

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

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE MONTH OF MARCH 2002 AS “PROFESSIONAL SOCIAL WORK MONTH”

Mayor Worley read the proclamation proclaiming the month of March, 2002, as “Professional Social Work Month” in the City of Asheville. He presented the proclamation to Ms. Dotty Saxon and Ms. Tracy Carrington who briefed the Council on some activities that will take place during the month.

B. PRESENTATION OF USS ASHEVILLE MEMORABILIA

Mr. Ken Vasilik, Chairman of the Asheville USS Asheville Committee, gave a brief background of the PG-21. He said that a video of the memorial ceremony conducted by the SSN-758 has been given to the City. He concluded his presentation with reading the certificate from the SSN-758 commemorating the event, presenting it together with the duplicate wreath and photo plaque of the wreath in the water at the site superimposed with an image of the PG-21.

On behalf of City Council, Mayor Worley thanked Mr. Vasilik, Mr. Walter Ashe, LCDR Scott Maple of the USN Reserve Center, and the entire USS ASHEVILLE Committee for this memorabilia.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 26, 2002, AND THE WORKSESSION HELD ON MARCH 5, 2002

A. RESOLUTION NO. 02-39 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM DAMON ROUSE TO PURCHASE DISPOSAL PARCEL 146 ON LINCOLN STREET IN THE EAST END/VALLEY STREET COMMUNITY

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcel 146 in the East End/Valley Street Community to Damon Rouse in the amount of \$3,200.

Disposal Parcel 146 is a substandard lot located on the north side of Lincoln Street comprising 3,659± square feet. The lot is irregular in shape and mostly flat about street level then sloping up sharply to the rear. The bid in the

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amount of \$3,200 from Damon Rouse includes the proposal to combine the property with adjoining property currently owned by Mr. Rouse on Jordan Street.

On February 26, 2002, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 146. The advertisement ran in the Asheville Citizen-Times on March 1, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Damon Rouse in the amount of \$3,200 was not upset and the sale to Damon Rouse should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 82

C. RESOLUTION NO. 02-40 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO BLACK MOUNTAIN

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System (City of Asheville) in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

In no event will the City of Asheville be required to contribute financially to this route. All financing will be provided by the State (maximum of \$92, 708), the Town of Black Mountain (\$13,360), Mountain Mobility (\$5,000), and Fare Box Revenue (\$3,882). The total budgeted cost is \$114,950. The City of Asheville is specifically exempted from any liability towards operating costs. If funds budgeted are not sufficient, the operation will either be additionally funded by some combination of the above, or it will be terminated. The City of Asheville will not be liable for any additional cost of operation under this contract.

The contract has a period of performance of 14 months - from March 1, 2002, through May 1, 2003. During that time, the Asheville Transit System must provide 12 consecutive months of service, within the above financial constraints.

The NC DOT requires the Mayor to sign the contract for this service, and will then return a copy signed by the state Secretary of Transportation. Commencement of service is contingent upon receiving this signed contract from the NC DOT. Service will start as soon as possible after receipt of the fully executed contract.

Black Mountain will be served four times a day, six days a week, except for holidays during which the transit system does not operate. Thus, Black Mountain will be served 306 days during the twelve-month period.

City staff recommends adoption of the resolution.

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D. RESOLUTION NO. 02-41 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON GALAX AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Galax Avenue in the West Asheville community.

Michael A. Pressley submitted a bid in the amount of \$25,800 for the purchase of land on Galax Avenue in the West Asheville Community. Said bid is not less than the tax appraisal of \$25,800.

The land on Galax Avenue is a residential zoned lot beyond the end of the street improvements of Galax Avenue. Said lot is 0.94 acre. The bid from Michael A. Pressley includes the proposal to combine the property with adjacent property he owns and construct nine units of affordable housing on the property. Mr. Pressley's project has been recommended for a Housing Trust Fund Loan and is consistent with the policy of encouraging infill development.

The property was designated as surplus property in 1997 and has been available for sale since that time.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution.

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E. RESOLUTION NO. 02-42 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND

ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO ASSIST WITH THE DEVELOPMENT OF AZALEA ROAD PARK PHASE I

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation for funds through the Land, Water and Conservation Fund to assist with the development of outdoor recreation facilities.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road in east Asheville. If this grant is received, the funds will be used to assist with the construction of the first phase of the Park. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise \$3 million to build the first phase of the Park.

The Parks and Recreation Department is requesting \$500,000 in grant funds from the Land, Water and Conservation Fund, which requires a 50% cash or in-kind match. The cash match is available through the Western North Carolina Soccer Foundation via the John B. Lewis Family Foundation, and the in-kind match is available in labor, equipment, and project management in the Parks and Recreation Department.

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The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds to assist with the construction of Azalea Road Park Phase I.

RESOLUTION BOOK NO. 27 – PAGE 85

F. RESOLUTION NO. 02-43 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "MYRA PLACE" OFF EAST STARNES COVE ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Myra Place."

Dave Ball, owner of lots in Maple Grove Subdivision, has petitioned the City of Asheville to accept the street name " Myra Place." The new street will begin at East Starnes Cove Road and end at cul-de-sac on Myra Place.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 86

G. RESOLUTION NO. 02-44 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO LEASE SPACE AT 45 WALL STREET TO THE ASHEVILLE PERFORMING ARTS ALLIANCE

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed lease with the Asheville Performing Arts Alliance for space at 45 Wall Street.

The property at 45 Wall Street is located in the Wall Street Parking Garage owned by the City of Asheville. The City has previously leased the space, but currently the space is vacant.

The Asheville Performing Arts Alliance (APAA) has offered to enter into a lease for the space. The proposed lease will enable APAA to operate offices and a small performing theater at the site. There is a provision which allows either the Lessor or the Lessee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 9 years and 11 months. APAA will pay rent in the amount of \$1,050 for the first six years the rent will increase annually thereafter based on the Consumer Price Index compared to the date the lease originated. In addition to the rent, APAA will up-fit the space at its own expense.

Approval of the resolution will authorize the City Clerk to publish a Notice of Intent to enter into the Lease.

Finance Department and Planning Department staffs recommend adoption of the resolution.

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.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

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III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE FLOODPLAIN REGULATIONS

ORDINANCE NO. 2902 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE FLOODPLAIN REGULATIONS

Mayor Worley opened the public hearing at 5:21 p.m.

Ms. Natalie Berry, Stormwater/Erosion Control Coordinator said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) regarding floodplain regulations. This public hearing was advertised on March 1 and 8, 2002.

Below are the recommended amendments to the City's flood control standards. All of the revisions are housekeeping in nature.

- Revising the ordinance to give the City Engineer authority to enforce this section of the UDO in place of the Planning and Development Director, adding a few definitions, amending a few definitions and changing the name of the Erosion Control Review Committee to Specifications Review Committee.
- Expanding the duties of the Specifications Review Committee to be able to interpret and make recommendations on variances to the flood ordinance to the Board of Adjustment, leaving final authority vested in the Board of Adjustment.
- Delete the paragraph entitled "exemptions" out of the flood ordinance. The National Flood Insurance Program Western Coordinator recommends the deletion due to non-compliance with Federal Emergency Management Agency (FEMA) regulations.
- Adding an option under the unnumbered "A" zone section. When the base flood elevation (BFE) is not known this is known as an unnumbered "A" zone. A structure may be constructed if the lowest finished floor is built at least three (3) feet above the highest adjacent grade. This option will help the property owner(s) who could not afford to hire a professional engineer to do a flood study to determine the base flood elevation (BFE).
- Remove wet flood proofing option "c" under the flood proofing heading in Section 7-12-1(i)(2). The National Flood Insurance Program Western Coordinator recommends the removal of this option for the City of Asheville's UDO. This is not an option under FEMA model ordinance. A property owner can still use this option if they apply for a variance with the Board of Adjustment and follow strict guidelines.
- Include the flood ordinance under the enforcement and penalties for civil penalties when violations occur - \$100.00 per day for each day the violation continues.

The Planning and Zoning Commission voted 6 to 1 to recommend approval of the proposed ordinance amendment. The opposing vote was due to the changes in no longer allowing wet flood proofing on structures in the floodway.

Staff recommends that City Council adopt the proposed amendments to the Floodplain Regulations of the Unified Development Ordinance.

Dr. Ned Guttman, representing Coalition of Asheville Neighborhoods, commented on the major issues regarding floodplain management that this ordinance does not address. He felt the Task Force was created to modify the ordinance so that adequate flood protection could be afforded to the community, but this ordinance does not address that. He briefed Council on the several suggestions he made as a member of the Task Force, but staff ignored. He said that City

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staff does not have the specialized training to approach these issues. He stressed that City Council is responsible for floodplain management in Asheville.

When Mayor Worley asked Dr. Guttman if he agreed with the ordinance with regard to housekeeping issues. Dr. Guttman replied he did, however, he stressed that in the definition section for historic structures, the ordinance only refers to national and state listings - nothing about local historic sites or sites under formal study. That should be included in the proposed ordinance.

Ms. Berry said that she did take into consideration all comments from the Task Force. With regard to the definition for historic structures that Dr. Guttman noted, she said that she intended to include that in the ordinance and it was her omission. She agreed that should be added as well.

City Engineer Cathy Ball responded to the comments from Dr. Guttman. She stressed that staff considered all comments from the Task Force, appreciated their feedback and respected their opinions. However, there is a balance between trying to keep the community safe and being able to have property that can be developed. We do have an ordinance that does meet federal requirements and when we look at stricter regulations, our property becomes unable to be developed, especially on the riverfront. Again, they did have to balance the ability to develop in the area vs. stricter compliance.

Ms. Ball responded to several questions Vice-Mayor Bellamy raised. She explained that the role of the committee was to review the ordinance and make recommendations.

Mr. Guttman said that what he is proposing would not restrict development. Basically, what he asked for was to provide information to the community to be able to judge whether or not there is a flood hazard.

Mr. Marvin Slosman, member of the Task Force, supported the ordinance in that this is an example where the program is in compliance and it works for the community and developers. The ordinance is not so burdensome that it doesn't allow progress.

Ms. Margaret Shook, Crowfields resident, said that each year there are new developments and the increased resulting Stormwater velocity are causing three creeks, Pebble Creek, Dingle Creek and Turtle Creek, to jeopardize personal safety, create road hazards, plus greater and greater damage to properties contiguous to these creek's entire waterways. In every area of Asheville there will continue to be a growing problem of flash flooding of streets, properties and inadequate floodplain areas – all going hand-in-hand with rapid development construction without an impact study to the downstream areas. Please consider including the amendment for new development construction to provide a stormwater impact study before "City approval" to build within all Asheville watersheds impacted with rapid development including the extremely fragile Busbee Mountain Watershed.

Mr. Don Yelton, property owner, said that vacant property, undeveloped, serves as a way to soak up water and has value to the taxpayer. He encouraged Council to consider looking at stormwater and run-off together.

Mayor Worley closed the public hearing at 6:04 p.m.

Councilman Peterson felt the City does need to look at going beyond the minimum requirements and encouraged the City Engineer to seriously look at that issue. He hoped that staff would look at some of the ideas Dr. Guttman suggested with stricter standards.

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Vice-Mayor Bellamy suggested the Task Force continue to meet to address some of the specific concerns brought up today and report back to Council in about six months.

Councilman Mumpower felt that if the City was going to use the services of a Task Force, they should take their recommendations seriously. He suggested that in the future there be a larger presence of Task Force members so City Council can get their opinions.

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

Councilman Mumpower moved for the adoption of Ordinance No. 2902, with the addition of adding a subsection to the definition of historic structure to include locally designated historic structures. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ARTIST'S STUDIOS AND WORKSHOPS AS HOME OCCUPATIONS IN RESIDENTIAL DISTRICTS AND TO ESTABLISH STANDARDS FOR THESE USES

ORDINANCE NO. 2903 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ARTIST'S STUDIOS AND WORKSHOPS AS HOME OCCUPATIONS IN RESIDENTIAL DISTRICTS AND TO ESTABLISH STANDARDS FOR THESE USES

Mayor Worley opened the public hearing at 6:08 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance to identify artist's studios and workshops as home occupations in residential districts and to establish standards for these uses. This public hearing was advertised on March 1 and 8, 2002.

The Planning and Zoning Commission is recommending adoption of an amendment to the City's zoning standards to identify artist's studios and workshops as home occupations and to establish standards for these uses. Home occupations are currently permitted in all residential districts and although many artists have studios or workshops in their homes, these uses are not specifically identified in the City's zoning code. As a result of the City of Asheville's popularity as an arts center, the number of artist's studios and workshops located in residential areas will continue to increase. Artist's studios and workshops often require more space than traditional home occupations due to the need to store materials and for larger work areas. The proposed amendment addresses this need by allowing artist's studios and workshops to be larger than other home occupations. In order to protect adjacent residential uses from potential adverse impacts of artist's studios and workshops, a larger lot size is required for larger studios and workshops. Larger studios and workshops, when constructed as a separate building, must be setback a greater distance from the property lines. The studios and workshops must also adhere to the other standards for home occupations set forth in the City's zoning ordinance. These standards address:

- The display of goods and products as well as other advertising;
- Prohibition on retail sales from the home;
- Restriction on uses that create odor, noise, glare, etc.; and
- Standards for signs and parking.

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Staff worked with a group of artists and craftspeople in developing the standards set forth in the draft ordinance amendment. No comments in opposition to the proposed revisions have been received.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Mayor Worley closed the public hearing at 6:10 p.m.

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

Councilman Ellis moved for the adoption of Ordinance No. 2903. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 525

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE SIDEWALK REGULATIONS

ORDINANCE NO. 2904 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE SIDEWALK REGULATIONS

RESOLUTION NO. 02-45- RESOLUTION AMENDING THE FEES AND CHARGES MANUAL

Mayor Worley opened the public hearing at 6:11 p.m.

City Engineer Cathy Ball said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) related sidewalk regulations. This public hearing was advertised on March 1 and 8, 2002.

In May of 1997, sidewalks requirements were adopted as part of the final adoption of the UDO. In March of 2000, the sidewalk requirements were revised to include the provisions for allowing a "fee in lieu of" constructing sidewalks under certain conditions.

In 2000, staff began working with the development community to review the conditions for allowing a fee in lieu of constructing sidewalks. This group consisted of developers, affordable housing advocates and staff. The group agreed that some additional changes needed to be made in the sidewalk requirements (Section 7-11-17) for the following reasons:

- The group had concerns regarding the fact that the ordinance did not have an exemption for properties that had low pedestrian impact and were on relatively low vehicular volume streets.
- The development community, while not happy to pay additional costs of sidewalks, supported paying the fee in lieu of constructing the sidewalk so long as the money was used to install sidewalks in places where it was needed. Developers requested more flexibility in being able to pay the fee in lieu of constructing the sidewalk.
- Staff was concerned about maintenance issues that would arise from having sidewalks installed piecemeal. This means that the sidewalks would age at varying degrees and

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need to be replaced at different times, thus increasing the maintenance and replacement costs.

- The development community requested that a more expedient appeal process be developed. Currently they are required to go to City Council for a waiver to the sidewalk requirements.
- The group requested that clarification be made as it relates to sidewalk requirements on private and public streets.

As a result of these concerns, staff began exploring ways of improving the sidewalk requirements. The revisions that you are being asked to approve include most of the concerns of the task force.

The revisions include the following changes:

- Establishing a threshold for requiring sidewalks or a fee in lieu of constructing sidewalks. We recommend that this threshold be 300 Average Daily Traffic (ADT) volume currently or projected for the next 5 years. (Provided the street is not listed on the Pedestrian Thoroughfare Plan.)
- Requiring sidewalks to be constructed on all new and improved streets. A large cost of the sidewalk includes mobilization and grading. When a street is being constructed or reconstructed, the mobilization and grading for the sidewalk can occur in conjunction with the roadway.
- Allowing developers to pay the fee in lieu of constructing the sidewalk unless the sidewalk is on the Pedestrian Thoroughfare Plan.
- Providing for an appeal process that allows the developer to appeal to a committee consisting of the City Manager, or his designee, and two other Department Directors, excluding the City Engineer.
- Clarifying that public and private streets have the same requirements with regard to sidewalks.

In addition, an amendment to the Fees and Charges Manual is requested. She said the amendment would be to add the following sentence: "In the event that a fee is allowed for an economic development project, the developer will be allowed to pay 50% of the fee, provided that the project is eligible for the City of Asheville Economic Development Incentive Grant as defined by the City of Asheville Economic Development Incentive Policy and administered by the Economic Development Director."

Nothing in the revised ordinance would prohibit a developer from installing sidewalk as opposed to paying the fee in lieu of constructing the sidewalk. The developer always has the option of installing the sidewalk adjacent to their project.

The Planning and Zoning Commission approved the revisions to the sidewalk regulations on February 6, 2002. The approval vote was unanimous with the following two suggested changes:

- (1) Allow the developer to pay the fee in lieu of constructing sidewalk if the sidewalk is listed on the Pedestrian Thoroughfare Plan so long as the project is on a N. C. Dept. of Transportation or City of Asheville funded project.
- (2) Request an easement from the developer for future sidewalk installation even if they are exempt from installing the sidewalk or paying the fee in lieu of constructing the sidewalk.

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Staff presented the concept of this proposal at the Development Issues Forum in September 2001 and at the February meeting of the Council of Independent Business Owners. Both groups had a favorable response to the revisions.

Staff requests that City Council adopt the revisions to Section 7-11-7 of the Unified Development Ordinance related to sidewalk regulations and adoption of the amendment to the Fees and Charges Manual.

Upon inquiry of Councilman Dunn, Ms. Ball explained how the \$20 per linear feet was derived, noting that the City feels that amount is very fair.

After responding to several questions from Councilman Peterson, Ms. Ball said that the City is in the process of updating the Pedestrian Thoroughfare Plan and it should be brought before Council in approximately six months.

Mayor Worley noted that one of the uses in the fee in lieu of provisions is to allow us to construct sidewalks in other areas where they are identified.

Upon inquiry of Councilman Mumpower, Ms. Ball said that this ordinance will allow more flexibility in working with developers and it also provides the necessary linkages that we need in the City.

Mayor Worley closed the public hearing at 6:28 p.m.

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

Councilman Dunn moved for the adoption of Ordinance No. 2904. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Peterson stressed that we need to require sidewalks and hoped that City staff will exercise proper discretion where sidewalks should be installed. Even though it looks like we are requiring "sidewalks to nowhere," those need to be built now so development in the future doesn't balk at installing their portion of the sidewalk.

ORDINANCE BOOK NO. 19 – PAGE 528

Councilman Mumpower moved for the adoption of Resolution No. 02-45. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 88

B. PUBLIC HEARING TO CONSIDER THE SALE OF 9-13 BILTMORE AVENUE

RESOLUTION NO. 02-46 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM THE ASHEVILLE AREA ARTS COUNCIL TO PURCHASE 9-13 BILTMORE AVENUE (MINUS THE AIR RIGHTS OVER THE REAR PARKING LOT)

Mayor Worley opened the public hearing at 6:30 p.m.

Field Services Coordinator Ed Vess said that this is the consideration of a resolution authorizing the Mayor to convey 9-13 Biltmore Avenue (minus the air

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rights over the rear parking lot) to the Asheville Area Arts Council in the amount of \$462,500.

On February 26, 2002, City Council scheduled a public hearing for March 12, 2002, and directed the City Clerk to publish a notice of said public hearing in connection with a proposal from the Asheville Area Arts Council to purchase 9-13 Biltmore Avenue (PIN No. 9649.18-40-1091), minus the air rights over the parking lot on South Lexington Avenue, for the sum of \$462,500. The notice ran in the Asheville Citizen-Times on March 1 and 8, 2002, as provided in N. C. Gen. Stat. sec. 160A-475 (4).

Mr. Vess said this property is located 125 south of Pack Square. The property was acquired in 1985 as part of the Pack Square Redevelopment Project. It was leased to the Arts Council in 1987 and they invested

about \$100,000 in the property in return for reduced rent. He said that the City does have a bid in hand for the air rights, which will be coming before Council in their next worksession. The Arts Council has proposed to purchase the property using a cash payment of \$399,000 and financing from the City in the amount of \$123,500. The Arts Council proposal equals the appraised value for the property (minus the air rights). Their investment in, and presence on, Biltmore Avenue has contributed to the redevelopment of the area. Their presence on Biltmore Avenue is consistent with, and complimentary to, the present development in that area and will continue to be an asset for that area in the foreseeable future.

Staff recommends acceptance of the Art Council's bid and that evidence of financing be required within 60 days of the acceptance.

Upon inquiry of Mr. Walter Plaue, Mr. Vess said that the Arts Council will be using a portion of the property to generate income and they will be required to pay taxes on it.

Mr. George Saenger, Chairman of the Arts Council, said that this would allow them to expand their arts and education program in addition to providing a headquarters for the Urban Trail.

Mayor Worley closed the public hearing at 6:38 p.m.

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

Councilman Mumpower moved for the adoption of Resolution No. 02-46. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 90

At 6:40 p.m., Mayor Worley announced a short break.

IV. UNFINISHED BUSINESS:

A. DISCUSSION OF AMENDMENT TO CITY COUNCIL POLICY ON RULES FOR BOARDS AND COMMISSIONS REGARDING U.S. CITIZENSHIP AS A QUALIFICATION FOR APPOINTMENT

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Vice-Mayor Bellamy, Chair of the Council Boards & Commissions Committee, said that the issue regarding U.S. Citizenship as a qualification for appointment to a board or commission was remanded to this Committee. Their charge was to tweak the list received from the City Attorney of boards and commissions having some degree of independence or autonomy. Those boards include the Airport Authority, the ABC Board, the Board of Adjustment, the Civil Service Board, the Historic Resources Commission (HRC), the Metropolitan Sewerage District, the Planning & Zoning Commission, the Regional Water Authority, the School Board, the Tourism Development Authority (TDA) and the WNC Air Quality Board. This list represents 11 out of the 35 boards the City makes appointments to.

Councilman Mumpower, member of the Committee, also stated that there was an original unanimous vote in favor of requiring citizenship for boards and commission that make decisions for citizens. He said the Committee did not vote in favor of requiring citizenship of advisory boards.

Vice-Mayor Bellamy confirmed Councilman Mumpower's statement that the Committee originally made the recommendation that governing and policy-making boards were the ones they recommended U.S. Citizenship.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the 11 boards perform a governmental function; the chief criterion used to identify those boards was whether they had the power to consider and determine the rights of others in a way that could be final, without recourse to the City Council or some other City board. In his follow-up memorandum to Council dated February 19, 2002, he recommended the HRC be removed from consideration for application of the citizenship requirement because its decisions are appealable to the Board of Adjustment. That recommendation stands to be consistent with the other boards. Also in his memorandum, he recommended the TDA be removed because its function is only marginally political in the sense that it is important for purposes of the law, and because legal aliens play an important role in the local tourism industry. With regard to the TDA, he would leave that up to Council's discretion to keep it on the list or remove it.

When Councilman Peterson asked why the Planning & Zoning Commission was included on his list, City Attorney Oast

said that they have final approval authority with respect to some subdivisions and under statute they can perform some of the functions of the Board of Adjustment, if Council assigns those functions to them.

When Councilman Peterson asked if wording on the proposed amendment had been drafted, Vice-Mayor Bellamy said that City Attorney Oast would draft that amendment based on Council's direction tonight.

Upon inquiry of Councilwoman Jones, City Attorney Oast said that some of the 11 boards Vice-Mayor Bellamy named have other bodies making appointments to those same boards and they are free to establish their own qualifications for appointment.

Councilman Mumpower said that since the February 19, 2002, privileged and confidential memorandum from City Attorney Oast to City Council is the only written material before Council for discussion and is therefore their working document, Mayor Worley asked for a motion that authorized the release of this privileged memorandum. This motion was seconded by Councilman Mumpower and carried unanimously.

The following individuals spoke in favor of amending the City Council policy on Rules for Boards and Commission to require U.S. Citizenship as a qualification for appointment to boards and commissions:

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Ms. Helen Morrison, City resident
Mr. Walter Plaue, Buncombe County resident
Mr. Zed Mackey, City of Asheville property owner
Mr. Terry Elniff, City resident
Mr. Robert Grant, Veteran
Mr. Danny Roberts, City resident
Mr. Don Yelton, City taxpayer
Mr. Chad Nesbitt
Mr. Cecil Beumer, City resident
Mr. Bill Stamey, City resident
Mr. Tom Glanville, City resident
Ms. Mary Glanville, City resident

The following individuals spoke in opposition of amending the City Council policy on Rules for Boards and Commission to require U.S. Citizenship as a qualification for appointment to boards and commissions:

Mr. Bud Howell, City resident
Ms. Pauline Kaltsunis, member on the Greenway Commission
Ms. Hazel Fobes, City resident
Ms. Sharon Martin, City resident
Ms. Rebecca Campbell, City resident
Mr. Robert Fitch, City resident
Mr. Peter Salvucci
Mr. John Gaynor, City resident
Mr. Willie Rosencrans, City resident
Ms. Allie Morris, City resident

Councilman Dunn said that he raised this issue and it had nothing to do with fear or the terrorist attack on September 11, 2001. He felt that "our founding fathers would be happy to see everyone in this room upset and wanting to take care of minorities. In 1776 a lot of people decided they were tired of being told what to do by someone across the ocean. It's called self-determination. That is what the revolutionary war was all about – self-determination. This is not an issue – it's a principle. This country has gotten to the point where it wants to be fuzzy and feel-good and it's forgotten some of the principles on which it was founded. Self-determination was one of them. The newspapers, the Asheville Citizen-Times and the Mountain Xpress love to express their attitudes. This time I think they are wrong. Their own polls showed over 400 people wanted to see this change. Only 20 said they didn't want to. I heard the comment about a lot of hurt people in this City. I think you will hurt an awful lot of people if you don't vote for this. I have been sitting here listing to the press and have been reading the Letters to the Editors for about two months. People ask me why I brought this up. I did not bring this up to attack a member who was on the Board of Adjustment. I never really attacked him personally. I attacked the principle. Why did I bring it up? I felt the people in Asheville needed to know about it. A lot of them did not know that this is a policy that we have been doing for a long time. We have a politically correct country now and sooner or later we are going to have to start thinking about the basics on what this country was

founded on. This policy discriminates. There are people on this Council and others who do not like discrimination and I don't either. This policy, if we don't pass it, discriminates on people who are U.S. citizens. They have lived here, worked here and pay their taxes and they can't be on a board. This is discrimination when we are allowing and worrying about a handful of people who can become a citizen and be working on everything we hold dear. Then what is the problem? We are taking about a few years to become a citizen. Is that asking too much? We all stood up and said the Pledge of Allegiance to the flag. We put our hands across our hearts and said "I pledge allegiance to the flag of the United States of America." We weren't talking about the 'United Nations.' We were talking about the 'United States of

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America.' 'One nation under God.' It's not talking about a bunch of nations – it's talking about "one nation", our nation. There are hundreds of thousands of American people who have given their lives to keep this country the way it is. We are taking God out of it too. 'One nation under God.' God sure doesn't seem to have much of a place anymore in this country and we seem to be too worried about a lot of other things. Talk is cheap. Go over to Normandy, France, and you look at those dead Americans that came across on the Normandy invasion. I'd like you to ask them what they thought about this. They would tell you they didn't storm ashore to get their heads shot off for someone who doesn't belong to this country and is going to make decisions for them. The soldiers that defended this country from 1776 to Afghanistan do know what is involved here. Go ask them. You have heard some things about we want the best folks in Asheville to be on our boards. I do too. I want Asheville to be the best it can be. But this is an elitist idea because of the fact that we put Asheville's needs way above what that flag stands for – citizenship. Where do we get off on thinking Asheville is more important than what this country was founded on. You will also hear that this is not a big deal, not a big issue – that Council can change it anytime they want to. And that's true. It can be changed. But, it's a principle. When are we going to start taking a stand on things and how much more are we going to give away in this nation that we haven't already given away. Before you know it, there's not going to be anything left to give away. Property rights, family issues, family values – they don't seem to have as much of an issue now as it used to be. I've heard that a lot of people are going to be hurt. I think if this isn't passed, there are going to be a lot of citizens in Asheville very upset. It's not like we're banning people from these boards. We have 38 of them in the City and we're only talking about 11. We're not trying to keep people from having a say-so. They can walk up here and stand at the podium and say anything they want to say. They can go to church. They are protected under our Constitution for everything so why are we so worried about this one little issue. You're right. We have other things in the City more important. I am proud of the people that came up here. These veterans. Those folks in the USS Asheville who we just heard about that died in World War II. Let's think about what they did, what their sacrifices have been. One man made a comment about what is so significant about a piece of paper. I'll tell you - it's called citizenship and you go ask our veterans what they paid the price for. They may give you a different answer than what significance really is. Significance is that they gave their lives to defend this country and that's darn significant. I've heard we are not really serving the needs of the residents of Asheville. Where is Asheville? It's in the United States of America. I don't think this is divisive. I think if we don't vote for this, it's going to divide the City a little more. Again, what is so difficult about being a citizen? What is so bad about this? What is so wrong for someone to just simply raise their right hand, learn what the Constitution is and join the rest of us – all of us in this room. We welcome them, but let's draw the line in the sand somewhere. If we don't draw the line in the sand somewhere, we're not going to have anything left. I was asked to apologize to this Council and to this City for my issues. I'll never apologize to anyone for what I've said. And I will say one more thing 'God Bless America.'"

Councilman Mumpower felt that all things should be discussed. He said we have worked out a compromise. "When thing first landed on the table, it was no non-citizens on any boards or commissions. We narrowed that down by 1/3 to what to some of us is the core of the issue. Roughly 20 of our boards are advisory boards and a non-citizen can serve on those. My personal belief is that those who have governmental authority over citizens should in fact be citizens. I have trouble looking beyond that. Somewhere between disenfranchising minorities and disenfranchising majorities is a middle ground. We are not going to support minority issues by disenfranchising our majority. We have to work together. I think this is an imperfect effort to move in that direction. We are a community of standards that has worked well for the most part. Some of us are interested in validating and improving that community and hesitant to support the drift toward, what we view, is a less constructive course. I think we didn't spend a lot of time on this and I'm sorry it's become divisive but I've been proud of this Council's effort to try to find a reasonable, practicable place to land on. I frankly, do not think that this will contribute to the

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deviceness in the community. Whether we wished it would have come up this way or not, it has, and I've enjoyed the opportunity to work with these folks and find a good place to land."

Councilman Peterson felt this issue "has gotten sidetracked by a lot of symbolic and divisive issues. I think we've got 500 to 1,000 people on boards and commissions and we've had probably one non-citizen. We probably may not have another one apply for another 10 years, but it's a very symbolic issue and a hot button issue. I know folks feel very strongly about it. I hoped this Council would focus on more practical matters we face and significant problems, but symbolic issues are hard to get away with

once they've been opened up. There was a lot of criticism that the prior Council spent too much time on issues that weren't affecting folks on a daily basis. I also think that if this is adopted, we're going to have lawsuits and we're going to waste a lot of money. Our attorney has informed us that these kinds of issues frequently attract costly lawsuits. So, the issue is, if we adopt this policy, are we going to lay off a fireman or layoff a policeman to defend against it. Because, we all know, Asheville is the kind of City that attracts an awful lot of lawsuits. I just wish we could focus on more practical issues and we could actually solve some of the City's problems that we actually deal with on a regular everyday basis. I also think it sends a message. Some of the comments are about we don't like aliens making decisions for us. In Sunday's paper I saw where French company was looking to bring several hundred jobs here. Volvo, Square D - I think we are potentially sending those folks a message saying we don't want your jobs here because we don't like people in foreign countries or even foreigners living here telling us what to do. I think that if we're going to adopt a policy, I don't see the distinction between some of the boards. They are all very important boards and commissions."

Councilwoman Jones said she "was grateful for the subcommittee's work on moving towards a compromise. I think when I first heard this discussion I thought the compromise would be a much more limited body. From some people's perspective, 1/3 is a small number. In my perspective, it's a large number. I think I do want us to continue to have that type of dialogue and try to come together. I do believe that how we go outside these doors, whatever happens on either side - I think it's our choice how much we separate from each other. It's our choice how hurt we are. And that's going to be a choice I personally make, one way or the other." She said in Councilman Mumpower's prayer, it was a call to see the best in others. "I think that I believe that everybody on this table is struggling through that. It's unfortunate that we are not going to have the same vote, but it is belief that's where we are all coming from - to see the best in others. The thing that made me so sad after September 11, regardless of how you felt about the comments that were made, was that all around the country communities were coming together. They were embracing each other and holding each other's hands and crying on each other's shoulders. We somehow managed to make each other made. At that moment, we should have been united nationally. So it's our choice whether we hear this one way or the other. I do hope we can go forward like that. I do think this opens us up for legal issues and anybody that was on the campaign trail knows that I really hate litigation and any way that we can cut it off at the pass, we have a good stewardship to the City to try to do that. That's my personal belief and part of the frustration that I express. I really want to understand legal matters to protect the City's resources down the line. That's a huge concern for me - the legality of it. In terms of the founding fathers and founding mothers, I think self-determination is a big part. And I think part of what we need to do is to be able to vote our conscious. If you vote your conscious, you might get voted out of office. That's okay. That's about being a public official with integrity, with conscious. I think on either side of the fence is that what you probably want at the end of the day. You want somebody with a conscious that is working from a place of integrity. I hope everybody can be open to all seven of us in that regard. I'm not saying you have to vote for all of us, but understand where we are coming from."

Vice-Mayor Bellamy said as Chair of the Boards and Commissions Committee we were presented with an awesome task of deciding on what boards and what commissions we could possibly comply with the request regarding U.S. citizenship. "There are 35 boards that the City

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actually appoints to. Of those 36 boards, 206 people are appointed by the City of Asheville. That is not counting the ones who are appointed by other entities - just the ones that solely are appointed by this City Council. The seven of us being up here represent 69,739 citizens and in that process we don't always go with everyone's views. Because there are close to 70,000 people in our City, we are asked to make decisions on behalf of them every other Tuesday, and sometimes every Tuesday. In the process of decision-making, some decisions that we make, everyone doesn't agree with and some decisions we make, some people do agree with. Someone told City Council 'it's your job to counsel the people.' Then tonight someone came in and said we're serving all the residents of the City of Asheville. That means that some of the citizens who we serve may be in the minority and some may be in the majority in decision-making processes. It's important tonight that as we cast our vote that everyone understands there are some people in our community who believe in whatever way that we choose to vote tonight, that there are people who believe in either non-citizens, or all citizens. So it's important that as we have this awesome task to make these decisions, that we do represent all citizens and all citizens don't agree with some of the people who come before you and stand. We get e-mails, faxes, phone calls, and we go out and talk to people - we just don't stay in the ivory tower. We believe in grassroots efforts and in talking and communicating. Carl will even invite you for breakfast - he even pays for it. What I'm trying to say is we reach out and so it's imperative that you hear where we're coming from and hear the hearts of this Council that we are here to serve you. And that the decision that we make is not based on people who come just before us today or just before us in the moment. It's about decision-makings and hearing people at all times - in the grocery stores, in the car wash, the cleaners, the day-cares, it doesn't matter. We're here for you. So as we make our decisions tonight, please keep that in mind."

Councilman Ellis said that he is a veteran, having served four years during the Korean War and so he does come from that perspective. "Asheville is facing many serious challenges tonight and to spend time debating whether a taxpaying resident of Asheville or Buncombe County must be a citizen to voluntarily contribute their time, talents and efforts to improve our lives is at

best questionable. Earlier this year, Council authorized adding a question about citizenship to every application for any board or commission. On an individual basis, along with all other qualifications, I feel the applicant's citizenship can be considered. I have serious reservations about approving a policy that prohibits qualified city and county residents from serving based solely on that one qualification. I have a few examples to share. We are blessed to have the world headquarters for Volvo International in Asheville. Volvo is a Swedish company and if the president of Volvo is willing to serve on our Economic Development Board and try to encourage additional European companies to locate here, that individual has my vote to serve. Some in this room may remember when American Enka employed over 5,000 area residents. Enka was owned and built by a company from the Netherlands. We welcomed their investment in our community. Similarly, Akzona, the corporate giant that built their world headquarters in downtown Asheville was owned by a Danish company. Would we exclude an official from that company from serving on one of our boards or commissions? We want and need jobs in Asheville. If we approve this policy, what message are we sending to companies like BMW, Michelin and hundreds of others regarding locating their companies in Asheville. I have heard it said that anyone not supporting the citizenship requirement is not patriotic and un-American. I feel differently. To tell the world we will not welcome foreign companies and jobs to Asheville along with the participation of their company officials is shortsighted. Americans pride ourselves on being inclusive not exclusive. Let me repeat, I feel by adding the citizenship question to the application form, this Council has already taken all the action necessary and I cannot support the proposal that citizenship is mandatory. In addition, it has brought up that we truly have a potential legal problem and I'm simply not willing to vote for something that will put the citizens of this City at risk for money that is just totally being wasted."

Upon inquiry of Councilman Dunn, City Attorney Oast said his reading of the cases that he has looked at suggest that there is a political function exception to the strict scrutiny test that

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may apply in situations involving appointments to boards and commissions that exercise some degree of authority and final, in the sense of administrative finality, over folks who are citizens. That really does draw from the recognized principles of self-determination. What he provided Council with is a list of boards and commissions with respect to which he felt the policy would be legally defensible. He couldn't guarantee that the City would win if we were sued and he couldn't guarantee that the City wouldn't get sued. The best he could do is to put the City in a position of legal defensibility.

City Attorney Oast concurred with Councilman Peterson's statement that other cities have been sued over issues similar to this and potentially have gone to not just Superior Court, but courts of appeals and supreme courts. However, he said he didn't think this issue has been addressed by appellate court in North Carolina.

When Councilman Mumpower asked if there have been successful suits filed against policy changes similar to this, City Attorney Oast said there have been cases that have recognized that legal aliens have certain rights of citizenship, even though they are not citizens. Where a governing body has taken some action to limit those rights, such as by service like this, there have been, in some cases, successful lawsuits. He didn't remember a case exactly on point with what City Council is proposing now.

Vice-Mayor Bellamy asked if the question on our application form of whether you are a U.S. Citizen or not is discrimination. She doesn't want the City to be in a position of having something on the application form and then still exclude people based on what is on the form. She would prefer the question not be on the form. She wanted it to be clear to people when they apply for a board. City Attorney Oast said that the key thing he would caution Council about is adopting a policy that is a blanket exclusion of non-citizens from all boards. He felt the citizenship question is an appropriate question to ask.

Councilman Dunn agreed with Vice-Mayor Bellamy in that we will discriminate against a lot of people who are citizens of this country. He was more worried about what they think than even our good friends who come over and bring business. These people came to this country to bring business to the City because they know this is the fairest and greatest, most economically healthy nation in the world. That's why they came. He doesn't think we will scare anybody off by changing this policy. When they come, they realize there are a few rules we have to follow. He didn't think that's sending a bad message.

Mayor Worley said that "based on the way this Council and past Councils have done business, this issue has no significance. Let me explain what I mean. First of all, it has significance. It has significance to each one of you who have come and spoken for or against the issue. But what is that significance based on? It's based on a feeling. It's based, perhaps for many of you, on the waive of patriotism that is sweeping our nation – and we should be patriotic. We have every reason in the world to be patriotic. For some of you the significance is based on the fear of discrimination. Discrimination against a class of people who are amongst us and who contribute to us in many, many ways. So yes, it has significance, but in the context of the way this Council and the past Councils have done business, it has no significance, because it is a policy decision. It is a policy that no matter what we do in terms of that policy, we can do something different immediately thereafter. We can adopt this policy tonight and tomorrow we can appoint a non-citizen to a board. We cannot adopt this policy tonight and tomorrow we can refuse to appoint a non-citizen to a board. So, in that context, it has no significance. I have really struggled in my own mind over what position I

would take with respect to this issue. As soon as the issue came up I realized it had no significance in terms of the City Council's actions. I've also recognized that the question or the issue of citizenship is a very popular one to discuss. It's easy to lose site of the context of the issue and jump on the patriotic bandwagon and wave the flag and say 'we don't want any non-citizens participating on our boards and commissions.' It's real easy

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to do that in particularly in light of September 11, it's even easier. Is citizenship a consideration, and a serious consideration? I believe it is. Is it something we should put into our policy? I don't think so because of what I said a moment ago where I said it has no significance. I don't think so because we're not doing it across the board. I don't think we ought to separate out our various boards and commissions. I know there are legal reasons to do so. If we're going to adopt the policy like that, we ought to adopt it with respect to every board or commission, or we ought to adopt it to none of them. I think it's a little sweeping and over-broad to adopt it to all of our boards and commissions, so I don't necessarily support going that way. We have wasted a lot of time. We are closing in on the two hour range tonight, about an hour and forty minutes by my calculation. We have a lot of very important issues that do have significance to this Council and to this community. I think we ought to be addressing those issues. We've got serious budget problems. We've got other things on the horizon that we have needs for. We don't need to spend a lot of time. Okay, it's easy to say we've spent the time, let's pass this thing and get on with it. But I don't think the time stops there. I think even though I am very satisfied with our attorney's research and opinion that we would win a lawsuit, I think there is a risk that we would suffer a lawsuit. That's more time and more money and more attention directed away from the important things that are facing us. So those are the reasons that I will not support a change in the policy. Does that mean that I want to go out and appoint a non-citizen to our boards and commissions? No, it means that I will continue to take, as I have, citizenship as a serious issue and one of the criteria upon which I base the qualifications that I will select someone to a board or commission. I think each one of us on Council has the right and the duty and the obligation to develop our own set of criteria and qualifications. And citizenship will be certainly one of my criteria. I don't think any member of this Council who either votes in favor of changing the policy, or who votes against a change in the policy should be either held up or ridiculed. These are matters that are important to you, in terms of your perception. It's important to the Council in terms of how we do business. I think we need to get on with the business of taking care of our City. I've given you my criteria. I am concerned about citizenship – don't misunderstand me. I am concerned about citizenship and I am as patriotic as anybody in this room. I just don't believe it's in the best interest of the City of Asheville to adopt the change in the policy.”

Councilman Mumpower moved to approve a policy change that makes U.S. citizenship a requirement for participation on the following decision-making boards, authorities and commission: Airport Authority, the ABC Board, the Board of Adjustment, the Civil Service Board, the Historic Resources Commission (HRC), the Metropolitan Sewerage District, the Planning & Zoning Commission, the Regional Water Authority, the School Board, the Tourism Development Authority (TDA) and the WNC Air Quality Board. This motion was seconded by Councilman Dunn. Said motion failed on a 3-4 vote with Vice-Mayor Bellamy, Councilman Dunn and Councilman Mumpower voting “yes” and Mayor Worley, Councilwoman Jones, Councilman Ellis and Councilman Peterson voting “no.”

Vice-Mayor Bellamy moved to remove from the boards and commissions application the questions of “Are you a U.S. Citizen?” This motion was seconded by Councilman Mumpower.

Councilman Brian felt that question should remain on the application because it is a factor we should consider. He personally couldn't imagine appointing a non-citizen to an important regulatory board and I would like to know that. That will be only one of many factors in his decision.

Councilman Mumpower felt it should be up-front or not at all. He made a promise to any non-citizen who wants to be appointed to one of our boards, he won't pay any attention to that question. He said they are welcome based on the earlier vote.

Vice-Mayor Bellamy agreed with Councilman Mumpower. On the application we currently ask race, sex, address and if you are a City or County resident. We do take that

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criterion into consideration when we deliberate on appointments. It's clear and it's important. If we ask if they are a U.S. citizen and we say we are not going to appoint them, I think that's discrimination. If we keep the question on there, we should consider them just like any other applicant. If it's not an issue enough to change the policy, it shouldn't be on the application.

Councilwoman Jones interprets this differently than Vice-Mayor Bellamy. She feels the U.S. citizenship question is an important factor. In terms of the regulatory boards, she felt there is a higher bar in terms of some of the requirements, so she would ask harder questions.

Mayor Worley felt the question should remain on the application because it is one of the criteria we look at and he doesn't want to make decisions in the absence of knowledge of some qualifications.

The motion made by Vice-Mayor Bellamy and seconded by Councilman Mumpower failed on a 2-5 vote, with Vice-Mayor Bellamy and Councilman Mumpower voting "yes" and Mayor Worley, Councilman Dunn, Councilwoman Jones, Councilman Ellis and Councilman Peterson voting "no."

At 8:40 p.m., Mayor Worley announced a brief recess.

V. NEW BUSINESS:

A. ORDINANCE NO. 2905 - ORDINANCE PROHIBITING PEDESTRIANS TO STAND ON ANY CITY STREET OR MEDIAN AND SOLICIT MONEY, EMPLOYMENT, BUSINESS OR A RIDE FROM PASSING OR STOPPED MOTORISTS WITHIN THE CITY LIMITS

Deputy Police Chief Ross Robinson said that this is the consideration of an ordinance prohibiting pedestrians to stand on any city street or median and solicit money, employment, business or a ride from passing or stopped motorists within the City limits.

The Asheville Police Department has determined that there is a potential danger allowing persons to solicit money, employment, rides or business from the streets and medians within the City. Currently, there are many busy intersections where persons regularly use to beg for money, rides or employment. It is the Asheville Police Department's (APD) contention that this type of behavior near a busy intersection creates a dangerous situation for the pedestrian and the motorists.

This ordinance will make it a class 3 misdemeanor and a fine no more than \$500.00 for a pedestrian to stand on any city street or median and solicit money, employment, business or a ride from passing or stopped motorists within the City limits.

In addition, APD has determined that at certain intersections, homeless persons have formed "gangs" to enforce the exclusive right to beg at certain intersections and will resort to violence if another group or person tries to beg at said intersection.

The APD has checked with the N. C. Dept. of Transportation and they fully support this ordinance.

Currently, the cities of Charlotte, Gastonia, Wilmington, Greenville and Garner have some form of a street solicitation prohibition. Durham is currently in the process of adopting such an ordinance.

City staff recommends approval of the ordinance.

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Councilman Peterson asked exactly where is the dividing line of what is getting in the street and what is off the street. Deputy Chief Robinson said they try to apply a commonsense approach to that question. They are frequently governed by what the right-of-way is of the highway and we generally know the road features of how many feet that is, but we realize private property owners can grant someone permission to be on their property. There is a certain amount of judgment involved and a certain amount of right-of-way expectation. They are trying to determine that everyone is safe and not in harms way. They realize there are a lot of well-intentioned people and organizations collect money, but we feel they can find a safer location by moving onto private property, with the permission of the property owner.

Deputy Chief Robinson agreed with Councilman Peterson in that there is nothing to prevent people from advertising on private property.

Mayor Worley asked if, for example, school groups on sidewalks notifying people of a car wash would be prohibited. Deputy Chief Robinson said that would not be prohibited because it makes specific allowance for use of a sidewalk.

The following individuals spoke in favor of the ordinance and made various comments, some being, but are not limited to: requesting Police restraint when issuing citations or arrests, give pedestrians a two week warning period, need money to take care of the indigent, and this ordinance is being proactive before someone is injured:

Mr. Fred English, City resident
Mr. Danny Roberts
Mr. Mickey Mahaffey, City resident and representing Peacemakers

Ms. Hazel Fobes, City resident
Mr. Walter Plaue
Mr. Cecil Beumer, City resident

Mr. Robert Grant and Mr. Salvucci spoke in opposition of the ordinance for various reasons, some being, but are not limited to, lay-offs and plant closing in Western North Carolina will drive homelessness up, churches can't help everybody, jails are already over-crowded, and wait until the economy picks up and then pass the ordinance.

Mr. Karl Rogozenski, District Director of the Muscular Dystrophy Association, understands the need for an ordinance of this nature, but since 1954 firefighters have collected funds for Jerry's Kids on the street. Asheville firefighters are strong good-will ambassadors for the City of Asheville. The organization does not put their staff members, volunteers, patients or their families on the street. We use safety professionals. We also have extensive training and conferences where we meet and emphasize safety. We will not compromise the safety of these professionals. Firefighters do not stop traffic – red lights do. And once they are stopped, then they solicit. We have helped craft ordinances where there are exceptions. He would be disappointed in seeing a blanket ordinance adopted that will eliminate firefighters from soliciting for his organization. He suggested City Council table this issue. He offered his organization's resources to help Council craft an ordinance to fit it to the needs of the firefighters of Asheville. They provided \$13,327 last year and they are a source of pride for the City of Asheville.

City Attorney Oast gave Council a letter from Mr. Gene Hampton, who had to leave the meeting. Said letter hoped "this Council will act with both courage and compassion and restore some 'faith' in our government."

Councilwoman Jones, member on the Housing & Community Development Committee, said that they have proposed to not only fully fund the Hospitality House, but funding them at a

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higher level recognizing the extent of the problem. She knows this is a small step, but it may help.

Upon inquiry of Councilman Peterson, Assistant City Attorney Curt Euler said that he did review the ordinances in Raleigh, Charlotte, Gastonia, and other North Carolina cities and saw no exceptions for charities. City Attorney Oast also noted that he felt there might be some legal difficulties in discriminating between charities and other types of organizations.

Councilman Peterson did wish we could provide something for the firefighters and other non-profit groups, but understood.

When Councilman Mumpower asked that the procedure would be for non-profits to ask for an amendment to the ordinance for exceptions, City Attorney Oast said they could contact the City Attorney's Office, the Police Department or an individual Council member.

Vice-Mayor Bellamy recently attended a conference with the Secretary of Housing & Urban Development and he said that HUD is working on homelessness. Our citizens need to write Secretary Martinez to get more money for our community. In President Bush's proposed budget for 2003, there is \$1.13 Billion set aside for homeless assistance grants. We need to get our share. Also there is no money allotted for drug elimination grants. We need those grants because it helps the police officers and Housing Authority deal with drug elimination to provide programs and alternatives to homelessness. She encouraged people to write to Secretary Mel Martinez, 451 7th Street SW, Washington, DC, 20410 - Phone 202-708-0417.

Councilman Mumpower said that one unfortunate consequence of this ordinance is that it does penalize groups that depend on this kind of activity. He encouraged Mr. Rogozenski to meet with staff and present them with some legitimate exceptions.

Councilwoman Jones said the public safety and the training is a really strong case and if there is a way to present that to staff, she would be open to hearing an amendment.

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

Councilman Ellis moved for the adoption of Ordinance No. 2905. This motion was seconded by Councilman Mumpower 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 February 22-28, 2002: George Benning (Water), Viola Thompson (Inspections) and Josef Zaengerle (Water).

The following claims were received by the City during the period of March 1-7, 2002: Charles Norman (Water), William Yelton (Civic Center) and Ernest Conner (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

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Campaign Finance Reform

Upon inquiry of Councilman Peterson of the status of the 3 member Council subcommittee, Mayor Worley said that he has one more member to ask if they would serve.

Campaign Finance Reform

Mr. Lewis Langford, representing Citizens for Campaign Finance Reform, presented City Council with a petition containing 194 signatures. Said petition read "Whereas, the cost of running for and winning elective office has been escalating throughout our nation, and Whereas, this escalation has reached to municipal election level, and Whereas, this escalation essentially limits access to public office to those with wealth or access to the wealth of others, and Whereas, this escalation seriously erodes the principle of one person, one vote. We citizens of Asheville, North Carolina, do hereby resolve to petition the City Council to appoint a Citizens Committee to study alternative methods of municipal campaign finance, and to recommend adoption of a specific ordinance for comprehensive campaign finance reform to the City Council by July, 2002." He felt the 3 member Council subcommittee being established to determine the parameters of study is a mistake. He felt the citizen study committee should be appointed as soon as possible, with no limits.

Comments from Mr. Fred English

Mr. Fred English, Haw Creek resident, was disappointed that City Council did not vote in favor of requiring U.S. citizenship on boards and commissions.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:48 p.m.

CITY CLERK

MAYOR