

Tuesday – February 20, 2001 - 3:00 p.m.

Worksession

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

Absent: None

Mayor Sitnick said that a space will be available at the City-County Plaza and also at the Speedway for those residents who wish to pay tribute to Mr. Dale Earnhardt Sr.

CONSENT:

Bid Award for Bee Tree and Burnette Dam Improvements – For Information Only

Summary: The Regional Water Authority will consider a contract award for the Bee Tree Dam and Burnette Dam Improvements project at their regular meeting on Tuesday, February 20, 2001, at 8:45 am.

Sealed bids were received and opened on Wednesday, January 24, 2001, for the Authority's Bee Tree Dam and Burnette Dam Improvements Project. Five (5) bids were received, with a summary of the bids as follows:

COMPANY BID

Hickory Construction \$ 5,499,710

Tri-State Consultants 5,567,665

Thalle Construction 5,595,000

Taylor & Murphy 5,872,056

Gilbert Southern 6,708,400

The Water Authority held a special meeting on January 30, 2001, after the staff conducted a thorough investigation of Hickory Construction's bid. Hickory Construction was determined to be well qualified for the work in every respect, and were compliant with the bid instructions with one exception. The exception was the failure to include a one page form with their formal bid which summarized the minority business enterprise subcontracts they were proposing to award if selected as the prime contractor. The investigation revealed conclusive evidence that Hickory Construction had pursued minority businesses during the bid process as required by the Asheville-Buncombe Minority Affairs office, and had achieved the highest use of minority subcontractors of all bidders. The Water Authority determined the omission of the one page form with the bid to be a clerical error and exercised its authority to waive this error as an informality with the full consultation of the Authority's attorney. As part of that decision, the Authority authorized the staff to negotiate a lower contract price with Hickory Construction since all bids exceeded the engineer's estimate.

Extensive negotiations were conducted among the staff, the project engineer (AG&E-Schnabel), and Hickory Construction between February 1 and February 9, 2001. The goal of these negotiations was to achieve reductions without reducing the quality of the completed construction and without eliminating any of the fundamental technical objectives of the project. Ideas for cost reduction were evaluated for conformance with

the above technical objective, and then evaluated to determine if they were firm (construction methods which we know now can be changed) or contingent (construction methods which may be changed if certain latent conditions

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on the present site exist). As a result of these negotiations, a firm reduction in the contract price of \$150,480 has been achieved, and contingent options have been identified which may further reduce the final contract price up to a maximum of \$121,630.

Some examples of firm reductions achieved include: (1) the use of pipe culverts instead of a temporary bridge for the temporary construction access road across Bee Tree Creek; (2) the placement of on-site excavated rock in mass concrete at the top of the spillway to reduce purchased concrete quantities; (3) the use of on-site rock as channel rip-rap to reduce the volume of quarry stone required; and (4) the stockpiling of existing topsoil to avoid importing topsoil from off-site. Examples of contingent options include: (1) eliminating water pumps during construction in the new dissipator basin if the reduced lake level sufficiently lowers the groundwater table in this area; (2) eliminating rock anchors to support the existing right wall of the spillway chute if a structural analysis performed after sections of the existing spillway are removed confirm this can be safely eliminated; and (3) reducing diving costs at the North Fork reservoir if water levels are significantly lower than normal due to dry weather conditions at time of construction.

The staff has recommended to the Regional Water Authority that they award a contract to Hickory Construction Company at the bid price of \$5,499,710, contingent upon the further execution with the contract of a Change Order No. 1 to reduce the contract price by \$150,480 to a total of \$5,349,230. Further, staff has recommended that contingent options be identified in Change Order No. 1 to specifically state specific agreed prices for each option and the conditions upon which the option will be taken. The election of contingent options would be confirmed by future change orders.

Staff has evaluated the impact of these proposed changes to the bid price on the funds available from the recent \$13.3 million water revenue bond sale and have determined sufficient funds exist.

The Water Agreement grants the Regional Water Authority jurisdiction over the award of this contract; staff is providing this information to City Council for information only.

2001 Festivals and Special Events

Summary: The consideration of a motion approving the festivals and special events for 2001.

In March of 1995, the Asheville City Council adopted a Festivals Policy. A segment of that policy requires that City Council approve the list of festivals on an annual basis.

The Parks and Recreation Department met with a Co-sponsorship Task Team in an effort to set forth appropriate criteria to determine the qualifications of organizations applying for co-sponsorships with the City of Asheville. It was determined that the best way to determine qualification was to rate the events as they occurred on the degree that they met the terms of the co-sponsorship agreement and served the citizens of Asheville. The Task Team proposed the following minimum criteria for future co-sponsorships with the City of Asheville:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.

3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.

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6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

This year's list for co-sponsorship includes several new events which include: 1st Annual St. Patrick's Day 10K Road Race, Mountain Renaissance Adventure Fair, YMCA's World's Largest Run, Statewide Preservation Commission Conference Dinner, Pathways Pedal Pushers, Asheville Citizen-Times Half Marathon, Smoky Mountain Motorcycle Toy Run.

The Parks and Recreation Department recommends approval of the festivals and special events for 2001.

Non-Warranty Deed for Portion of an Unopened Alley off Conestee Street

Summary: The consideration of a resolution authorizing the execution of a Non-Warranty Deed for a portion of property located between two privately owned properties off Conestee Street.

A request was received from the attorney for James M. Wilson and Audrey Wilson, Co-Trustees of the Irrevocable Trust of Elizabeth Lindsay Wilson on December 29, 2000, requesting that the City execute a non-warranty deed, quitclaiming all government interest if any, in the portion of the trust property that encroaches onto an undeeded strip of land, that has since 1912, been referred to as an alley.

According to the attorney for the Wilsons, the dwelling situated on the property identified as PIN No. 9649.10-26-8359 has existed at the current location for approximately 90 years. The dwelling encroaches into the undeeded strip of land called an alley as shown on an unrecorded Plat prepared by Glenn Haynes dated March 11, 1998. The date of the dedication of this alley is not known.

The Public Works Department staff recommends City Council authorize the execution of a North Carolina Non-Warranty Deed quitclaiming all government interest, if any, in the portion of the property where the encroachment lies.

Agreement with MSD for Sidewalk on State Street

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Metropolitan Sewerage District (MSD), whereby MSD will, in connection with soliciting formal bids for the sewer rehabilitation project for State Street, include at the request of the City of Asheville, the requirement for the installation of sidewalks along State Street, the cost of which shall be paid by the City of Asheville.

The Metropolitan Sewerage District plans to disturb the pavement of State Street for major sewer rehabilitation project. The City has already designated State Street to receive sidewalks. MSD agreed to and did solicit formal bids for the construction and installation of sidewalks along State Street as part of its sewer rehabilitation project for State Street. MSD solicited the formal bids in accordance with N. C. Gen. Stat. Sec. 143-129 and three bids were received as follows:

Company MB Part Drug Free Bond Bid

Hobson Construction Co. Inc. 100% Yes Yes \$618,040

T&K Utilities 0 Yes Yes \$688,836

Bryant Electric Company 0 Yes Yes \$847,139

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MSD's governing body awarded the project to the lowest responsive bidder, being Hobson Construction Company, Inc., in the amount of \$618,040, with \$114,970 of that amount being the City's portion for the construction and installation of the sidewalk. MSD has otherwise complied with all statutory requirements in awarding the contract.

The Public Works Department staff recommends City Council authorize the City Manager to enter into an agreement with MSD whereby MSD will cause their contractor to construct and install approved sidewalks along State Street in accordance with City specifications, in an amount not to exceed \$114,970 upon assurance from MSD that all statutory bidding laws and requirements have been met.

Dedication of Midway Place

Vice-Mayor Cloninger noted that he has a conflict of interest with this matter.

Summary: The consideration of a resolution acknowledging and accepting a right of way dedication.

Reynolds Mountain Subdivision, LLC, has requested the City to acknowledge the public status of a dedication of right-of-way bordering the subdivision currently under development.

The right-of-way in question is a dedicated but unopened right-of-way. Our investigation shows that it was first dedicated as Midway Place with the recordation of a plat in 1933 (Plat Book 16 at Page 70), as part of Lakeview Park. Midway Place again appears in a resubdivision of property that was recorded in 1955 (Plat Book 29 at Page 12). The right of way was particularly in the City until 1960, when the entire area was annexed.

Properties located on the south side of this right-of-way have been sold and developed with homes. Tax maps indicate that the right-of-way is public, and field observation shows that it has been improved for part of its length, but currently only serves one residence, essentially as a private driveway.

In 1998 the developer obtained City approval for a subdivision of the part of the Reynolds Mountain Subdivision that is in the City. This consists of all or a part of 12 lots located along the north side of Midway Place right-of-way. The approved preliminary plat shows that the street that will serve these lots runs along the northern or uphill side, while the Midway Place right-of-way runs along the southern or downhill side of the lots. The developer at present proposes to use the Midway Place right-of-way for installation of utilities, but wishes to preserve such other rights of use as he may have.

The reason that this matter has come up now is that, despite the above-described indications that the Midway Place right-of-way has been considered public for many years, there is no record that its public status was ever officially recognized by the City or County. Given the age of the original subdivision, this is not unusual, and the record of that action may simply have been lost. Moreover, there are sufficient other acknowledgements of the public status of Midway Place that are matters of record that the City may be estopped from denying it. A search of the Buncombe County records indicates that the Midway Place right-of-way has never been withdrawn from dedication, and a search of the City's records has similarly disclosed no record of withdrawal or abandonment.

Usually, the City is not requested to recognize rights-of-way until whatever improvements are to be installed are complete. However, the developer in this case wishes to have the added measures of the City's official

recognition of the Midway Place right-of-way prior to undertaking utility installation within it.

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Staff's primary concern is that, by this recognition, the City does not assume responsibility for maintenance of the right-of-way, or for any problems that might arise during construction. The developer has agreed to enter into appropriate agreements with the City to ensure that this is accomplished.

Staff recommends that Council adopt a resolution acknowledging the public status of the Midway Place right-of-way for the purpose of utility installation, and accepting it to the extent that acceptance has not already occurred, subject to the condition that the developer assume all responsibility for its maintenance and for any construction-related issues until the improvements are accepted by the City or other appropriate authority.

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

ASHEVILLE SCHOOL BOARD

Mayor Sitnick welcomed School Board Chair Susan Fisher, members of the Asheville School Board, Superintendent Karen Campbell, and Associate Superintendent Alice Hart.

Ms. Fisher then updated City Council on the progress of Asheville City Schools. She reviewed their Emergency/Crisis Guide; the Code of Conduct and Student Rights and Responsibilities Handbook; Gateways to Education Student Accountability Standards and what they mean for elementary school students, middle school students and high school students; and the Parent Handbook 2000-2001 and Report of Progress.

Ms. Fisher, Dr. Campbell and Dr. Hart reviewed and answered various questions from Council regarding the charts they presented for "Reading and Math Achievement Levels 3rd - 8th Grade - Black Students 98, 99, 00", "Reading and Math Achievement Levels 3rd - 8th Grade - All Students 98, 99, 00", and "EOC % Proficient Black Students and All Students 98-99, 99-00."

Discussion surrounded the City Schools drop-out rate, how much time each Board member spends in the schools per month, what is being done to increase parental involvement, the need for computers for all teachers, ways the administration can work with businesses to create opportunities for parents to visit the schools during the day, what happens to suspended students, and thoughts on an elected vs. appointed School Board.

Councilwoman Bellamy asked the School Board work hard to increase parental involvement and to work towards the elimination of the achievement gap.

Mayor Sitnick said that since the demographics of Asheville has changed so drastically in the last few years since has asked the City Attorney to investigate the possibility of expanding the School Board.

PACK SQUARE RENAISSANCE PROJECT – INFORMATION KIOSKS

Ms. Karen Tessier, member of the Downtown Commission, said that the Pack Square Conservancy is requesting to install two signs in the Pack Square/City-County Plaza area to provide public information regarding the Pack Square Renaissance Project.

The purpose of the signage is to increase public awareness and enthusiasm about the Pack Square Renaissance Project and to acknowledge those organizations and individuals that have contributed financially to this effort. The theme of the three-sided signs is "History, Heroes and Horizons". The "History"

panel will tell the story of Pack Square as it evolved through history. The "Heroes" panel will speak to the long-standing tradition of philanthropy on the square

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and will acknowledge those who have contributed financially to the Renaissance Project. The "Horizons" panel will describe the vision for recreating these public spaces and will display the illustrations of the conceptual plan. Each sign will measure approximately 8 feet in height and the panels will have a width of approximately 4 feet.

The signs would remain in place through construction. Completion is anticipated in the summer of 2003.

At their February 12, 2001, meeting, the Asheville Parks and Recreation Advisory Board approved this request and suggested that Parks and Recreation staff assist in determining the optimum locations for the signs.

This is for informational purposes only. No Council action is required.

HOUSING TRUST FUND ALLOCATION

Community Development Director Charlotte Caplan said that this is the consideration of approving the recommendations from the Housing & Community Development Committee for loans totaling \$400,000 from the City's Housing Trust Fund.

A Request for Proposals for Housing Trust Fund (HTF) loans was issued on December 1, 2000. Eleven applications were received by the due date of January 19. All were essentially complete and eligible for funding. Staff was very pleased with the number, variety, and quality of these applications.

Evaluation Process: A group of four staff from the Planning & Development Department visited all the project sites and evaluated each application using 23 criteria drawn largely from the Housing Trust Fund policies approved by Council last year. Each project was given scores of 0-5 for each criterion, and then the scores were multiplied by a weighting factor of 1, 2, or 3 before being totaled. The highest weighting factor was given for financial capacity, funding requested per unit, affordability, and readiness to proceed. Other

important criteria were developer experience, good design, careful budgeting, location, site suitability, and preservation of long-term affordability.

Results: Although all the projects submitted had attractive features and were appropriate for HTF assistance, three stood out in the evaluation process, scoring at least 36 points higher than any of the other eight projects:

- Ron Moser Homes – Glendale Avenue Subdivision (18 units for homeownership)
- Neighborhood Housing Services – Short Street (4 units for homeownership)
- Mountain Housing Opportunities – Compton Place (40 units for elderly rental)

The Housing and Community Development Committee has reviewed the evaluation and recommends the following loans be made, on the terms requested:

Ron Moser Homes: \$195,000 at 2% interest with staged repayment as each house is sold

Neighborhood Housing Services: \$65,000 at 0% for 30 years (amortizing)

Mountain Housing Opportunities: \$140,000 at 0% for 20 years (non-amortizing)

The Housing and Community Development Committee and staff recommend approval of the Housing Trust Fund loans listed above.

A brief discussion was held about the rate of return on the loans but agreed that ultimately Council's goal is to get more units of affordable housing.

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Ms. Caplan said that she would get City Council additional information they requested on the applications and the score sheets.

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

OUTSIDE AGENCY POLICY

Budget Director Ben Durant said that this is the consideration of a motion approving City Council's outside agency policy.

During a budget worksession on the proposed Fiscal Year 2000-2001 Annual Budget, City Council asked staff to develop an official policy to guide the Outside Agency Committee's process for evaluating outside agency funding requests.

Staff has developed a draft policy, which has been reviewed by the Outside Agency Committee, and is presented for full Council review. At Council's February 6, 2001, worksession, City Council suggested minor changes to the policy and those changes have been made. Key aspects of the recommended policy include the establishment of priority service areas for which Council may direct its outside agency funds, the setting of limits on the number of consecutive years certain agencies can receive City funds, and a focus on funding

specific programs rather than general operating expenses.

City staff recommended City Council adopt the outside agency policy.

Upon inquiry of Councilman Hay, it was the consensus of City Council that the policy be amended so that the City will only accept funding requests from outside agencies organized as a 501 (c) corporation, opposed to a 501 (c) (3) corporation. Councilman Hay asked Mr. Durant to make sure that we are not excluding any of our current outside agency contracts.

Mayor Sitnick asked if City Council wanted to consider doing a general across the board percentage reduction in our outside agency budget, in light of the state's decision to withhold local business inventory reimbursement payments to local governments. City Manager Westbrook said that as the budget negotiations are worked out, he would let the Outside Agency Committee know and let them make a recommendation to the full Council, if necessary.

After a brief discussion about when this policy would be implemented, it was the consensus of Council to follow the policy for this fiscal year. However, since the deadline for receiving applications is this week, City staff was instructed to send all applicants the policy immediately and to give them an opportunity to amend their application after they review the policy.

Mayor Sitnick said that she would like a mid-year report by staff outlining how the funds are being spent by the outside agencies who received outside agency funding by the City.

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

CIVIC CENTER FUNDING OPTIONS

City Manager Westbrook said that on February 6, 2001, City Council requested staff present information regarding various funding options for renovating the Civic Center.

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Budget Director Ben Durant then presented the following options, all of which would be to renovate and on-going maintenance of the Civic Center:

Hotel & Motel Tax

Rate of Tax: 1% on gross receipts derived from the rental of any room, lodging or accommodation

Distribution of Tax: Levied throughout Buncombe County. Collected by Buncombe County. Proceeds of net collection costs distributed to the City of Asheville.

Projected Annual Proceeds: Fiscal Year 2001-02 - \$1,000,000

Tax Impact: Approximately 95% of all room rentals are made to people living outside of Buncombe County

Food & Beverage Tax

Rate of Tax: 1% of the sales price of prepared food and beverages sold within the County at retail for consumption

Distribution of Tax: Levied throughout Buncombe County. Collected by Buncombe County. Proceeds of net collection costs distributed to the City of Asheville.

Projected Annual Proceeds: Fiscal Year 2001-02 - \$2,800,000

Tax Impact: City – 25%; Regional – 45%; Tourists – 30%

Additional 1-Cent Local Option Sales Tax

Rate of Tax: 1% of sales within Buncombe County

Distribution of Tax: Levied throughout Buncombe County. Collected by Buncombe County. Proceeds of net collection costs distributed to Buncombe County, Asheville and other municipalities based on population

Projected Annual Proceeds: Fiscal Year 2001-02 - \$9,704,168;

Fiscal Year 2002-03 - \$9,898,251;

Fiscal Year 2003-04 - \$10,096,216;

Fiscal Year 2004-05 - \$10,298,141;

Fiscal Year 2005-06 - \$10,504,103

Tax Impact: Inside County – 50%; Outside County – 50%

Property Tax Rate

Rate of Tax: 1-cent equals an additional \$450,000

Distribution of Tax: Levied throughout City of Asheville. Collected by Buncombe County.

Proceeds of net collection costs distributed to Asheville.

Projected Annual Proceeds: Fiscal Year 2001-02 – Determined by tax rate

Tax Impact: 100% of tax borne by Asheville residents

Mayor Sitnick felt that prescription drugs and food should be excluded from the additional one-cent local option sales tax, even though there would be a reduction in revenue.

It was pointed out that the Buncombe County Tourism Development Authority has asked for an additional one-cent on the hotel/motel tax for product development and Buncombe County is requesting a one-cent local option sales tax. These are in addition to City Council's proposed request for a one-cent food/beverage tax. It was noted that if the County is not successful with their one-cent local option sales tax, then the City needs to have a fallback – which may be the food/beverage tax.

All of Council agreed that public support needs to be built with a lot of good publicity and a lot of public comment sought.

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City Manager Westbrook said that he has received a letter from Buncombe County Manager Wanda Greene asking for City Council's endorsement of their local option sales tax request.

Councilman Peterson felt it was very important to start soliciting public comment on some new funding source before the draft bill deadline of March 14, 2001. City Attorney Oast said that he will be in Raleigh on Monday (February 26, 2001) and will talk with our legislators about introducing a blank bill with a general description on this issue which will give the City some additional time within which to decide how the draft bill should read.

Mayor Sitnick stated that she would not raise the property taxes of the Asheville residents to renovate the Civic Center when it is used by 80% of people who live outside Asheville.

Councilman Worley said the City should go on record supporting Buncombe County's request, but make it clear that the City of Asheville is looking for a food/beverage tax as a back-up. He suggested the City asking Buncombe County for their support of a food/beverage tax as well.

Mayor Sitnick said that there is already some community knowledge and support for Buncombe County's local option sales tax by managers and mayors around our region.

Vice-Mayor Cloninger suggested the City Manager work with the County Manager regarding how the City and the County can work together in supporting both the County's one-cent local option sales tax and the City's request for the food/beverage tax. He asked that the City Manager report back to City Council next week on the outcome of that meeting. He felt the City and the County should not be competing with each other on this issue.

City Attorney Oast said that a bill was introduced (HB 99 – Local Tax Menu With Voter Approval) to provide statewide authority for cities and counties to levy various local option taxes. The revenue options are subject to local voter approval. He said that may be something that Asheville can have to fall back on as well.

Councilman Peterson said that our state legislators want to see significant public support on this issue. If we don't have that community support they may not want to introduce or support our bill. If, in the next few weeks we don't find that support, perhaps this fall we can put something on the general election ballot and then prove to our legislators that we do have that support.

Mayor Sitnick said that we will be looking at a public input session, possibly with Buncombe County.

City Attorney Oast said that with regard to the legislative package, he is pursuing the traffic enforcement cameras, the suspension of bidding and contracting laws for public projects, and the non-betterment relocation costs matter.

REPORTS ON BOARDS AND COMMISSIONS

At the request of Mayor Sitnick, City Attorney Oast updated City Council on the Clean Air Community Trust. The City Attorney was directed to work with the County on establishing a Trust to fulfill the purpose of the Clear Air Community Trust outside of the Interlocal Agreement. It was also the consensus of City Council to have the City Clerk begin advertising for vacancies in the next quarterly appointment process.

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Mayor Sitnick said that Ms. Kim McGuire, Community Foundation of Western North Carolina, has invited the City Council to appoint a representative to serve on the Board of Directors of a newly formed Education Coalition. The Coalition is a collaboration of two public school systems, more than a dozen non-profit organizations, five higher education institutions, and other community leaders in Buncombe County. This Coalition will establish standards and improve coordination and evaluation of educational services in an effort to significantly decrease the high school drop-out rate, as well as strengthen students' ability to be successful citizens. Councilman Worley moved to waive the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Cloninger and carried unanimously. Vice-Mayor Cloninger moved to appoint Councilwoman Terry Bellamy, as the City's representative on the Education Coalition Board of Directors. This motion was seconded by Councilman Worley and carried unanimously.

It was the consensus of City Council to interview Mr. James T. Fink for a vacancy on the Noise Ordinance Appeals Board.

Councilwoman Field reported that good goals were developed at a recent Downtown Commission retreat.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:20 p.m.

CITY CLERK MAYOR
