

- Planning & Development staff recommend approval of the conditional use rezoning with the following conditions: (1) The size of the building should be limited to 13,000 sq. ft.; and (2) The revised site plan should include the landscaping, existing and proposed.
- Vice-Mayor Bellamy moved to adopt Ordinance No. 2885 granting the conditional use permit for Biltmore Heights Professional Park with the following conditions: (1) The size of the building should be limited to 13,000 sq. ft.; and (2) The revised site plan should include the landscaping, existing and proposed; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Mumpower and carried unanimously.

Tuesday – January 8, 2002 - 6:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 18, 2001

B. RESOLUTION NO. 02-1 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO INCLUDE A COMMUNITY MEETING ON TUESDAY, JANUARY 29, 2002, BEGINNING AT 7:00 P.M. AT THE SKYLAND VOLUNTEER FIRE DEPARTMENT LOCATED AT 9 MILLER ROAD, ASHEVILLE, NC

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C. RESOLUTION NO. 02-2 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: The consideration of appointing a member to the Educational Access Channel Commission.

Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On December 12, 2001, Superintendent of Asheville City Schools Robert L. Logan recommended Mr. Charlie Glazener be appointed as one of the representatives of Asheville City Schools to replace Dr. Patti Cutspec. Mr. Glazener will be filling the unexpired term of Dr. Cutspec, whose term will expire on June 1, 2005, or until his successor is appointed.

Staff recommends City Council adopt the resolution appointing Mr. Charlie Glazener to the Educational Access Channel Commission.

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D. RESOLUTION NO. 01-3 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH CIRCLE NET INC. FOR ANTENNAS AND RELATED EQUIPMENT AT 36 RESERVOIR ROAD (FORMERLY WHITE FAWN RESERVOIR)

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Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Circle Net, Inc. for an antenna at 36 Reservoir Road.

On December 28, 2001, pursuant to City Council Resolution No.01-188 the City Clerk published a public notice of City Council's intent to consider a license agreement with Circle Net, Inc.

Circle Net, Inc. has offered to enter into a license agreement for space on the tower owned by the City and known as the "U. S. Cellular Tower". The proposed License Agreement will enable Circle Net to operate antennas and related equipment at the site. There is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Circle Net will pay a License Fee of \$7,800 for the first term with a 5% increase annually thereafter. In addition to the License Fee, Circle Net will pay a Utility Fee of \$150.00 per annum.

Planning Department staff recommends adoption of the Resolution.

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

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE REZONING OF THREE LOTS LOCATED AT YORKSHIRE STREET AND REED STREET (BILTMORE HEIGHTS PROFESSIONAL PARK) FROM OFFICE DISTRICT TO OFFICE II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2884 - ORDINANCE TO REZONE THREE LOTS LOCATED AT YORKSHIRE STREET AND REED STREET (BILTMORE HEIGHTS PROFESSIONAL PARK) FROM OFFICE DISTRICT TO OFFICE II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2885 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THREE LOTS LOCATED AT YORKSHIRE STREET AND REED STREET (BILTMORE HEIGHTS PROFESSIONAL PARK)

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 issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:03 p.m.

Urban Planner Stacy Merten submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 1/8/02). This public hearing was advertised on December 28, 2001, and January 4, 2002.

Ms. Merten said that this is the consideration of an ordinance to conditionally rezone three lots on Yorkshire Street and Reed Street (Biltmore Heights Professional Park) from Office District to Office II District/Conditional Use, and issuance of a conditional use permit.

On October 26, 2001, Dr. William Chambers submitted an application for conditional use rezoning from Office District to Office II District/Conditional Use for the Biltmore Heights Professional Park (PIN Nos. 9647.12-85-2947, 9647.12-86-3084 and 9647.12-86-3131). The 2.92 acre site is located at the corner of Reed and Yorkshire Streets (Location Map – Attached to City Exhibit 3). The site has undergone Level I review and been approved for the construction of three, 2 story office buildings (Site Plan – Attached to City Exhibit 2). Two of the buildings (B & C) have been completed.

The proposal is to conditionally zone the property as Office II District/Conditional Use to allow the construction of a 13,000 square ft., 2 story building, which is 5,000 square ft. larger than the 8,000 square ft. maximum allowed for multi-story buildings in the Office zoning district. The reason for the request is to accommodate a more marketable building that works better with the existing site conditions for the construction of building A. Both buildings B & C received variances from the Zoning Board of Adjustment and are larger than the underlying Office zoning allows.

The Technical Review Committee reviewed this project at their meeting on December 3, 2001, and recommended that the project be forwarded to the Planning & Zoning Commission with the conditions that the size of the project be limited to 13, 000 sq. ft. and that a revised landscape plan be submitted showing both existing and proposed landscaping. A Transportation Impact Analysis was not required for this project.

City Council must take formal action as set forth in section 7-9-9(c) (4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's preliminary review, absent the benefit of public input, indicates that all seven standards appear to be met.

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

The proposed use is for an office building which is allowed in the existing zoning district and as such would not materially endanger the public health or safety if developed in accordance with the approved site plans and applicable regulations.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The building design makes maximum use of the property given the amount of grading that would be necessary regardless of the size of the building, thus the proposed project will be better able to work with the existing site conditions.

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

The larger building will be located on the site uphill and away from the adjacent residential property and adequate buffers will be provided. It is not anticipated that the use would have a negative affect on the value of adjoining or abutting property.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed use will be similar in size, scale and materials to the existing buildings on the site. The surrounding properties to the north and east are zoned Institutional and Highway Business respectively and are developed with higher intensity uses. The project will be adequately buffered from the adjacent residential uses and landscaped in accordance with the UDO, thus it will be in keeping with the existing character, scale and density of the neighborhood.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Comprehensive Plan indicates commercial uses for this area. The proposed use will be in keeping with smart growth policies in that it is promoting compatible higher density commercial development. It is also encouraging the expansion of medical services in keeping with the economic development strategic plan.

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

The proposed use is located in an existing developed area. The original project, with a smaller building, received informal approval from the City's Technical Review Committee, including the Water Resources Department, the Fire Department, Engineering and Public Works.

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

The proposed building is 5,000 sq. ft. larger than would be allowed under the current zoning. A transportation Impact analysis is not required as traffic generation will be minimal.

The Planning & Zoning Commission reviewed this project at their December 5, 2001, meeting and voted unanimously to recommend approval of the project with conditions.

Planning & Development staff recommend approval of the conditional use rezoning with the following conditions: (1) The size of the building should be limited to 13,000 sq. ft.; and (2) The revised site plan should include the landscaping, existing and proposed.

There was a brief discussion about why the Board of Adjustment approved variances for Buildings B and C, but denied the variance for Building A. Mr. Carroll Hughes, President of Spaceplan, gave his recollection of the Board of Adjustment decision to Council stating that his rationale for the variance was the same for Building A as it was for Buildings B and C. He did not quite understand why the Board of Adjustment denied

the variance petition for Building A. City Attorney Oast stated that the conditional use zoning of this property is the appropriate way to get

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the use out of the property that Mr. Hughes is seeking. Ms. Merten also noted that when the first building variance was applied for, the City did not have the conditional use process in place.

There being no request for rebuttal, Mayor Worley closed the public hearing at 6:17 p.m.

Councilman Ellis moved to adopt Ordinance No. 2884 to rezone three properties at Yorkshire Street and Reed Street from Office District to Office II District/Conditional Use. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE

Vice-Mayor Bellamy moved to adopt Ordinance No. 2885 granting the conditional use permit for Biltmore Heights Professional Park with the following conditions: (1) The size of the building should be limited to 13,000 sq. ft.; and (2) The revised site plan should include the landscaping, existing and proposed; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE

B. PUBLIC HEARING RELATIVE TO REZONING 669 BREVARD ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2886 - ORDINANCE TO REZONE 669 BREVARD ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 6:18 p.m.

Urban Planner Alan Glines said that this is the consideration of the rezoning of property located at 669 Brevard Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on December 28, 2001, and January 4, 2002.

This proposal is to consider the rezoning of property located at 669 Brevard Road from Commercial Industrial District to Highway Business District. The PIN No. is 9627-20-92-8325 and is located within the City limits. The parcel is the site of an older single story brick house located on Brevard Road which is becoming a commercial corridor. The parcels immediately to the north and west of the parcel are zoned Commercial Industrial. The contiguous parcels to the south which have frontage along Brevard Road are zoned Highway Business. The parcel is approximately .69 acre. The parcel is an ideal location for a small business and would follow a similar pattern in the area of changes in use from residential to business uses along this important corridor between I-26 and I-40.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the rezoning of the property located at 669 Brevard Road from Commercial Industrial District to Highway Business District. The Planning and Development staff recommend the approval of the

requested rezoning.

Mayor Worley closed the public hearing at 6:21 p.m.

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

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Councilman Dunn moved for the adoption of Ordinance No. 2886. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 02-4 - RESOLUTION ACKNOWLEDGING REPAYMENT OF DEBT OWED BY EAGLE/MARKET STREETS DEVELOPMENT CORPORATION TO THE CITY OF ASHEVILLE

Ms. Heather Dickens, Community Development Analyst, said that this is the consideration of a resolution to accept the value of space provided free of charge to the Asheville Police Department by Eagle/Market Streets Development Corporation at 70 South Market Street as repayment in-kind of the \$14,000 debt owed to the City.

Eagle/Market Streets Development Corporation (EMSDC) has submitted a request to the City of Asheville for forgiveness of the \$14,000 debt owed to the City in exchange for rental space provided at no cost to the Asheville Police Department (APD) from August 1999 through December 2001. From August 1999 to present, the APD has operated a substation and occupied the north half of the building, Suite A, of 70 S. Market Street. Suite A includes 1200 square feet of office and meeting space, valued at an area market rate of \$750 a month. The total value of in-kind rent provided by EMSDC to APD is \$21,750.

The initial debt arose in 1998 when EMSDC purchased 70 S. Market Street for \$14,000 more than the appraised value. Community Development Block Grant (CDBG) funds were used to pay for the property acquisition. After review, the Dept. of Housing and Urban Development disallowed the \$14,000 excess payment and required the City to repay the difference from general fund to the CDBG fund. As a result EMSDC agreed to repay \$14,000 to the City.

The request from EMSDC is for the City to accept the value of space provided for APD as full and satisfactory repayment of the \$14,000 owed to the City. EMSDC plans to continue partnering with the APD and will establish a new lease agreement for the terms of the space beginning January 1, 2002, where services will be provided in lieu of rent.

City staff recommends approval of the resolution and that the \$14,000 owed to the City by EMSDC be regarded as paid in full.

Upon inquiry of Vice-Mayor Bellamy, City Manager Westbrook said that City does not pay rent in facilities where we have a substation because usually those facilities are City-owned.

When Councilman Dunn asked why EMSDC purchased the property more than the appraised value, Ms. Dickens explained that when CDBG funds were used for the purchase of 70 S. Market Street, an appraisal did not accompany the payment for that purchase. When later reviewed, the appraisal price was for less than the purchase price. Therefore, CDBG funds could only be used for the full appraisal value. The City does not now pay out CDBG funds without a full appraisal.

Councilman Peterson and Mayor Worley both agreed that a police substation at this location is a big benefit and good partnership for the area.

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

Councilman Ellis moved for the adoption of Resolution No. 02-4. This motion was seconded by Councilwoman Jones and carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 14, 2001 – January 3, 2002: Kenneth Faulkner (Sanitation), Werner Ent. (Streets), Santos L. Jackson (Water) and Terry Smathers (Water).

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

B. LAWSUIT

The City was served with the following Complaint on December 21, 2001, which is generally described as follows: Connie C. Jones. The nature of proceeding is ESC claim for unemployment insurance denial. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY KEVIN NUTTELL

Mr. Kevin Nuttall, representing NC AIDS Policy Center, talked about his involvement in exposing the integrity of the AIDS industry. He stressed the need for consumer and public involvement in the oversight of AIDS service organizations at the local level. It is his goal to work in partnership with the Mayor's Office to develop language expanding Asheville's "sunshine ordinance," thereby ensuring the taxpayer has a specific right to participate in local oversight functions of any corporation which is registered in the City of Asheville, in particular local AIDS Service Organizations.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:33 p.m.

CITY CLERK MAYOR
