

Tuesday - October 10, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; 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: Councilman Brian L. Peterson

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF KEY TO THE CITY TO ROSE QUALLEY

Mayor Sitnick presented the Key to the City to Rose Qualley (Andie MacDowell) .

B. PROCLAMATION PROCLAIMING OCTOBER, 2000, AS "ASHEVILLE SISTER CITIES MONTH"

Councilman Hay read the proclamation proclaiming October, 2000, as "Asheville Sister Cities Month" in the City of Asheville. He presented the proclamation to Ms. Mary Lasher and Mr. Tom Sanders who briefed City Council on some activities taking place during the month.

II. CONSENT:

Councilwoman Bellamy recognized Ms. Corrine Hines, 5th grader at Glory Tabernacle, who has a strong interest in politics.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 26, 2000, AND THE WORKSESSION HELD ON OCTOBER 3, 2000

B. RESOLUTION NO. 00-192 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CAROLINA ROOFING AND CONSTRUCTION INC. FOR THE SENIOR OPPORTUNITY CENTER ROOF REPLACEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract for the Senior Opportunity Center.

In an effort to maintain City facilities, City staff, through the capital improvement process, has determined the Senior Opportunity Center requires a new roof. City staff solicited sealed bids from eleven roofing contractors, three of which were minority contractors, to supply and install a new roofing system. City staff received bids from four qualified bidders as follows:

Construction Advantage , Inc. \$43,715.00

Service One, Inc. \$42,483.00

Stroup Sheet Metal Works, Inc. \$42,459.00

Carolina Mountain Roofing and Const., Inc. \$42,187.00

-2-

City staff has reviewed all bids and determined that Carolina Mountain Roofing and Construction, Inc. is the lowest bidder. City staff recommends acceptance of the total bid amount of \$42,187.00.

Approved funding is available in the capital improvement project account to pay for this roof replacement for Senior Opportunity Center.

The Parks and Recreation Department requests City Council approve the City Manager to enter into a contract for \$ 42,187.00 with Carolina Roofing and Construction, Inc., for the roof replacement contract at the Senior Opportunity Center.

RESOLUTION BOOK NO. 26 – PAGE 198

C. ORDINANCE NO. 2754 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE NEXT PHASE OF IMPROVEMENTS AT THE SENIOR OPPORTUNITY CENTER AND HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of \$12,194, for the annual appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging, to establish a budget for the next phase of improvements at the Senior Opportunity Center and Harvest House.

The City of Asheville applied for funds in September 2000 for the 2000 Senior Center Allocation from the State of North Carolina, Department of Health and Human Services, Division on Aging. The allocation was recently awarded in the amount of \$12,194 and designated for facility improvements and purchasing equipment at Senior Opportunity Center and Harvest House.

The Parks and Recreation Department is responsible for the management and operation of two senior centers. The annual allocation from the State of North Carolina will assist the department in implementing facility improvements or purchasing equipment and supplies.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of \$12,194, to establish a budget for the next phase of improvements at Senior Opportunity Center and Harvest House.

ORDINANCE BOOK NO. 18 – PAGE

D. RESOLUTION NO. 00-193 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE RENEWAL AGREEMENT WITH MOTOROLA COMMUNICATIONS AND ELECTRONICS INC. TO PROVIDE MAINTENANCE OF THE CITY'S RADIO COMMUNICATION SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics Inc. to provide maintenance of the City's radio communication system for another year at the cost of \$12,611.30 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. Effective with the service agreement covering the period of September 1994 through August 1995, the

-3-

maintenance cost per unit of equipment has been fixed. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2000, through August 31,

2001, remains fixed at the original cost per unit.

This renewal agreement reflects a monthly increase of \$156.85, which covers additional equipment purchased by the City that has come out of warranty during the past year. The monthly cost of this service is \$12,611.30.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

The Finance Department requests City Council authorize the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at the cost of \$12,611.30 per month.

RESOLUTION BOOK NO. 26 – PAGE 199

E. RESOLUTION NO. 00-194 - RESOLUTION OF SUPPORT FOR THE PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a resolution expressing endorsement of and support for the Pack Square Renaissance Project.

The Pack Square Task Force, a public/private partnership created to direct the project, is requesting the approval and adoption of this resolution. Along with numerous other letters of support, the resolution would be used to garner additional public support for the project as well as to aid fundraising efforts. The conceptual plan, which resulted from a three-day public design workshop involving the participation of hundreds of citizens, has previously been presented to Council.

City staff recommends City Council adopt the resolution expressing endorsement for the Pack Square Renaissance Project.

RESOLUTION BOOK NO. 26 – PAGE 200

F. RESOLUTION NO. 00-105 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CHARRON SPORTS SERVICES INC. FOR THE CIVIC CENTER BLEACHER RENOVATION PROJECT

Summary: The consideration of authorizing the City Manager to enter into a contract with Charron Sports Services, Inc., for the Civic Center Bleacher Renovation Project.

The Civic Center has considered the bleachers a major Capital Improvement Project for some time. To purchase new ones, however, could cost as much as one million dollars. Earlier in the year, Council directed the staff to create a plan that would aid the City in maintaining services at the venue until the Task Force made it's recommendations regarding the future direction of the facility. Funding was an important issue.

The staff has found a solution regarding the bleacher project. A firm has been located that will completely renovate the bleachers to an "as new" condition. Those located on the north

-4-

and west sides of the building will be motorized for ease of installation and removal at events. Original parts will be used where possible. The company also has the ability to reproduce parts comparable to new ones. New handrails will be installed that will greatly reduce the need for labor. The overall labor savings per installation is estimated to be approximately \$2,000.00.

In addition, the firm will include in the price a one-year warranty to include both parts and labor. The total cost of the project is \$85,895.00. This work only covers the structural work to the bleachers themselves.

Only one company could be found with the capabilities to complete such an extensive project. Some of their employees were involved with the original installation. They can retrofit the bleachers back to a like new condition. They are also giving the City a one-year warranty on both parts and labor. In addition, the City can see immediate financial return from the motorization of two of the three sections. Furthermore, the project is far less expensive than an outright purchase of new equipment.

Funding for this project was approved with the adoption of the Fiscal Year 2000-01 Capital Improvement Program.

The staff recommends that City Council authorize the City Manager to enter into a contract with Charron Sports Services Inc., for the Civic Center Renovation Project.

RESOLUTION BOOK NO. 26 – PAGE 201

G. MOTION SETTING A PUBLIC HEARING ON OCTOBER 24, 2000, TO CONSIDER THE REZONING OF PROPERTY LOCATED OFF OF SWEETEN CREEK ROAD AND ROSSCRAGGON ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO CB II COMMUNITY BUSINESS II DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

H. MOTION SETTING A PUBLIC HEARING ON OCTOBER 24, 2000, TO INITIALLY ZONE 65 AND 67 LONG SHOALS ROAD TO OFFICE BUSINESS DISTRICT

I. RESOLUTION NO. 00-196 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE IN ORDER TO CANCEL THE WORKSESSION ON OCTOBER 17, 2000, AND THE COMMUNITY MEETING ON OCTOBER 31, 2000

RESOLUTION BOOK NO. 26 – PAGE 202

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 Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

-5-

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED AT 38 SYCAMORE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT (CONDITIONAL USE ZONING) AND ISSUANCE OF A CONDITIONAL USE PERMIT

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.

City Attorney Oast said that a valid protest petition has been filed in connection with the rezoning request which will require an affirmative vote of all six members of Council present in order to allow the rezoning. If the rezoning passes, City Council will then consider the particulars of the conditional use permit requested. With regard to the conditional use rezoning, City Council should remember that they voting on the general legislative question of whether it is appropriate to rezone this property to allow for some particular use with conditions. City Council is not voting at that time to issue the conditional use permit. If, and when, it comes time to vote on the conditional use permit, City Council may then consider what conditions are appropriate for that particular use.

The following Council members disclosed that they visited the site: Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Bellamy and Councilmen Hay and Worley.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:37 p.m.

Chief Planner Gerald Green said that this is a request to rezone property allow a larger non-residential use than permitted under the current zoning. Throughout our City in all our residential districts, a variety of non-residential uses are permitted. In various zoning districts the scale of these non-residential uses is limited due to the impact on neighborhoods. As part of our on-going strategy to implement the smart growth policies, the Planning & Development staff is reviewing standards for all non-residential uses in residential districts to identify reasonable sizes, the scale of the structures, parking, landscaping, and other items that could adversely impact the residential uses, if not addressed properly. This use before Council tonight is within the scale limits and meets all the criteria that have been identified thus far for day cares within any residential district within the. These standards have not been recommended for adoption by the Planning & Zoning Commission yet because staff is looking at so many non-residential uses, all of which are currently located in residential districts. The use before Council has been characterized as a commercial intrusion, however, staff does not see it as such. In looking at our smart growth policies, City staff has identified a number of issues which are addressed by the proposed use and the proposed zoning change. These include the wise use of natural and manmade resources, development policies which reduce the dependency on automobile travel by placing a variety of uses in close proximity, by encouraging a mixture of uses within an area, by promoting compatible land uses that serve the residents of a community, and by encouraging

-6-

the traditional neighborhood development pattern in which residences, schools, churches and small scale commercial and office uses are all located in the same neighborhood.

Mr. Dan Baechtold, Urban Planner, submitted into the record the Affidavit of Publication (City Exhibit 1), the Certification of Mailing of Notice to Property Owners (City Exhibit 2), and the Staff Report (City Exhibit 3). This public hearing was advertised on September 29 and October 6, 2000.

Mr. Baechtold said that this is the consideration of an ordinance to rezone property located at 38 Sycamore Road from Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District (conditional use zoning), and issuance of a conditional use permit for a Montessori pre-school (child day care center) and single-family residence.

The Planning and Zoning Commission reviewed this project on September 6, 2000, and took action to recommend approval (5-1) of the rezoning and conditional use permit with conditions. The request is to rezone one lot of just under an acre in size. The lot is currently occupied by one single-family residence, and the owner operates a Montessori pre-school for eight children. The pre-school is a permitted use in the RS-8

District as a child day care home. The applicant wishes to place a building of 1,100 square feet next to the existing residence, and construct a new circular driveway. The proposed site plan shows minimal site disturbance and minimal removal of existing vegetation. The owner would like to expand the pre-school to a maximum enrollment of 25 children.

The lot is located just off of Beaverdam Road, on a private access road that serves four homes (City Exhibit 4). Two of those homes face Beaverdam Road, and have driveway access onto Beaverdam Road. Thus, the access road provides primary access for just two property owners. Beaverdam Road carries approximately 6,000 cars per day in this location. There is a 30-foot public right of way associated with a portion of the road (City Exhibit 5). This short section of Sycamore Road does not connect to the other portion of Sycamore Road. Therefore, the traffic at drop-off and pick-up times will have minimal conflict with existing residential traffic. The property owner proposes to construct an off street circular driveway to facilitate drop-off and pick-up (City Exhibit 6). The owner also proposes to construct a multi-sided building which will house the day care. He showed a drawing (City Exhibit 7) which shows a prospective on the existing trees along the property boundary which are all to remain, except for a couple of smaller apple trees where they are proposing to construct the building. In addition to the proposed circular driveway, the property owner has offered (and it was a condition of the Planning & Zoning Commission) to widen the paved portion of the access road between 18-20 feet. The property owner has offered to assume maintenance responsibilities of the road if they can work out the agreements with the other people who share that private road. He then showed Council a rendering of what the new building would look like (City Exhibit 8) (City Exhibit 9).

Planning staff recommends approval of the rezoning, and the issuance of a conditional use permit. The zoning change is from one residential category to another residential category. The existing zoning of the property already permits uses such as child day care homes, schools, and churches. Through the conditional use process, the residential density will not increase. The only uses that will be allowed on the site are a single-family residence and a child day care center for 25 children. The only increase in intensity on the site will be an additional 17 children in the Montessori pre-school. With the widening of the access road and the circular drive for drop-off and pick-up, the traffic concerns can be mitigated and also with the appropriate buffering, any other impacts such as noise, can also be addressed.

-7-

The conditional use zoning tool provides an opportunity to ensure that the community has appropriately located essential services. Further, the tool ensures that these uses are in harmony with the surrounding area, and that any negative impacts are mitigated. Day care is an

essential service to neighborhoods and to the community as a whole. Smart growth principles suggest that strong residential neighborhoods should include essential services such as schools and day care centers.

At the Planning and Zoning Commission public hearing on this matter, several persons spoke in favor of the rezoning request, and several neighboring residents spoke in opposition to the request. Several of those opposed were represented by an attorney. The staff recommendation below includes the recommended conditions of the Planning and Zoning Commission.

Planning and Development staff recommends approval of an ordinance to rezone property located at 38 Sycamore Road to Residential Multi-Family 16 (conditional use zoning) and issuance of a conditional use permit with the following conditions: (1) Uses will be limited to a single-family residence, and a child day care center with a maximum enrollment of 25 children; (2) Site development and building design shall be regulated by the proposed site plan and building elevation drawings that are approved as part of the conditional use permit; (3) Maintain a 25-foot "Type C" buffer between the new building and neighboring property lines and eliminate any parking spaces from this buffer; (4) Widen the access road from Beaverdam Road to the new driveway entrance to a travel width of 18 feet, as determined by the City Traffic Engineer.

Property owner will also agree to assume maintenance of this roadway section; (5) Complete the Level I site plan review process; and (6) Buffer area should not be used as credit toward required outside play area.

Councilman Worley asked why the zoning change is requested from RS-8 to RM-16. Mr. Baechtold said that under the RS-8, child day care homes are permitted for eight children in a day care setting, however the RM-16 district allows child day care centers that would not limit the number of children – it is the conditional use permit and the applicant's proposal that would limit the number to 25.

Upon inquiry of Councilman Worley, Mr. Baechtold did state that this proposal would meet the scale for non-residential uses in residential neighborhoods that is in process of working its way through the Planning & Zoning Commission. Mr. Green also noted that if the proposed amendment is adopted by City Council, then there would be no need for a rezoning or a conditional use permit for this type of usage and this number of children, if the applicant met all the standards that are eventually adopted.

Ms. Patsy Meldrum, attorney for the applicant Blue Ridge Montessori School, said that they had no objection to the Mayor and City Council visiting the site. They also have no objection to the evidence presented by the City staff being made a part of the record. She said she will show how this application complies with the standards required for a conditional use permit. It has been recommended and approved by the Technical Review Committee, by the Planning & Zoning Commission and by City staff – all saying that this application complies with the standards required for conditional use zoning and a conditional use permit to be issued. Ms. Meldrum supplied City Council with a document entitled "Blue Ridge Montessori School Conditional Use Permit" which contained the Applicant's Exhibits. She also provided Mr. Lyman Gregory, attorney representing some of the surrounding property owners, with a copy as well. She entered into the record the following: Technical Review Committee minutes of August 21, 2000, showing that this application fully complies with the technical requirements (Applicant Exhibit 1); August 23, 2000, letter from Mr. Dan Baechtold to Ms. Gayle Rayfield regarding the approval by the Technical Review Committee and the conditions recommended (Applicant Exhibit 2); Rezoning petition fact sheet prepared by City staff for the Planning & Zoning

-8-

Commission on September 6, 2000 (Applicant Exhibit 3); excerpt from the September 6, 2000, Planning & Zoning Commission meeting minutes showing that the Planning & Zoning Commission recommended approval subject to conditions (Applicant Exhibit 4); and the Staff Report submitted to City Council prepared by Mr. Baechtold with attachments – including proposed staff findings showing that the application complies with all seven of the standards required to be met for a conditional use permit to be issued (Applicant Exhibit 5 and City Exhibit 3).

Ms. Gayle Rayfield, property owner of 38 Sycamore Road and Director of the Blue Ridge Montessori School, gave a brief history of the School which was started in October of 1999 with four children – they now have a waiting list of over 30 parents. She said she has a Masters Degree in Montessori Education. She explained the proposed daily schedule (Applicant Exhibit 6) showing the amount of time the children will be at the school, noting that they do encourage carpooling. She stressed that they are not just a day care, but are actually a Montessori pre-school. The maximum number of children in the center at any one time would be 25 and that would be the same 25 children throughout the day as opposed to a different 25 coming in at different times. She showed a site plan of the existing building to indicate where the parents currently drop off the children and where the play area is for the children (Applicant Exhibit 10). With the use of a tax map (Applicant Exhibit 7) and certified copy of Plat Book 31 at page 65 (Applicant Exhibit 9) Ms. Rayfield oriented Council on the site location. She presented a certified copy of her deed for the subject property (Applicant Exhibit 8). She said that the School currently has two teachers and if the conditional use permit is granted, they would hire at least one other aid in the classroom. She showed the proposed buildings on the site (Applicant Exhibit 11) and where parking is proposed. She said that anyplace that will not be used for the

proposed gravel driveway would remain lawn. She presented a drawing of the proposed circle lot (Applicant Exhibit 12 and City Exhibit 6) showing the dimensions of the proposed driveway. She described what the existing building is like compared to the proposed building (Applicant Exhibit 13 and City Exhibit 8). She said that the property is secluded (Applicant Exhibit 14 and City Exhibit 7) and all the trees would remain, except a couple of little crabapple trees. She said they were careful to place the building where no trees would have to be cut. She also outlined where the children's play area would be. She explained why they chose the particular structure for the proposed building (Applicant Exhibit 15 and Applicant Exhibit 16). She said that she was familiar with the Smart-Start Program in Buncombe County and has seen the Executive Summary of "The Early Childhood System in Buncombe County" (Applicant Exhibit 33) which shows the need for child care services in Buncombe County.

Councilwoman Bellamy asked if two cars could pass at the same time on the private road. Ms. Rayfield said that right now she didn't think they could, unless one pulled off the road onto the grass. She said there is a 30 foot right-of-way but most of it is very overgrown. That is why she is proposing to have this repaved and widened. She said she does not have to get an easement from the existing property owner to widen the road (Applicant Exhibit 9).

Councilwoman Bellamy noted that there is a sharp curve on Beaverdam Road before you get to Sycamore Road. She asked if there are any plans for additional signage after the road is widened because there is a blind spot coming off Sycamore Road. Ms. Rayfield responded that that issue has never been brought up before. She then explained that the speed limit right at the entrance of Sycamore Road was recently lowered to 25 mph (Applicant Exhibit 34).

Upon inquiry of Councilwoman Bellamy, Ms. Rayfield said that the current road width is approximately 12 feet wide and they are proposing to widen it to 18 feet. They will only be paving the portion from Beaverdam Road to the end of where the current paving ends and her driveway begins.

-9-

Ms. Rayfield responded to Councilwoman Bellamy's questions regarding parking on the property.

Ms. Meldrum entered into the record a certified copy of Plat Book 29 at Page 154 (Applicant Exhibit 31) showing that the front lots on Sycamore Road, showing that the width of Sycamore Road is 30 feet.

Upon inquiry of Councilwoman Field, Ms. Rayfield explained that Montessori is basically a method of education, a philosophy of teaching using respect for the child and learning through the senses.

Discussion surrounded Councilman Hay's question about access on Sycamore Road. Ms. Meldrum said that there is a recorded plat (Applicant Exhibit 31) showing a 30 foot right-of-way. Another plat (Applicant Exhibit 9) shows the subdivision of Lot 5 into two, and there is still a recorded 30 foot right-of-way which all of the original five lots have the benefit of off of Beaverdam Road (Applicant Exhibit 32). Councilman Hay said that the deed (Applicant Exhibit 8) is to only Lot 5-A, not 5-A plus the remainder of Lot 5. Ms. Meldrum explained that the plat was recorded prior to the deed being recorded, but when that deed was recorded, it was taken subject to that plat, thereby getting the benefit of the recorded right-of-way.

Councilwoman Bellamy asked if the 30-foot right-of-way is being used by any other residents. Ms. Rayfield said that both properties that front on Beaverdam do have access onto Sycamore Road (Applicant Exhibit 17).

Councilman Hay asked Ms. Rayfield if she moved to that property to establish a Montessori school. Ms. Rayfield responded that she did not, however, it did turn out to be a perfect location due to it being a dead-end street with very little traffic and all the trees that surround the property make it private.

City Attorney Oast agreed with Councilman Worley in that if Council did rezone the property and grant the conditional use permit with one of the conditions being to enlarge the pavement and there is not sufficient right-of-way to do that, then the condition could not be met and the use could not be put into place.

Councilwoman Bellamy asked if this new development would require a sidewalk under our current ordinance. Mr. Green responded that sidewalks are required for all new non-residential development and his interpretation at this point would be that a sidewalk would be required along the street frontage. If Council feels that a sidewalk would be appropriate, then they could place that as one of the conditions in the conditional use permit. If Council feels that a sidewalk would not be appropriate, the property owner could go through the a fee in lieu of process.

Ms. Jane Douglas, part-time employer for Blue Ridge Montessori School, spoke to Council about her research on child care homes and child care centers in the north Asheville area (Applicant Exhibit 29). She said her research data is from the N.C. Dept. of Health and Human Services and also from the N.C. Division of Child Development Services. After calling all the centers and finding only one vacancy, her research indicated that there is very little to none child care facilities in north Asheville. Ms. Douglas then explained the utilities on the existing site, including the location of a fire hydrant on Beaverdam Road which is approximately 220 feet from the existing building (Applicant Exhibit 18). She then reviewed with Council a rendering showing the existing buffering and plantings in addition to any proposed plantings and buffering (Applicant Exhibit 19). She then outlined the play area behind the school, noting that there is enough play area, excluding the buffering area, as required by the state licensing board. She also reviewed photographs of the Sycamore Road area showing Ms. Rayfield's property, the

-10-

school location, Beaverdam Road, and the access to the various homes in the area (Applicant Exhibit 30).

Upon inquiry of Mayor Sitnick, Ms. Meldrum explained what, if any, difference there is between the words Montessori school, child day care center and pre-school.

At 7:17 p.m., Mayor Sitnick announced a short break.

Mr. J. T. Black, licensed real estate agent and subcontractor, said that he has listed and sold property in the Beaverdam area. He explained what a market analysis is and said that he has performed a market analysis for property in the Beaverdam area. He said that he was familiar with Ms. Rayfield's property and other properties immediately adjacent to it. In addition, he is familiar with the plans for expansion of the School. It was his opinion that there would be very little impact to the actual values of the adjoining properties if the conditional use permit were granted.

Ms. Meldrum asked to enter into the record a letter from Mike Miller, real estate agent, who was unable to attend the meeting (Applicant Exhibit 27). Mr. Lyman Gregory, attorney for some adjoining property owners, objected to Mr. Miller's letter being entered into the record under the grounds that Mr. Miller is not present at this public hearing in order to be cross-examined.

City Attorney Oast said that Mr. Gregory is correct. In a court of law the letter from Mr. Miller would be hearsay. He cautioned City Council that they need to base their decision on competent evidence, although he did not know if it was necessary to exclude Mr. Miller's letter – just that the author is not available for cross-examination and accord this particular piece of evidence the appropriate weight.

Mayor Sitnick said that if City Council is not allowed to enter into the record letters from the public, unless the authors are present, then she would assume that City Council should not enter Mr. Miller's letter into the record. City Attorney Oast said that typically such items are received into the record for whatever they are

worth.

Ms. Meldrum explained that she believes this request meet the standards for both the rezoning and also for the conditional use permit. For the rezoning, a question might be raised if this would constitute an illegal spot zoning. Using the opinion of the N. C. Supreme Court in Chrismon v. Guilford County where spot zoning is defined, Ms. Meldrum explained how this property does not constitute spot zoning because of the conditional use process and the conditions imposed. She then went through the seven standards required to be met in order to issue a conditional use permit, and explained why the day care center meets all those standards.

Ms. Felicia Berry, family support specialist, said that she has compiled data from 65,000 surveys and preliminary indications show that there is a lack of quality child care in our area.

Mr. George Oerke, resident at 6 Spooks Branch Road, spoke in support of allow the Montessori School expand.

Ms. Marsha Hudsick, certified teacher in North Carolina, stated that it was extremely difficult to find good quality child care. She felt a multi-use neighborhood is a good solution.

Mr. Lyman Gregory, attorney representing some residents in the Sycamore Road area who are opposed to this request, presented City Council with a packet of Exhibits (Neighborhood Exhibit 1). He stated that he also furnished Ms. Meldrum with the information as well. He said that City Council is being asked to allow what would be an absolutely prohibited use with

-11-

objectionable impacts into the middle of a residential neighborhood. He explained that child day care homes are a use allowed in RS-8, but they are a use by right subject to special conditions. He felt this would be a commercial child day care center on a one acre tract surrounded in a sea of residential zoning and residential use. Using his exhibits, he showed a picture of the entry into Sycamore Road to the proposed day care center and an aerial view of the neighborhood. In addition, he reviewed the existing zoning and page 96 out of the Asheville City Plan 2010, both showing entirely residential uses around the subject property.

Ms. Patricia Wald, resident at 29 Sycamore, said her only issue with this request is changing the status of her neighborhood in a way that she sees will have a devastating effect on her home and her life as she has known it for the last 20 years. She opposes rezoning of her neighborhood for the following reasons: (1) too much traffic on a small narrow street designed for people coming and going to their homes and it is unsuited for commercial use of any nature; and (2) noise and pollution that accompany that traffic. Her view goes from a residential front lawn to a large commercial driveway. People coming in and out of her neighborhood to use the applicant's business are people who don't live there and probably would not have the same concerns and level of care toward the neighborhood as those who do live there. What is perfect for the customers and the business owner is not perfect for the neighbors. She felt that property values will be negatively affected and homes that go up for sale in the area may take longer to sell. The applicant chose to move to a residential zoning area with the intention of operating a business. She said they have no objection to the need of day care, but it must be established in communities that residents benefit and where it does not disrupt and destroy the quality of life for existing residents. There is no one on Sycamore that has a child attending the day care center. She explained that both sides of Sycamore is one neighborhood. She said that there are 18 homes on the street, including the applicant's home, and 16 are opposed to this request. They believe that their rights as the unquestionable majority of the people directly affected by this request supercede those people living in other areas. She urged City Council to deny the rezoning request and to also deny the issuance of a conditional use permit.

Ms. Brenda Lewis, resident at 21 Sycamore Road, asked to present into the record a petition signed by 37

residents and property owners who are opposed to the rezoning in order to allow a conditional permit to be issued (Neighborhood Exhibit 2). Ms. Meldrum objected to the petition being entered into the record unless off of those who signed the petition are present. Mr. Gregory responded that since a component of this vote is on the legislative rezoning request, this petition would be in order for that portion of the vote. City Attorney Oast suggested that City Council accept the petition into the record for whatever it may be worth, bearing in mind that many of the signatories to that petition are not here and not subject to cross-examination.

Ms. Lewis said that the Sycamore Road residents feel that they have a right to be heard because it is their neighborhood. Ms. Rayfield's clients who do not live in the neighborhood should not be given the same voice as the people who live there. The great majority of people in the neighborhood oppose this use of a residential neighborhood for a business of this size. She said Ms. Rayfield has offered the carpooling of students, buffering, and widening the road at her expense, even though this would encroach upon properties of people who oppose the rezoning. A business of this size and potential noise, traffic and devaluation of property values is totally inappropriate for this small neighborhood. The residents are not against pre-schools and noted that there are several private pre-schools in north Asheville. They hope to maintain the status of their residential neighborhood and they ask that City Council vote against the conditional use rezoning.

Mr. Milo Garren, professional real estate agent and owner of property on Beaverdam Road, felt that there would not be a safe ingress or egress from Sycamore Road onto Beaverdam Road even if the bushes and trees were cut. As a real estate agent, one thing they evaluate is the ingress and egress aspect, along with safety and convenience as factors that

-12-

affect value. That is the only ingress and egress for some area residents. He said that he has been in the real estate business for 25 years in Asheville and it is awfully hard for him to see how this would not impact negatively the property values of adjoining or abutting properties. It is his opinion that there is substantial injury to the property values, especially those people who are immediately adjacent and especially those people who use this property for their only form of ingress and egress.

Mr. Gregory pointed out that this is not a referendum on day care, it's about the impacts of a specific proposal to this area. He urged Council to focus on the standards that have to be applied for the issuance of a conditional use permit. On the rezoning issue in general, which is a legislative policy decision, you generally look if there is a reasonable basis for that or some kind of change of conditions in the area, which this request is not. He explained why he felt this property does constitute illegal spot zoning, relying on the same Chrismon v. Guilford County case. He then explained how several of the conditional use standards cannot be met for the conditional use permit to be issued. He said that if City Council approves this request, they will be making a significant precedent setting policy change for the City based on just one individual application. He noted that City staff is currently looking at this issue and developing standards, however, they have not been adopted. He felt City Council should wait until those standards are adopted before these kinds of decisions are made.

Mayor Sitnick asked if this conditional use zoning request is granted and becomes RM-16 and Council issues a conditional use permit for the day care center with a maximum of 25 students, is there a point in the future that this applicant, or someone who takes over this property to continue the school, could a request for a change in that condition or does the condition hold for the life of the use. Mr. Green said that the City cannot prevent any property owner from petitioning any change that is permitted through the legislative process in the City. The owner of the property could come in next year and request a different zoning. It is through the review process with City staff, the Planning & Zoning Commission and City Council that inappropriate uses are denied.

Ms. Tina Wolfe, representing her grandmother who lives at the corner of Sycamore and Spooks Branch, said

that the day care center does not benefit the community and urged City Council to deny the rezoning request and not issue the conditional use permit.

Mr. Harold Garland, owner of three lots on Sycamore and two lots on Spooks Branch Road, talked to Council about the dangerous curve on Beaverdam Road. In addition, he wondered how the 12 foot right-of-way got expanded to 30 feet because he was involved in that development and it was 12 feet then. He urged City Council to not rezone this property and to not issue the conditional use permit.

Ms. Jacquelyn Schauer, architect in Asheville, said that day care is an important issue but it is a separate issue. She lives within 1/2 mile from this neighborhood and is very familiar with it. She feels that the shift from eight children in a home day care to 25 children day care center is a significant change, given this neighborhood of small lots. She wondered who would monitor the school to verify that they don't exceed the 25 children. She feels it's misleading to say that the parents just drop their children off and drive away because many times parents come in and observe the children, watch performances, attend award ceremonies, etc., and parking could become a problem. She felt this use is inappropriate for this neighborhood.

Ms. Gail Moody, homeowner in east Asheville, said that if Council grants this request, it could impact every residential neighborhood in Asheville. No one would argue that pre-school provides an essential service to the community. What must be determined is whether this is the appropriate place and does it warrant conditional use. The basic community function of the neighborhood is a safe, quiet place for people to live. Not only with the operation of a 25 student

-13-

pre-school not enhance the successful operation of Sycamore road in its basic community function, but the proposed building and circular drive is clearly not in harmony with the character of the small single-family neighborhood.

Ms. Meldrum pointed out that the comment about this being precedent setting and policy changing is not accurate because this is not setting a precedent for allowing this type of day care center in all residential neighborhoods. This is a specific request for a specific lot so it's not setting a precedent because you have to consider these on a case by case basis. Secondly, the City has throughout its jurisdiction allowed day care homes and day care centers in residential areas and also non-residential uses in residential districts. So again, this is not a change – it's just merely an affirmation of the policy that has already been in place to allow these types of non-residential uses, because they are compatible with residential uses - as are schools allowed in residential districts. She said she has provided plats showing that these are very different neighborhoods, platted at different times and different size lots. Also photographs of the two areas were shown showing the access to the two areas – they are clearly two separate neighborhoods. Mr. Garren admitted himself that he is not a traffic engineer and we have clear and convincing evidence that this will not create a traffic hazard from the City's Traffic Engineer. With regard to Mr. Garren's testimony about property values, he said there may be some impact and that the market would decide. There is a case in North Carolina where the Court of Appeals held that where you try to meet the test about substantial injury in order to show that there is substantial injury, you have to have certified appraisals or market studies supporting the naked opinions. In this case there has been absolutely no evidence of certified appraisals or market studies, merely opinion testimony. There has been a lot of discussion about the right-of-way question and concessions made that the Council does not have to determine the right-of-way rights of the various property owners. Clearly it has been conceded that Ms. Rayfield does have access to this lot. She disagreed that there has to be a change for a rezoning to be made. She said that you have to show that the requested change complies with the Comprehensive Land Use Plan and that is exactly what they have done. With regard to standards for issuance of a conditional use permit, she said the case law in North Carolina is that if an applicant for a conditional use permit establishes a prima facie case, they have complied with all the

standards required, which is exactly what they have done, then there is a large burden to deny the permit. She said that burden has not been met. There must be competent, material and substantial evidence in the record to show that the prima facie case has been overcome. That has not been made. They have agreed that they will comply with the conditions recommended by the Technical Review Committee and the Planning & Zoning Commission and they respectfully request City Council vote both to approve the conditional use zoning and the granting of the conditional use permit.

Ms. Carolyn Wright, resident at the corner of Sycamore Road and Beaverdam Road, stated that her intersection is not safe as she has had to replace her mailbox, damage to her maple trees and signs being knocked down.

Mr. Gregory said that the burden of proof for obtaining a conditional use permit is that the applicant must make showing on all seven standards. If there is an argument made on the more general standards, the burden does shift to the opponents. We have made our arguments more on the objective standards and the burden of proof remains on the applicant to show that those standards have been met. Secondly, he does not dispute the statement that if the showing is made that the permit should be granted, but he did draw Council's attention that before you get to the permit decision, there is a legislative policy decision, which is not constrained by the proof of the quasi-judicial conditional use permit.

Mr. Garren stated that he was very clear about his opinion on the properties. He said that he did do research on this issue and has been in the business for 25 years. He is not a certified appraiser but has been in a court of law certified as an expert more than one time.

-14-

Upon inquiry of Councilman Worley, City Traffic Engineer Michael Moule said that he has not done a full site distance analysis on the traffic curve on Beaverdam Road coming out of Sycamore Road, however, he did review the situation in the field in the early afternoon on a weekday and didn't notice anything exceptionally bad about the site distance problem, although there is certainly a curve there that does limit the site distance.

Mr. Green responded to Councilwoman Field on why City staff felt this particular use was positive in terms of our smart growth policies.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 8:50 p.m.

Vice-Mayor Cloninger said that he would reluctantly vote against this proposal because he hated to vote against any proposal that would expand much needed day care facilities in our community. In addition, he was not opposed to day care facilities in neighborhoods. He felt that when we look at this from a smart growth standpoint, we should consider whether the day care is serving the neighborhood in which it is located. He didn't think that this is the situation here. He was also concerned about the safety issue of ingress and egress onto Beaverdam Road from Sycamore Road because Sycamore Road is located close to that sharp curve. He also felt that the opinions of the neighbors should be considered and respected.

Councilwoman Bellamy agreed with Vice-Mayor Cloninger. In addition, she didn't feel that this project complies with the intent of the RM-16 District. She felt this was a good project but not in the right location.

Councilman Worley said that he was convinced by our smart growth policies and felt this is consistent with those policies. He recognized that the implementation of those policies will be perceived to be painful in many situations because people just don't like change. However, he feels strongly that we need to support those policies and this is a small step towards the implementation of those policies. He drives Beaverdam Road every day and is concerned about the traffic, however, he personally felt that the proposed use would not cause undue traffic. He said he would vote to approve this issue primarily because of the City's

commitment to smart growth policies.

Councilman Hay addressed staff in that he does have a concern that Ms. Rayfield doesn't have the absolute right to build what we would expect her to build on that right-of-way. It seems to him that she may be co-owner of that strip of land and it really concerned him when he found out that the person on the other side of the right-of-way was opposed to this. He realized that it is not City Council's concern now, but maybe some of these things need to be worked out before they get this far. Also, he felt this decision does not reflect Council's opinion about day care centers in residential areas. He personally hoped that City staff moves forward with the policy changes they are working on because that is part of smart growth. He said that he would have to vote against this, however, because he does not find that the project would not substantially injure the value of the adjoining properties, which would be one of the things they would ultimately have to vote on the conditional use permit.

Mayor Sitnick echoed comments about not being opposed to child care, especially safe, good child care which this sounds to be. However, it is hard to vote for a conditional use rezoning request if you don't think you can uphold it by the conditions. She explained that there is a vast difference between property value and the value of property and because the value is very subjective to the people who live on it and around it. She would therefore, vote against the conditional use rezoning request.

-15-

Mayor Sitnick 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 rezone 38 Sycamore Road from RS-8 Residential Single Family High Density District to RM-16 Residential Multi-Family High Density District (conditional use zoning). This motion was seconded by Councilwoman Field and failed on a 2-5 vote with Councilwoman Field and Councilman Worley voting "yes" and Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Bellamy and Councilman Hay voting "no".

At 9:05 p.m., Mayor Sitnick announced a ten minute break.

NEW BUSINESS ITEMS – CHANGE IN AGENDA

Councilman Worley moved to amend the agenda to consider waiving the requirement for a sidewalk along Reed Street for the Biltmore Heights Development at this time. This motion was seconded by Councilwoman Bellamy and carried unanimously.

CONSIDERATION OF WAIVING THE UNIFIED DEVELOPMENT ORDINANCE AND THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL REQUIREMENT FOR A SIDEWALK ALONG REED STREET FOR THE BILTMORE HEIGHTS DEVELOPMENT

Councilman Worley moved to excuse Councilwoman Field and Vice-Mayor Cloninger from this issue due to conflicts of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

City Engineer Cathy Ball said that this is the consideration of a request from Biltmore Heights to waive Section 7-11-6 of the Unified Development Ordinance that requires a sidewalk be constructed, or a fee in lieu of construction be paid, along Reed Street.

Section 7-11-6 of the Unified Development Ordinance requires that new construction place sidewalks as specified in the Asheville Standard Specifications and Details Manual along street rights-of-way or pay a fee in lieu of constructing a sidewalk. Biltmore Heights has constructed a new office complex located at 11 Yorkshire Street. The project is a corner lot with street frontage on Yorkshire, Margaret, and Reed Streets.

The developer plans to put sidewalks on Yorkshire Street to their driveway entrance, and a fee in lieu of construction has already been approved for the remainder of the project that fronts Yorkshire and Margaret Streets.

The developer is requesting that Section 7-11-6 of the UDO for the portion of the project fronting Reed Street be waived and that a sidewalk not be constructed nor a fee in lieu of construction be paid. Reed Street is a City maintained street located in South Asheville.

Staff recommends that a sidewalk be constructed along Reed Street for the following reasons:

- Staff estimates that the Biltmore Heights development is expected to generate approximately 500 trips per weekday.
- This development is adjacent to a residential neighborhood with several pedestrian generators in close proximity.
- Staff approves the developer to vary the five (5) foot setback requirement for a sidewalk set forth within the Asheville Standard Specifications and Details Manual and

-16-

acknowledges that "in the event that a sidewalk must be built adjacent to the curb, the sidewalk must be 6 feet wide." A curb would be incorporated into this monolithic sidewalk.

City staff recommends that City Council not waive the requirement that a sidewalk be placed along Reed Street as required by the Section 7-11-6 of the Unified Development Ordinance for the Biltmore Heights development.

Upon inquiry of Councilwoman Bellamy, Ms. Ball explained what is on the surrounding properties.

Mr. G. Carroll Hughes, architect representing the owners Dr. Bill Chambers and Dr. Keith Black, said they are requesting City Council waive the sidewalk requirement along Reed Street due to extenuating circumstances. He handed out a letter dated October 3, 2000, to Ms. Cathy Ball, along with several photographs. He said the extenuating circumstances include (1) Reed Street is only 18 feet wide; (2) there are gas and water lines along the project side of the street; (3) there is a steep bank from 5-12 feet away from the edge of the street, along the project side of the street; (4) there is a large tree stump between the edge of the street and the top of the slope, which cannot be removed without damaging the existing utility lines and also undermining the existing pavement; (5) there is insufficient room for a 5-foot wide grass strip and a 5-foot wide sidewalk; (6) the City Engineer has suggested a 6-foot wide sidewalk and constructing a turn-down curb edge; (7) CP&L cut the existing trees along Reed Street and has put in a power pole where the sidewalk is proposed; (8) the existing sidewalks along the west side of Hendersonville Road are not 6-feet wide, but are 5-feet wide with no grass strip; (9) the recently installed sidewalks along Hendersonville Road on the other side are only 5-feet wide; (10) the rest of the neighborhood along and around Reed Street have no sidewalks; (11) none of the existing sidewalks are being properly maintained by the City; (12) the standard for the neighborhood in the most improved areas is a straight concrete curb section only with grass and no sidewalks; (13) residential setbacks along Reed Street, adjacent to and beyond Dr. Chambers' development, are too close to the street to comfortably accommodate future sidewalks; (14) there does not appear to be any pedestrian traffic generated along Reed, Yorkshire or Margaret Streets; (15) Dr. Chambers and Dr. Black have already been penalized by City and State regulations on this particular piece of property. They have already incurred substantial costs and noted additional projections if they have to buy a sidewalk at the fee in lieu of rate of \$20 linear foot all along the property; (16) six rental units were constructed at the opposite direction and they were not required to construct sidewalks; and (17) they are required to buffer

between this property and the adjoining property and they cannot do both. He said that it is the owners' request that no sidewalk, nor fee in lieu of construction, be imposed along this portion of Reed Street. If Council determines that it waives the sidewalk requirement, but finds that it can legally impose a fee, then the owners' respectfully request that the fee be allowed to be used for additional on-site landscaping to benefit the neighborhood, rather than a fee in lieu of buy a sidewalk out of the neighborhood.

Upon inquiry of Councilman Hay, Mr. Hughes said that there is 1,065 linear feet of sidewalk required if we were to put a sidewalk all the way around the tree sides.

Dr. Keith Black said that this complex is unique due to its extremely large amount of bordering sidewalks in relation to the small amount of property. They have always striven to blend into the neighborhood and be an asset as seen with the existing complex and what they are trying to do with this proposed complex. There is not a high pedestrian volume in this area and their patients drive to the complex, not walk. He felt that sidewalks will not enhance the character of this neighborhood. He felt that putting a sidewalk in will create an unnecessary commercial look. He stressed that they do plan to put sidewalks on Yorkshire Street to their driveway entrance, and a fee in lieu of construction has already been approved for the remainder

-17-

of the project that fronts Yorkshire and Margaret Streets. He then handed City Council a petition containing 71 signatures which read "Let Common Sense Prevail! We, the below citizens oppose a sidewalk along Reed Street. We prefer a green-way with grass and trees to enhance the character of our neighborhood. NOT sprawling concrete with detracts from it. We want character NOT concrete!"

Ms. Ball said that the requirement in the Asheville Standard Specifications and Details Manual is if you are adjacent to the street you are required to put in a 6-foot sidewalk. She did fail to mention, however, that we do have the ability to vary that down to a 5-1/2, with 5 foot sidewalk and a 6-inch curb section. Also, with the changes that were passed in March of this year to the Asheville Standard Specifications and Details Manual, it does require developments to put in curb and gutter or stand-up curb as a part of their sidewalk.

Ms. Ball stated that they don't feel like the topographic constraints are enough that would not warrant the installation of the sidewalk in this area. Given the fact that it is one block off of Hendersonville Road, she felt that even though there may not be a lot of pedestrian use now, there is a potential, with this development, to create a lot of use of that sidewalk. With regard to the telephone pole, she said they have worked to meander sidewalks around utility poles or around hydrants that are impractical to move – so we have allowed some type of variance to fit those in. Sometimes they have had to go down to the minimum allowed by the ADA requirements, but they have allowed some variances either in the field or at a staff level.

Mayor Sitnick explained essentially the long-term vision thinking of City Council on the sidewalk policy.

Councilman Worley moved to waive the requirement that a sidewalk be placed along Reed Street as required by the Section 7-11-6 of the Unified Development Ordinance for the Biltmore Heights development. This motion failed due to lack of a second.

Upon inquiry of Councilman Hay, Ms. Ball said that if, in the construction of the sidewalk, she finds new challenges that makes her re-think the issue of a fee in lieu of construction, she would be open to that.

Councilwoman Bellamy moved to amend the agenda to consider making appointments to the Greenway Commission at this time. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION NO. 00-197 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Vice-Mayor Cloninger said that this is the consideration of appointing members to the Asheville Greenway

Commission.

John Tate (term to expire December 31, 2002), Philip Cusick (term to expire December 31, 2000), and Casey Carmichael (term to expire December 31, 2001), have resigned as members of the Greenway Commission. In addition, Crystal Pace's term expires on December 31, 2000.

On September 12, 2000, City Council interviewed Linda Giltz. On September 19, 2000, City Council interviewed Tom Gallaher, Elizabeth Budd and Matthew Kern. On September 26, 2000, City Council interviewed Paula Robbins. Greg Gregory and Phyllis Stiles are additional candidates but were not brought in for interviews.

-18-

Councilman Worley moved to reappoint Crystal Pace to the Greenway Commission to serve a three year term, term to expire December 31, 2003, or until her successor has been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Ms. Budd received 4 votes, Mr. Kern received 4 votes, Ms. Giltz received 3 votes, Ms. Stiles received 3 votes, Ms. Robbins received 2 votes and Mr. Gregory received 2 votes.

Mr. Gerry Hardesty, Chairman of the Greenway Commission, spoke in favor of appointing Ms. Paula Robbins to the Greenway Commission.

Therefore, it was the consensus of City Council to re-vote. Ms. Budd received 5 votes, Mr. Kern received 4 votes, Ms. Robbins received 4 votes, Ms. Giltz received 3 votes and Ms. Stiles received 2 votes.

Councilwoman Bellamy moved to appoint Ms. Elizabeth Budd to serve the unexpired term of Mr. Cusick, term to expire December 31, 2000, and then to serve a full three year term, term to expire December 31, 2003; Mr. Matthew Kern was appointed to serve the unexpired term of Mr. Tate, term to expire December 31, 2002; and Ms. Paula Robbins was appointed to serve the unexpired term of Mr. Carmichael, term to expire December 31, 2001. All terms are until their successors have been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 203

CONTINUATION OF PUBLIC HEARINGS

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE METHOD OF CALCULATING THE FRONT SETBACK LINE

ORDINANCE NO. 2755 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE METHOD OF CALCULATING THE FRONT SETBACK LINE

Mayor Sitnick opened the public hearing at 10:09 p.m.

Urban Planner Dan Baechtold said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to change the method of calculating the front building setback line. This public hearing was advertised on September 29 and October 6, 2000.

On September 6, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of this wording amendment. Staff initiated this wording amendment to change an administrative procedure in the Unified Development Ordinance (UDO) to make it more consistent with the City's Smart Growth Policies.

Front setbacks are currently measured from the street right-of-way line. In some cases, this method of calculating the

setback pushes buildings back from the street by as much as 50 to 75 feet. In turn, these setback rules essentially mandate that the parking is located in front of buildings in these cases. This result is in direct conflict with the principles of smart growth and walkable communities. These principles say that buildings should be located next to the street to hide parking, promote pedestrian activity, and create a more interesting streetscape. The following amendment to the

-19-

ordinance will change the way we measure the front setback and the street side setback to allow buildings to be built closer to the street. This change will only be applied in cases where the street is at least four or five lanes wide, and where additional street widening is not anticipated. In these cases, we will measure the front setback from the edge of the travel lane rather than the right-of-way line.

Planning staff recommends inserting the following text (in bold) in Section 7-10-2(b) of the UDO:

b. Method of calculation

1. Minimum setback. Minimum setback is the space defined by measuring perpendicularly from and along the entire boundary of the lot (property line) to the building line, ~~except~~ Front setbacks shall be measured from the street right-of-way line, **except, on streets**

greater than 45 feet in travel lane width, the setback shall be measured from the edge of the travel lane. The accompanying corner lot, street side setback shall also be measured from the edge of the travel lane. In no case shall the minimum setback be closer to the street than the right-of-way line. A setback may be the front, rear, or side setback. For illustrations of the location of front, rear, or side setbacks, see Figure 10-1. Except as set forth for through lots in subsection 7-10-2(d) below, there shall be one (1) front setback area which is determined at the time of site plan approval or zoning permit issuance.

Mayor Sitnick closed the public hearing at 10:11 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2755. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

C. PUBLIC HEARING ON BOND ORDERS

ORDINANCE NO. 2756 - ORDINANCE ADOPTING THE BOND ORDER ENTITLED "BOND ORDER AUTHORIZING THE ISSUANCE OF \$1,300,000 SANITARY SEWER BONDS OF THE CITY OF ASHEVILLE, N.C.

City Clerk Burleson reported to City Council that the bond order entitled "Bond Order Authorizing the Issuance of \$1,300,000 Sanitary Sewer Bonds of the City of Asheville, North Carolina," which was introduced at the regular meeting of the City Council on September 26, 2000, and was published on September 29, 2000, with notice that the City Council would hold a public hearing thereon on October 10, 2000, at 5:00 p.m.

At 10:12 p.m., Mayor Sitnick announced that the City Council would hear anyone who wished to be heard on the questions of validity of the sanitary sewer bond order and the advisability of issuing the Sanitary Sewer Bonds. At the direction of the Mayor, the City Clerk distributed the bond order and the published notice of

hearing to all requesting them.

Finance Director Bill Schaefer explained the Bond Order and said the City Council of the City of Asheville, North Carolina has ascertained and hereby determines that it is necessary to extend sanitary sewer lines and acquire land and rights-of-way in land required therefor. In order

-20-

to raise the money required to pay the costs of making the improvements described above, in addition to funds which may be available for such purpose from any other source, bonds of the City of Asheville, North Carolina, are hereby authorized and shall be issued pursuant to the Local Government Bond Act of North Carolina. The maximum aggregate principal amount of such Sanitary Sewer Bonds authorized by this bond order shall be \$1,300,000. A tax sufficient to pay the principal of and interest on said Sanitary Sewer Bonds when due shall be annually levied and collected. A sworn statement of the City's debt has been filed with the City Clerk and is open to public inspection. No debt shall be contracted during any fiscal year by the issuance of bonds pursuant to this bond order if the amount of such debt and if all other debt contracted during such fiscal year shall exceed two-thirds (2/3rds) of the amount by which the outstanding indebtedness of the City shall have been reduced during the next preceding fiscal year, unless the incurring of such debt shall be submitted to a vote of the people of the City and shall be approved by a majority of those who vote thereon. This bond order shall take effect thirty (30) days after its publication following its adoption, unless it is petitioned to a vote of the people within thirty (30) days after its publication as introduced, as provided in N. C. G. S. Section 159-60, and in that event, the bond order will take effect when approved by the voters of the City.

At 10:13 p.m. Mayor Sitnick closed the public hearing after having heard all persons who requested to be heard in connection with the foregoing questions.

Councilman Worley moved that the City Council adopt, without change or amendment, and direct the City Clerk to publish a notice of adoption as prescribed by The Local Government Bond Act, the bond order entitled "Bond Order Authorizing the Issuance of \$1,300,000 Sanitary Sewer Bonds of the City of Asheville, North Carolina" which was introduced at the meeting of the City Council held on September 26, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 490

ORDINANCE NO. 2757 - ORDINANCE ADOPTING THE BOND ORDER ENTITLED "BOND ORDER AUTHORIZING THE ISSUANCE OF \$670,000 EQUIPMENT BONDS OF THE CITY OF ASHEVILLE, N.C.

City Clerk Burleson reported to City Council that the bond order entitled "Bond Order Authorizing the Issuance of \$670,000 Equipment Bonds of the City of Asheville, North Carolina," which was introduced at the regular meeting of the City Council on September 26, 2000, and was published on September 30, 2000, with notice that the City Council would hold a public hearing thereon on October 10, 2000, at 5:00 p.m.

At 10:13 p.m., Mayor Sitnick announced that the City Council would hear anyone who wished to be heard on the questions of validity of the equipment bond order and the advisability of issuing the Equipment Bonds. At the direction of the Mayor, the City Clerk distributed the bond order and the published notice of hearing to all requesting them.

Finance Director Bill Schaefer explained the Bond Order and explained the City Council of the City of Asheville, North Carolina, has ascertained and hereby determines that it is necessary to purchase firefighting equipment. In order to raise the money required to pay the costs of purchasing certain firefighting equipment, in addition to funds which may be available for such purpose from any other source, bonds of the City of

Asheville, North Carolina are hereby authorized and shall be issued pursuant to the Local Government Bond Act of North Carolina. The maximum aggregate principal amount of such Equipment Bonds authorized by this bond order shall be \$670,000. A tax sufficient to pay the principal of and interest on said Equipment Bonds when due shall be annually levied and collected. A sworn statement of the City's debt has been filed with the City Clerk and is open to public inspection. No debt shall be

-21-

contracted during any fiscal year by the issuance of bonds pursuant to this bond order if the amount of such debt and if all other debt contracted during such fiscal year shall exceed two-thirds (2/3rds) of the amount by which the outstanding indebtedness of the City shall have been reduced during the next preceding fiscal year, unless the incurring of such debt shall be submitted to a vote of the people of the City and shall be approved by a majority of those who vote thereon. This bond order shall take effect thirty (30) days after its publication following its adoption, unless it is petitioned to a vote of the people within thirty (30) days after its publication as introduced, as provided in N. C. G. S. Section 159-60, and in that event, the bond order will take effect when approved by the voters of the City.

At 10:14 p.m. Mayor Sitnick closed the public hearing after having heard all persons who requested to be heard in connection with the foregoing questions.

Councilman Worley moved that the City Council adopt, without change or amendment, and direct the City Clerk to publish a notice of adoption as prescribed by The Local Government Bond Act, the bond order entitled "Bond Order Authorizing the Issuance of \$670,000 Equipment Bonds of the City of Asheville, North Carolina" which was introduced at the meeting of the City Council held on September 26, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 492

D. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF BURNSIDE, PHASE 4 AT BILTMORE PARK

ORDINANCE NO. 2758 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BURNSIDE, PHASE 4 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 10:14 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Burnside, Phase 4, Biltmore Park. This public hearing was advertised on September 29, 2000.

Biltmore Farms, Inc. has submitted an annexation petition for Burnside, Phase 4, Biltmore Park. This area is adjacent to the existing City limits being immediately west of Burnside, Phase 3 which was annexed on 6/7/2000. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 11.4 acres and is platted for 12 single-family residential lots. Street access to this area is provided by White Ash Drive.

Utilities and streets are being developed by Biltmore Farms, Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Burnside, Phase 4, Biltmore Park.

-22-

Mayor Sitnick closed the public hearing at 10:15 p.m.

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

Councilman Hay moved for the adoption of Ordinance No. 2758. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

E. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF OAKBROOK, SECTION 2 AT BILTMORE PARK

ORDINANCE NO. 2759 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS OAKBROOK, SECTION 2 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 10:17 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Oakbrook, Section 2, Biltmore Park. This public hearing was advertised on September 29, 2000.

Biltmore Farms, Inc. has submitted an annexation petition for Oakbrook, Section 2, Biltmore Park. This area is adjacent to the existing City limits being immediately east of Oakbrook, Section 1 which was annexed on 8/22/2000. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 24 acres and is platted for 40 single-family residential lots and a common area. The annexation also contains a small cemetery. Street access to this area is provided by White Ash Drive and Dianthus Drive.

Utilities and streets are being developed by Biltmore Farms, Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Oakbrook, Section 2, Biltmore Park.

Mayor Sitnick closed the public hearing at 10:18 p.m.

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

Councilman Worley moved for the adoption of Ordinance No. 2759. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

-23-

IV. UNFINISHED BUSINESS:

A. ORDINANCE AMENDING THE CURRENT TAXICAB ORDINANCE INCLUDING THE IMPLEMENTATION OF A NEW TAXICAB RATE SCHEDULE

Finance Director Bill Schaefer said that this is the consideration of a request to continue to October 24, 2000, a revision of the current taxicab ordinance, including the implementation of a new rate table.

At the formal meeting on September 12, 2000, City Council directed staff to conduct further discussion with taxicab owners and other interested parties, to determine an appropriate rate structure to compensate taxicab owners and operators for the expense of possible increases in minimum insurance coverage requirements.

Staff has been working with taxicab owners and their counsel to assess the impact of increasing required insurance coverages. During a September 27, 2000, public forum on this issue, all of the attendees requested that additional time be allowed in order to gather the data needed to make valid decisions regarding adjustments to insurance requirements and the rate structures. Both staff and attendees agreed that the data could be gathered and analyzed in time to be considered by City Council at their formal meeting on October 24, 2000.

City staff recommends Council continue this agenda item to its formal meeting on October 24, 2000.

Vice-Mayor Cloninger moved to continue this matter until October 24, 2000. This motion was seconded by Councilman Worley and carried unanimously.

B. ORDINANCE NO. 2760 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PARKING LOT ASSOCIATED WITH MILKO INC. TO BE LOCATED ON PROPERTY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AT THE INTERSECTION OF DEAVERVIEW ROAD AND BEAR CREEK ROAD

Vice-Mayor Hay moved to excuse Mayor Sitnick from this issue since she was not at the public hearing on September 26, 2000. This motion was seconded by Councilman Worley and carried unanimously.

City Attorney Oast said that this public hearing was held on September 26, 2000, and City Council directed him to prepare an order granting a conditional use permit. He said that this is the consideration of an ordinance adopting findings and conclusions, and issuing a conditional use permit for Milko, Inc.

Following a public hearing on September 26, 2000, City Council voted to issue a conditional use permit to Milko, Inc. The order contains findings and conclusions developed from the public hearing and Council's discussion. The order may be changed as Council wishes prior to adoption.

Adoption of the ordinance, with changes as appropriate, is recommended.

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

-24-

Councilwoman Bellamy moved for the adoption of Ordinance No. 2760. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

V. NEW BUSINESS:

A. RESOLUTION NO. 00-198 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN OFFER TO PURCHASE AND CONTRACT FOR A PARCEL OF LAND AT 111 EASTVIEW CIRCLE FOR A FIRE/POLICE STATION

Interim Fire Chief Robert Griffin said that this is the consideration of a resolution authorizing the City Manager to sign an Offer to Purchase and Contract for a parcel of land at 111 Eastview Circle for a Fire/Police station.

A response criterion is a portion of the rating for fire departments that are established by the Insurance Service Office. Presently the City does not meet the response criteria in the far west area of the City creating a need to relocate a fire station that currently provides overlapping service. Therefore, no additional personnel or equipment will be required. Property has been identified that will meet that response criteria and enhance the response and coverage for emergencies. The property is located at 111 Eastview Circle. The property is 2.18 acres with good access to Smoky Park Highway and I-40. The property is zoned residential and abuts commercial property. A fire station is a permitted use in any zoning classification. The property is at the intersection of Eastview Circle and Old Haywood Road. Approximately 70-75% of the property is cleared, with the remainder, which is mostly perimeter areas, being wooded. Soil type is believed to be clay composition and suitable for most types of construction. The owners of the property have agreed to a purchase price and other terms and conditions as specified in the Offer. The property is listed in the Buncombe County Tax Office as the Maude R. H. Revis Estate, which are Mr. Berlon D. Hensley, Darlene Hensley McKinney and husband John A. McKinney. This site will also meet the needs of the Asheville Police Department for a joint facility in the west area of the City.

The Interim Fire Chief recommends City Council authorize the City Manager to sign the Offer to Purchase and Contract for the property at 111 Eastview Circle.

Councilwoman Bellamy said that there were some concerns voiced by residents in West Asheville who are currently located near the station on Old Haywood Road about response time. Interim Fire Chief Griffin said that there will be two companies located at the station on Oregon at Louisiana that will provide the immediate coverage with a four minute response time in that area and just relocate that engine company from Haywood Road.

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

Vice-Mayor Cloninger moved for the adoption of Resolution No. 00-197. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 204

-25-

VI. OTHER BUSINESS:

A. CITY COUNCIL MEETING DATE CHANGE

Vice-Mayor Cloninger moved to re-schedule the Tuesday, November 7, 2000, City Council worksession until Thursday, November 9, 2000. The worksession will begin at 3:00 p.m. in the First Floor North Conference in the City Hall Building. This motion was seconded by Councilman Worley and carried unanimously.

B. CITY COUNCIL RETREAT COMMITTEE

Mayor Sitnick appointed Councilwoman Bellamy, Councilman Worley and herself to the 2001 City Council Retreat Committee.

C. CLAIMS

The following claims were received by the City of Asheville during the period of September 8-28, 2000: Jacqueline Meadows (Transit Services), Stephanie Hughey (Water), Fran Pignanelli (Streets), Scott Jenkins (Streets), Patsy Schmidt (Parks & Recreation), Diana C. Teaster (Police), Joyce Kilgore (Water), Biltmore Estate (Sanitation), Oteen Baptist Church (Police) and Sue Hunter (Sanitation).

The following claims were received by the City during the period of September 29 – October 5, 2000: Casandra Plummer (Transit Services), Tom Barker (Streets), BellSouth (Water), The Timbers (Sanitation), John Morgan (Water), Joanne Baker (Transit Services), Sharon Hines (Sanitation), Shelia Gilliland (Water), Ronald Thurman (Police) and Jay Fine (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:27 p.m.

CITY CLERK MAYOR
