

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

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 02-154 – RESOLUTION OF APPRECIATION TO ROBERT E. SHEPHERD

Mayor Worley read and presented a resolution of appreciation to Robert E. Shepherd who is retiring as Executive Director of the Land-of-Sky Regional Council.

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B. PRESENTATION OF THE MERIT AWARD

Mr. Craig Van Dussen, Branch Manager of WK Dickson in the Asheville Office, and Mr. Edward Czynson, Branch Manager of WK Dickson in the Atlanta Office, President of Georgia American Society of Landscape Architects, and representative for the American Society of Landscape Architects, presented to Mayor Worley, Chair of the Recreation Board Frank Fishburne and Parks and Recreation Director Irby Brinson, the Merit Award they received for their design of the French Broad River Park Phase IV Master Plan.

C. PRESENTATION OF THE DESTINATION OF DISTINCTION AWARD BY THE NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. John Hildreth, representative from the National Trust for Historic Preservation, presented the City with the Destination of Distinction Award by the National Trust for Historic Preservation and briefed Council on what this designation means to the City of Asheville's preservation community and to the economic benefits of our City and County.

Ms. Martha Fullington, Chair of the Historic Resources Commission of Asheville and Buncombe County (HRC), along with members of the community, briefed Council on the positive impact historic preservation has had in Asheville. They explained how historic preservation increases property values, how it increases tax revenues, how it creates jobs, how it relates to smart growth and how it maintains our sense of place.

A brief discussion occurred regarding the possible reorganization of the HRC. Ms. Fullington explained why the HRC should not be reduced from its current 14 members to 7 members and said that they are discussing this with the Director of Planning and Development. Chief Planner Gerald Green explained that a focus group has been formed which will meet to discuss how to improve the efficiency of the Historic Resources Division.

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II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 10, 2002

B. RESOLUTION NO. 02-157 - RESOLUTION FIXING DATE OF A PUBLIC HEARING ON OCTOBER 8, 2002, ON THE QUESTION OF VOLUNTARY ANNEXATION OF PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, SECTION 3 AT BILTMORE PARK

Chief Planner Gerald Green responded to a concern from Councilman Dunn who asked if the City was being fair to require developers who develop property within the City to mitigate traffic if there aren't any similar requirements to parties who are outside the City who request annexation.

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C. RESOLUTION NO. 02-158 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH APAC CAROLINA INC. FOR CONTRACTED PAVING 2002-03

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. for the project known as "Contracted Paving 2002-2003".

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose eight streets to be resurfaced based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for resurfacing Maney Avenue, Linden Avenue, Julia Street, Heritage Drive, Lionel Place, Guinevere Court, Galahad Drive and Compton Drive.

Money for this project will come from the \$600,000 allocated to the Public Works Department's operating budget for service priorities for Streets and Sidewalks.

The project was advertised for three weeks. The Engineering Department received very competitive bids on Friday, August 30, 2002. Three bids were received and opened. One bid was from APAC Carolina Inc. in the amount of \$215,714.35, the second bid came from Tarheel Paving Company in the amount of \$229,049.06 and the third bid came from Precision Contracting in the amount of \$306,390.00.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents. All bids were reviewed by the Office of Minority Affairs for compliance with the City's minority business goals. The bid by APAC Carolina Inc. was found to be in full compliance and was deemed as a responsive bid.

Due to the very favorable unit prices received, City staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. in the amount of \$215,714.35 for the project known as Contracted Paving 2002-2003.

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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.

Councilman Peterson 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 RELATIVE TO REZONING PROPERTY AT 738 TUNNEL ROAD FROM RM-6 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2957 - ORDINANCE TO REZONE PROPERTY AT 738 TUNNEL ROAD FROM RM-6 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 6:09 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to rezone property located at 738 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Highway Business District. This public hearing was advertised on September 13 and 20, 2002.

The applicant, Norman Lizzaraldi, is requesting rezoning of approximately half of the 0.65 acre (PIN No. 9658.11-77-0013) split zoned property to Highway Business District. The southern portion of the property (abutting Tunnel Road) is currently zoned Highway Business. The requested rezoning would permit the northern portion of the lot to be used for offices or other commercial uses supported by the automobile traffic on Tunnel Road. Access to the portion of the property to be rezoned is via Mountain View Road off Tunnel Road.

Two buildings are located on the property. Both are currently used as offices; the one on the residentially zoned portion of the property has a residential appearance but has been used as an office building for approximately 9 years. The requested rezoning would permit the office use of this building to be made conforming. The portion of the property to be rezoned is abutted by residential property, both single family and multi-family, on the north and west. Commercial uses abut the property on the east and south. This portion of the property is buffered from the abutting residential properties with existing vegetation and by changes in topography. Any future redevelopment of the property would require compliance with all applicable development standards, including buffering, lighting, and off-street parking. Given the size of the property, any redevelopment of the site would be limited.

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 738 Tunnel Road from RM-6 to HB.

Mayor Worley closed the public hearing at 6:15 p.m.

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. 2957. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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B. PUBLIC HEARING RELATIVE TO REZONING PROPERTY AT 400 CARIBOU ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2958 - ORDINANCE TO REZONE PROPERTY AT 400 CARIBOU ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 6:17 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone property located at 400 Caribou Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on September 13 and 20, 2002.

The applicant, Robert Tucker, is requesting rezoning of the 0.69-acre parcel (PIN No. 9657.13-13-6778) in order to redevelop the property for uses permitted in the RM-16 District. The purpose of the RM-16 District is to permit a full range of high-density multi-family housing types along with limited institutional, public and commercial uses appropriate in high-density residential areas.

Two existing buildings are located on the property. One is an abandoned mobile home on the eastern portion of the site while the other is a former nursing home that contains nearly 5,000 square feet of space. The property is bordered by three rights-of-way, only two of which actually have streets built in them (Caribou Road and Booker Avenue). The site's main frontage is on Caribou Road, however, the parcel is a through-lot with frontage on Booker Avenue as well. Caribou Road functions as a major north-south collector street running parallel to Hendersonville Road providing access to a number of neighborhoods in the area.

This property is located within the City limits in an area that is predominantly residential. The properties immediately adjacent and across Caribou and Booker are zoned RS-8 as is the majority of the surrounding neighborhood save for a group of vacant properties zoned Neighborhood Business District located a few blocks southwest of the property at the intersection of Shiloh Road and Kent Street. The property is also located in a mobile home overlay district. The existing land uses in the area include single-family detached homes as well as mobile homes.

The applicant had recently requested to rezone this property to Neighborhood Business District, but withdrew his request at

the City Council's public hearing on May 28, 2002, due to significant neighborhood opposition. During the review period of that rezoning process, City staff had originally recommended that the applicant withdraw and refile the rezoning as a request for RM-16, since staff thought this District would be a more appropriate one due to the likely traffic impact generated if the property was rezoned to Neighborhood Business District and used primarily for office use. The applicant also met with representatives of the neighborhood prior to filing the current rezoning request to discuss the possibility of RM-16 zoning for the property.

City staff feels RM-16 is an appropriate district for this property since it would remain zoned residentially, but the existing building on the site could be retained and used for an economically viable small-scale institutional use, like a child or adult day care center or assisted living care facility, or as multi-family residential units. In addition, the traffic generated by uses permitted in the RM-16 would likely be considerably less than uses in a business district. As such, staff recommends approval of the request.

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The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 400 Caribou Road from RS-8 to RM-16. Planning staff recommends approval of the request as well.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast explained why he did not feel that rezoning this property would constitute spot zoning.

Mayor Worley closed the public hearing at 6:27 p.m.

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

Councilman Peterson moved for the adoption of Ordinance No. 2958. This motion was seconded by Councilman Ellis and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO REZONING PROPERTY AT 169 STARNES COVE ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

ORDINANCE NO. 2959 - ORDINANCE TO REZONE PROPERTY AT 169 STARNES COVE ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

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

Mr. Alan Glines, Urban Designer, said that this is the consideration of rezoning property located at 169 Starnes Cove Road from RS-4 Residential Single Family Medium Density District to Neighborhood Business District. This public hearing was advertised on September 13 and 20, 2002.

The request is for the rezoning of a .76-acre tract (PIN No. 9618.19-72-3414) in the City's extraterritorial jurisdiction (ETJ) from RS-4 to Neighborhood Business District. Harold and Susan Hoglen who reside at 55 Old Starnes Cove Road own the property.

The properties to the north, east and south are zoned RS-4 (Residential Single Family 4 units per acre). The properties to the west are outside of the City's ETJ area. The parcel is located at the intersection of Pisgah View Road and Starnes Cove Road. An existing building on the property has operated for a number of years as a general store for the community. The parcel also contains a residence near the back of the lot. The parcel just across from the subject property on Pisgah View Road is also used commercially (this parcel is outside the ETJ area).

The Neighborhood Business zone is designed to allow low intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods. The intent is to provide for daily convenience and personal service needs while minimizing conflicts with the surrounding residential uses. Structures may be constructed or enlarged to a 3,000 square foot footprint. Multiple story structures may be built with a total gross square footage of 6,000 square feet if the upper stories contain residential units.

The site is easily accessed with frontage on both Starnes Cove Road and Pisgah View Road.

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The Planning & Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 169 Starnes Cove Road from RS-4 to Neighborhood Business District. City staff recommends approval of the rezoning request as well.

Ms. Hoglen said that she had met with neighbors and has worked out an agreement regarding the concerns of the neighbors regarding alcohol sales. An agreement was reached that there would be no single beers sold on the premises, nor would there be any on-site drinking.

City Attorney Oast reminded Council that rezoning this property to Neighborhood Business District means it can be used for any purpose under that zoning classification. Even if this were a conditional use, City Council could not impose conditions regarding sales of alcohol. That is controlled by the ABC Board. Whatever agreements the applicant has with the neighbors are between them.

Mayor Worley closed the public hearing at 6:36 p.m.

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. 2959. This motion was seconded by Councilman Dunn and carried unanimously.

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D. PUBLIC HEARING TO REZONE TWO LOTS ON ARDMION PARK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley said that this public hearing was continued from the August 13, 2002, at which time the petitioner requested additional time within which to prepare for the City Council meeting. On September 10, 2002, the petitioner requested an additional two-week extension in order to arrange neighborhood meetings.

On September 23, 2002, the City received a letter from the petitioner Mr. Dean Pistor “requesting to be removed from the agenda ... rezoning in Ardmion Park. On the 18th, I met with neighbors and discussed concerns they may have for the development of multi-family housing and we have reached an agreement to request a conditional use RM-16 zoning for that project.” Mr. Pistor said that he would be in touch with the Planning Department regarding further action.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of September 1-19, 2002: Susan Carter (Water), Wayne Hensley (Water), Marlene Worley (Streets), Douglas Campbell Jr. (Streets), Heather Ross (Transit Services), Roger Hall (Police), BellSouth (Water) and John Darity (Streets).

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

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Lawsuit

The City was served with a Petition for Writ of Certiorari and Complaint for Declaratory Judgment on September 16, 2002 from Beverly Hills Area Homeowners Association, et al. The nature of the proceeding is to declare the rezoning ordinance in the Riverbend Marketplace matter as improperly adopted and invalid, that UDO Section 7-5-9 (a) (4) is invalid, revocation of conditional use permit and nullify ordinance granting conditional use permit. This matter will be handled in-house, but the attorneys for the applicant will intervene and do most of the work.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Fred English

Mr. Fred English, Haw Creek resident, commented about the raising of taxes when his services are not improving.

Water Efficiency Program

Ms. Hazel Fobes, Chair of Citizens for Safe Drinking Water and Air, said "steps are underway which could drastically reduce the scope and impact, or even abolish, the program of education of children and citizens groups on the importance of water conservation. One position being heard is that we do not need conservation; rather that we need to produce more water in order to generate income. Under consideration is the elimination of two posts in the Conservation Division of the Water Resources Department. The two women in those posts, among other duties, make dramatic presentations in schools and field trips and also workshops to civic, business and other groups here (and in the world) to eliminate wasteful use of water which with air is essential to life on the plant. The facts for your attention are first, that the Water Authority approved a program and budget for the year 2002-2003 which includes funds for these two posts and for an active public education program on water conservation. Any radical change in that provision, in our view, requires a full consultation with and hearing by the Board of the Water Authority – not policy-making by the Water Resources Department. The City Council and County Commissioners approved that program and budget and should be informed of any radical change in its implementation." School teachers and concerned citizens want water conservation to be covered in their discussions and the Water Authority should undertake a full discussion of this matter without delay and report to the Council and Commissioners. She passed out information regarding the Water Conservation Division.

City Manager Westbrook felt that there is some information being circulated that is not fact. He would like to meet each member of Council and explain to them, from the staff's prospective, what will be presented to the Water Authority. He said it is a re-engineering idea and since it has not in a form yet to even go to the Water Authority, we are premature in talking about it in that respect. He wanted City Council to have the correct information before they talk to the Water Authority.

Councilwoman Jones was in complete support of good water conservation and education.

Councilman Dunn suggested the Water Authority review the tap-on fee. Perhaps if the fees were not so high, the City could get more water users on line.

Mr. Gary Semlak, former Water Authority Vice-Chair, spoke in support of the water efficiency program and felt it was a long-term effort that should not be altered in any way.

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Ms. Nelda Holder, President of the League of Women Voters of Asheville-Buncombe County, said that they have heard directly from the two women in question that they were being offered dismissal or a night-time security job at a much lower responsibility and something that would certainly not utilize their training and professionalism. That does not coincide with the statement that the City wants to allocate their resources better. The conservation program is an award-winning program that speaks well for the City and the women who are running the program. Conservation is certainly not a program that the City should cut whether we are in a period of heavy rain or serious drought. She was concerned about the abruptness of the announcement to the two women and the fact that this is a public program and a policy issue. The handling of the matter did not allow for these women to speak to their own issue. If it were a monetary problem they should have been allowed time to look for grants and other ways to manage the program. If it's not a monetary program and truly a policy program, then she encouraged Council to ask their Water Authority representatives to speak in favor of maintaining the program.

Mr. Gwain Mainwaring, the first Captain Hydro, went into classrooms to educate children about water conservation and water issues. During the time he spoke with the children, he was able to talk about a lot more than just water conservation, e.g. water cycle and where water comes from. He felt that the program is very important.

Ms. Leni Sitnick said that in recognizing the budget dilemma she hoped that as this is discussed, that you don't look to generate revenues by dissolving, even in part, any part of the water efficiency program. Stopping the leaks and making sure everyone pays their fair share for water is the way to generate revenue. This program has received numerous awards and other states are emulating this program. When kids go on field trips, they are there in part having fun. When kids are in the classroom, they have their learning and thinking caps on. It's a different mode. The City and the Water Authority should not allow any part of this program to be diminished.

Interim Water Resources Director David Hanks updated City Council on our current water levels and explained the percentage of unaccounted water and what the City is doing to locate that water loss.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:25 p.m.

CITY CLERK

MAYOR