on Carson Creek Drive near the Turtle Creek and Carson Creek apartments. The subject property (PIN No. 9655.05-18-4838) is located in an RM-16 zoning district that is adjacent to a HB zoning district. The site is currently vacant. The proposal is to construct a small office park, to be known as Travis Office Park, consisting of three buildings with a total of 9,600 square feet (map is part of City Exhibit 3).

This site fits the criteria for office zoning as it is located in a transition areas between high density residential and commercial uses. Staff has worked with the developer to design a project that will fit into the character of the area and the site as the conditional use zoning allows. The buildings will be of log cabin construction to better blend with the natural surroundings. The building closest to the street will be two stories, but will appear as one from the front. The developer will strive to save as many large existing trees as feasible in the buffer areas and will plant additional trees and shrubs as may be required to meet the 20 ft. 'B' buffer requirement. Parking areas will not be readily visible from the street.

The Planning and Zoning Commission voted unanimously to recommend approval of the conditional use rezoning with the following conditions: (1) prior to the issuance of a Level I zoning permit, the following items must be addressed: (a) Easements for the private sewer lines must be submitted - this may affect the landscape plan; (b) Drawings must be revised so that no parking is located within a required setback; (c) The Planning Director and the City Engineer have determined that sidewalks are required and should be shown on the site plans; (d) Accessible paths of travel from the parking areas to the buildings must be shown on the site plan; (e) All requirements for stormwater and erosion control must be met; (f) A wastewater allocation

from MSD must be obtained; (g) The development will need to tie into the water main on Hendersonville Road; and (h) The final building plans must be sealed by a licensed architect and meet all NC building code requirements, including those for accessibility.

The Planning and Development staff recommends approval of the conditional use rezoning.

Councilman Hay was concerned that this property is zoned for multi-family housing and we're giving that up for an office use.

Ms. Merten said that that 26 units could be provided on this 1.64 acre site and actually the concern of the neighborhood was more to preserve the existing trees, which this development does.

Mr. John Fisher, Architect who prepared the site plan, said that the building is a log-style home to be placed on the site. He emphasized that they are proposing a low density residential type development and are being conservative with the site. The total square footage is 9,600 feet vs. if you did build 26 units on this site at 1,200 sq. feet per unit it would be 31,000 sq. feet. In addition, their parking is 39 cars vs. 26 units at two cars per unit it would be 52 cars. And, he noted, they are trying to preserve as many trees as possible.

Dr. Gerald Travis said that this is a proposal for his office as a child psychiatrist. His goal is to develop an atmosphere that is non-intimidating and actually has a residential feel for children and families that he sees in his practice. The design and intent is a different approach than a typical medical complex for the type of practice that he has.

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Councilman Hay wondered why this property has not been developed as residential in the past. Dr. Travis said that he heard this was a piece of property that was part of a foreclosure from Turtle Creek Apartments.

There being no request from the applicant for rebuttal, Vice-Mayor Cloninger closed the public hearing at 5:42 p.m.

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

Councilman Worley moved to adopt Ordinance No. 2732 to rezone property on Carson Creek Drive from RM-16 Residential Multi-Family High Density District to Office District (conditional use zoning). This motion was seconded by Councilwoman Field.

Councilman Hay said that he would vote in favor of the rezoning, however, he has a real concern about loss of opportunities for housing. He did feel that his project was great and is consistent with the kind of development City Council wants to see. But, this property is zoned for multi-family residential which is something we are struggling to find more opportunities for in the City. He said he would vote in favor of the rezoning, operating under the assumption that this property is not easily developable for multi-family or else it would have been developed by now.

Councilwoman Field said that, as an architect, looking at how small the lot is, she didn't think a developer would come in and develop that small an area multi-family. A developer would probably be looking to be much more efficient and develop more units in order to get the price at a reasonable level. That's probably why it hasn't been developed into multi-family housing. She agreed with Councilman Hay with regard to the loss of multi-family zoned property and Council really needs to be mindful of that.

Vice-Mayor Cloninger and Councilman Peterson both agreed with Councilman Hay stating that the City does need to be mindful of preserving as much of multi-family zoned property as it can.



The motion to rezone this property made by Councilman Worley and seconded by Councilwoman Field carried unanimously.

#### **ORDINANCE BOOK NO. 18 – PAGE**

Councilwoman Field moved to adopt Ordinance No. 2733 granting the conditional use permit for property on Carson Creek Drive (conditional use zoning), with the following conditions: (1) prior to the issuance of a Level I zoning permit, the following items must be addressed: (a) Easements for the private sewer lines must be submitted - this may affect the landscape plan; (b) Drawings must be revised so that no parking is located within a required setback; (c) The Planning Director and the City Engineer have determined that sidewalks are required and should be shown on the site plans; (d) Accessible paths of travel from the parking areas to the buildings must be shown on the site plan; (e) All requirements for stormwater and erosion control must be met; (f) A wastewater allocation from MSD must be obtained; (g) The development will need to tie into the water main on Hendersonville Road; and (h) The final building plans must be sealed by a licensed architect and meet all NC building code requirements, including those for accessibility. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature reflecting the findings that the Code requires regarding conditional use standards and reflecting information presented by staff and subject to the conditions suggested by staff. This motion was seconded by Councilwoman Bellamy and carried unanimously.

#### **ORDINANCE BOOK NO. 18 – PAGE**

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

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

#### **A. RESOLUTION WAIVING CONFLICT OF INTEREST AND PERMITTING VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A., TO FILE ACTIONS OF EMINENT DOMAIN ON BEHALF OF THE CITY OF ASHEVILLE**

#### **RESOLUTION NO. 00-120 - RESOLUTION AUTHORIZING THE FILING FOR CONDEMNATION OF A WATER LINE EASEMENT ALONG A PRIVATE ACCESS ROAD KNOWN AS SPRING STREET TO THE EXTENT THAT ADJACENT PROPERTY OWNERS HAVE INTEREST**

City Attorney Oast requested no action will be taken the resolution waiving the conflict of interest and permitting Van Winkle, Wall, Starnes and Davis, P.A., to file actions of eminent domain on behalf of the City of Asheville. He said that some issues have been raised by Council members in which he needs to get more information on and he is not prepared to go forward with that issue that this time.

City Attorney Oast said that at this time, staff is requesting Council's authorization to proceed with the filing of a condemnation of a waterline easement along a private access road known as Spring Street to the extent that adjacent property owners have interest.

Summary: As City Council is aware, the Regional Water Authority received a \$3 million grant from the State of North Carolina in July 1999 to construct some critical improvements to the City-owned water distribution system. Design has been completed, right-of-way has been underway since February 2000, construction bids have been received and contracts were awarded by the Water Authority on June 20, 2000, and construction is scheduled for August 2000 through February 2001.

Despite significant efforts by staff to acquire an easement along Spring Street, northwest of the City of

Asheville, we have been unable to obtain the signatures of Ms. Lavanda Rutan of Conestee, South Carolina, and Ms. Darlene M. Waters and husband, Richard G. Waters of Conestee, South Carolina. A third heir, Mr. Danny Mathis, Single, of Asheville, North Carolina has signed the easement. Title work obtained by the Water Authority's attorney identified these individuals as the surviving heirs of Ama L. Henderson, who owned the property but is now deceased. All owners of other property on Spring Street and Wolfe Park Circle have signed easements.

A survey and appraisal has been performed on these two properties, and the Regional Water Authority recommended on July 18, 2000, that the City Council authorize the Authority's attorney to exercise the Council's authority of eminent domain to obtain water line easements in the access road where the interests of these three owners in common of this property exist. These easements must be obtained for the Authority to proceed with the completion of the \$3 million of water system improvements.

City staff and the Regional Water Authority recommend the City Council adopt the resolution authorize the filing of condemnation of a water line easement on the property described above, and the City Attorney recommends the City Council adopt the resolution waiving conflict of interest with Van Winkle, Buck, Wall, Starnes, and Davis, P. A. (attorney for the Water Authority) to file these actions of eminent domain on behalf of the City of Asheville.

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

Councilman Worley moved for the adoption of Resolution No. 00-120. This motion was seconded by Councilwoman Field and carried unanimously.

## **RESOLUTION BOOK NO. 25 – PAGE 89**

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

#### **A. RESOLUTION NO. 00-121 – RESOLUTION CONFERRING MAYOR'S POWERS AND DUTIES UPON VICE-MAYOR**

City Attorney Oast read the following resolution: G.S. 160A-70 provides for the election of a Mayor pro tempore, and further provides for the powers and duties of the Mayor to be conferred by Council upon the Mayor pro tempore, in the absence of the Mayor, and Sec. 10 of the Asheville City Code, and Rule 10 of City Council's Rules of Procedure provide to similar effect with respect to the office of Vice-Mayor; and, Mayor Sitnick is absent from the City and is not anticipated to return until August 7, 2000. Now, therefore, be it resolved by the City Council of the City of Asheville that the powers and duties of Mayor are hereby conferred upon the Vice-Mayor, effective immediately and continuing until 8:00 a.m. on August 8, 2000, or until such sooner time as the City Manager is advised that the Mayor is no longer absent.

Councilman Hay moved for the adoption of Resolution No. 00-121. This motion was seconded by Councilwoman Field and carried unanimously.

## **RESOLUTION BOOK NO. 25 – PAGE 90**

### **B. CLAIMS**

The following claims were received by the City of Asheville during the period of July 7-20, 2000: Lewis Rathburn Center (Water), City Development, McNutt Service (Fleet Management) and Rebecca Keil (Parks & Recreation).

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

### **C. LAWSUITS**

The City received the following complaint on July 5, 2000: Betty Donoho v. City of Asheville, Buncombe County and WNC Air Pollution Control Agency. The nature of the proceeding is a complaint for injunction from paying any excess funds held by the WNC Air Pollution Control Agency to the Clean Air Community Trust and to order these funds to be paid to the School Board. This matter will be handed in-house.

The City received the following Charter Services Complaint on July 11, 2000: Travel Professionals Inc., Young Transportation Inc. and NC Motorcoach Association Inc. vs. Asheville Transit System. The nature of the proceeding is a determination that festival bus shuttle services are "charter service" and should be privatized; to enjoin the Asheville Transit System from providing the festival shuttle services; and order Asheville Transit System to pay compensatory damages in an amount in excess of \$10,000. This matter will be handled in-house.

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

### **VIII. ADJOURNMENT:**

Vice-Mayor Cloninger adjourned the meeting at 5:52 p.m.

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CITY CLERK MAYOR

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