

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 OCTOBER 10, 2002, AS "PUT THE BRAKES ON FATALITIES DAY" IN THE CITY OF ASHEVILLE

Councilman Mumpower read the proclamation proclaiming October 10, 2002, as "Put the Brakes on Fatalities Day" in the City of Asheville. He presented the proclamation to President-Elect Marc Worth of the PENC Western Carolina Chapter and Mr. Robert Welch, Past President of the Western Carolina Chapter of PENC, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING OCTOBER 18, 2002, AS "CLEAN WATER ACT DAY" IN THE CITY OF ASHEVILLE

Councilman Peterson read the proclamation proclaiming October 18, 2002, as "Clean Water Act Day" in the City of Asheville. He presented the proclamation to Ms. Mollie Rose, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 24, 2002, AND THE WORKSESSION HELD ON OCTOBER 2, 2002

B. RESOLUTION NO. 02-159 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE FOR A COMMUNITY MEETING ON OCTOBER 29, 2002, BEGINNING AT 7:00 P.M. IN THE WILLIAM F. WOLCOTT JR. BUILDING LOCATED AT 161 SOUTH CHARLOTTE STREET, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 27 – PAGE 257

C. RESOLUTION NO. 02-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE ASHEVILLE CITIZEN-TIMES FOR RETAIL ADVERTISING

Summary: The consideration of a resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

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Each year City staff and the staff of the Asheville Citizen-Times reviews retail advertising that the City has placed during the year to determine what rates the City will qualify for the following year. This year, the City qualifies for a weekly frequency rate of 16 to 31 column inches per week.

The open rate for advertising in the Asheville Citizen-Times is \$47.96 per column inch daily and \$64.67 per column inch on Sunday. This contract will allow the City to advertise for \$30.45 per column inch daily and \$41.43 per column inch on Sunday. Based on the amount of advertising placed in 2002, the City will save \$59,534 by signing the weekly frequency contract.

This contract is valid for all City departments that advertise with the Asheville Citizen-Times, including the Asheville Civic

Center.

Staff recommends approval of the resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

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- D. RESOLUTION NO. 02-161 - RESOLUTION OF INTENT TO CLOSE A RIGHT-OF-WAY KNOWN AS CAROLINA AVENUE FROM MOUNT CLARE AVENUE TO ITS DEADEND AND SETTING A PUBLIC HEARING ON NOVEMBER 12, 2002**

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- E. RESOLUTION NO. 02-162 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD**

Summary: Annually the City Council must appoint a Chair to the Civil Service Board.

On October 1, 2002, it was the consensus of City Council to reappoint Gene Bell as Chairman of the Civil Service Board.

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- F. RESOLUTION NO. 02-163 - RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION**

Summary: There currently exists a vacancy on the Greenway Commission.

On October 1, 2002, it was the consensus of City Council to appoint Mr. Jack Saye as a member of the Greenway Commission to serve the unexpired term of Elizabeth Budd, term to expire December 31, 2003, or until her successor has been appointed.

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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:

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- A. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW NEIGHBORHOOD CORRIDOR DISTRICT**

Councilwoman Jones moved to continue this public hearing until November 12, 2002. This motion was seconded by Councilman Ellis and carried unanimously.

- B. PUBLIC HEARING TO CONSIDER THE CLOSING OF A PORTION OF OLD HAYWOOD ROAD BETWEEN PARK AVENUE AND ROBERTS STREET**

RESOLUTION NO. 02-164 - RESOLUTION TO CLOSE A PORTION OF OLD HAYWOOD ROAD BETWEEN PARK AVENUE AND ROBERTS STREET

Mayor Worley opened the public hearing at 5:12 p.m.

Public Works Director Mark Combs said that this is consideration of a resolution to close a portion of Old Haywood Road from Park Avenue to Roberts Street. This public hearing was advertised on September 13, September 20, September 27 and October 4, 2002.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to

whether it has actually been opened.

On September 23, 1997, a public hearing on the question of closing a portion of Old Haywood Road between Park Avenue and Roberts Street was held at the regular meeting of City Council. A decision was deferred on "closing" until staff could further advise Council on the ability of using this portion of Old Haywood Road in the Greenway Master Plan.

The Planning Department has completed the Greenway Master Plan and determined that this portion of Old Haywood Road from Park Avenue to Roberts Street would not serve as a good link in an anticipated greenway connecting the downtown with the river. The Planning Department has also not identified a viable public use for this property as requested on September 23, 1997. Based on those findings the closing proceedings were reinitiated at the request of Mr. Rice.

The Public Works Department staff has determined that the right-of-way known as Old Haywood Road, beginning at Park Avenue and ending at Roberts Street, as shown in the Buncombe County Tax Maps bordered by PIN Nos. 9648-09-07-1425, 9648-09-07-0394, and 9638-12-97-9347 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution to close a portion of Old Haywood Road from Park Avenue to Roberts Street.

Vice-Mayor Bellamy said that there is a draft plan for the West End/Clingman Avenue Neighborhood (WECAN) greenway. She felt the neighborhood doesn't want to block any expansion, however, they would like to make sure the expansion enhances the neighborhood that the residents have to live in daily.

Economic Development Director Mac Williams said that in order to accommodate the business expansion of AvL Technologies, this portion of Old Haywood Road would need to be closed so the expansion could occur. Mr. Williams said that Mr. Mike Rice, property owner, has incubated his business in Asheville and the business is growing. He said the business manufactures satellite equipment and has good high paying jobs. If the business did expand, more jobs would follow.

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Mr. Joe McGuire, attorney representing Mr. Mike Rice, said that the building is rented out to AvL Technologies and they need to expand. He said they currently have 12-15 employees and the proposed expansion would result in approximately 40 employees. Mr. Rice would like to add on an approximate \$40,000 expansion and then add a new building, for AvL Technologies, for approximately \$250,000. He passed out a brochure showing that AvL Technologies is a clean industry, is high tech and has high-paying jobs. The only way the company can expand is if this portion is closed. Unless the expansion is able to occur, the owner and president of AvL Technologies, Inc., will have to look elsewhere to relocate his business. The other section of Old Haywood Road was closed back in 1982 and he submitted Affidavits by those two property owners which state that they "have no plans to grant a public easement across the property that is located between Clingman Avenue and Park Avenue, which is the portion of the Old Haywood Road that was closed in 1985." He explained that Mr. Rice is in favor of a greenway, but this is not the best location. He explained the location for a much better location for a greenway. He urged Council to close this portion to allow this industry to expand, as it will improve the tax base, will improve the community because of the nature of the building that will be there, and will allow the greenway to be at its best location. Mr. McGuire also passed out some photographs of the building.

Ms. Gail McCarthy, business and property owner in the area and representative of the Asheville River District Artists (30 working artists and craftsmen in the Asheville River District), stated that this portion of Old Haywood Road is located in the heart of the Asheville River Arts District and their neighborhood has been growing and developing since 1994. She read quotes from the 1995 Economic Contribution Study of Craft on our region's economy, which showed how important crafts are to Western North Carolina. She shared statistics of how the River District Artists have brought visitors to our area. Artists and craftsmen have begun to own property in the area and they are very interested in what happens within the community. They have supported the efforts and participated in the WECAN Citizens Master Plan and have supported the efforts of RiverLink in the RiverLink Design charette. They feel that this closing is short-sighted in that the property holds more value if it can be integrated into a design process compatible with the WECAN Citizens Master Plan, the RiverLink Plan and the City's 2010 Plan. They asked that before the City does anything that influences development in the neighborhood, they would like to know what plans are being made and approved for the area. They understand that no plans have been filed with the City at this point for use of what is now public property. Since the closing of this portion involves giving away public property, as owners of this property they would like to be able to offer their opinion and suggestions for its future use.

Mr. Ronnie James, representing the North Carolina Department of Commerce in the western region as Manager of the Business and Industry Development Division, urged Council to close this portion of property so the business can expand. He said that in Buncombe County one manufacturing job generates another 1.1 job increasing personal income in Buncombe County by \$69,000 – that's \$37,000 directly and approximately \$32,000 indirectly, adding over \$16,000 in federal tax revenues and over

\$6,000 in local and state revenues. AvL Technologies is a very clean operation and they pay high wages and if Mr. Rice is unable to expand, unfortunately the business will have to relocate, possibly outside of Asheville or even Buncombe County.

Ms. Carol Hensley, Assistant Vice-President for Small Business and Entrepreneurship with the Asheville Area Chamber of Commerce, said that she was representing the Buncombe County Economic Development Commission which supports the close of this portion of Old Haywood Road. She explained why the expansion of the business is important to our community. She said that in Buncombe County existing business and industry create well over 80% of all new jobs.

Ms. Lou Heetderks, President of WECAN, said that they have had interest and concerns regarding the Old Haywood Closing since 1997 when the same parcel of public land came before

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City Council then. At that time WECAN, and other interested parties, successfully convinced that City Council to keep this property and other publicly owned properties in both the WECAN district and the Riverfront under public domain until all the plans for this area were finalized. The City's consultant who prepared the Greenway Master Plan in a letter to her dated March 20, 1998, identifies this unused roadway "as a feasible route for an off-road greenway" and recommended "to maintain this old roadway right-of-way in public ownership because of it's greenway potential." Plans for this area include the West End/Clingman Avenue 2010 Plan, the WECAN Citizens Master Plan, RiverLink's Riverfront Development Plan, the City's Master Greenway Plan and there is also a site-specific greenway planning process being started this month using local greenway planners and local architects. This plan will address the urban forest that runs behind Clingman Avenue that will provide a link between Aston Park and the River. The WECAN Citizens Master Plan identifies the property at the corner of Roberts and Haywood Road, which includes the unused roadway, as a key and strategic site for development in this district. The type of development created at this corner will set the tone for the district and for future development. WECAN supports the type of clean, high wage, high tech industry that AvL Technologies brings to this district and to the City and they do not object to this business. Their concern is that the physical development of this property supports the principles and guidelines set forth in the numerous plans developed for this area. City Council should ensure that any development of this area complies with the various guidelines that have been developed in these plans. Meetings have been held with Mr. Rice in an effort to reach a compromise for something that will truly enhance the area, not only if AvL Technologies expands, but if the business moves out that what is left behind is something that supports the overall visions for the area and for the City as a whole.

Mr. Jim Oliver, President and Owner of AvL Technologies, explained that his company designs and manufactures mobile satellite antennas. He said that he does need to expand his business and would like to stay in the downtown area, however, that won't be possible unless his business is allowed to grow. He said that it is his intent to hire from the Asheville area. He said that since they don't manufacture any parts inside their building, they farm them out to 6-8 manufacturing companies in the Asheville area so those other businesses would be affected as well if he could not expand.

Mr. Jeff Hayes, employee at AvL Technologies, spoke in support of the Old Haywood Road closing.

A representative from Carolina Stone Works, property owner in the area, asked that Council postpone the closing until all plans are finished to see how that area will affect the arts community in the long-run.

Mr. Mike Rice, property owner, said that the Greenway Master Plan does not include this abandoned street. The drawing shows the greenway going down Clingman Avenue. He explained two better choices for the greenway. He urged Council to close this portion of Old Haywood Road in that it really is a win-win situation for the City and the business.

Mr. Brian McCarthy, Owner of High Water Clays, said that he supports high tech jobs and also supports the various plans for the area. His concern is that whatever buildings are developed there, especially any ones that are close to Old Haywood Road, are done in a fashion that they will enhance the area. The closing of this portion of Old Haywood Road may not have anything to do with what finally gets developed along Haywood Road, but it's important to the community that City Council keeps that in mind in any decision that they make.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities (MHO), said that they have invested approximately \$3 Million in the WECAN area including the construction of the new building at the corner of Clingman Avenue and Merritt Street. MHO strongly supports

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these kinds of jobs for Asheville. He has spent many hours meeting with Mr. Rice and the Operations Manager at AvL Technologies and had hoped to work out a clear compromise. He explained where he felt there were three potential routes for the

greenway. He also questioned if the legal advertisement included the entire portion of property requested to be closed or only a smaller portion of the property. In summary, he explained that it's the future development of the frontage on Haywood Road that is of particular concern.

Mayor Worley closed the public hearing at 6:16 p.m.

Planning & Development Director Scott Shuford said that the greenway route doesn't seem to be the big issue in this closing. It seemed to him that more of the concern is addressed about the potential development of the area with buildings being kept with the character of the River District, the downtown and plans. What is important is that there be the potential to link greenways across the river through different opportunities and alternatives have been suggested. He doesn't see the closure before Council as being something that would preclude greenway access. Again, he seems to think the concern is how the development will occur at that key location, how the buildings look, and how they are sited on the property. He did not think that any procedural errors occurred as alluded to by Mr. Dedman.

Upon inquiry of Councilwoman Jones, Mr. Shuford said that the development will probably not come before City Council given the scale of it, however, it will have to be built in accordance with the zoning requirements.

Mayor Worley said that there is a substantial area of right-of-way between pavement of Haywood Road and Mr. Rice's property line that lies north of the section requesting to be closed. It seems to him that the largest concern is what actually takes place within that right-of-way which owned by the N.C. Dept. of Transportation (NC DOT). He felt that the City would have a lot of effect with the NC DOT in that particular area and could preserve that for use as part of a potential greenway master plan.

Mr. Shuford responded to questions from Councilwoman Jones regarding the zoning of that area and what type of standards are in that zoning classification.

Councilman Ellis appreciated the efforts of the River District Artists, the WECAN citizens and MHO to all work toward a compromise and they all support jobs and jobs people can walk to. He did not think the closing of this portion would be a detriment to the area.

Vice-Mayor Bellamy understood that the residents support the jobs, however, they have concerns about the design of the building being compatible with the residential neighborhood. Council hasn't discussed the close proximity of the houses to the industry. The residents support expansion, but they would like it done in a way that is compatible with the WECAN Citizen Master Plan. She hoped Mr. Rice would go back and talk back to the neighborhood about a compatible building that will fit into the residential neighborhood.

Councilman Mumpower explained how he felt there are three issues in this matter of timing, economic development and fairness. He felt that Council has committed itself to retain good industry and industrial space.

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

Councilman Mumpower moved to adopt Resolution No. 02-164 to close the portion of Old Haywood Road between Park Avenue and Roberts Street. This motion was seconded by Councilman Dunn.

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Councilman Dunn agreed that it was important to make the building compatible and he felt sure that Mr. Rice would do the best he could to make the expansion of his industrial building compatible to the neighborhood.

Councilman Jones pointed out how easy it is sometimes to put plans at the bottom of the stack, but here's a great example of how important plans are for the City. She hoped that Mr. Rice will continue to talk with the neighbors because they have given a lot to their neighborhood and have enhanced it for everyone.

The motion made by Councilman Mumpower and seconded by Councilman Dunn carried unanimously.

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

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, SECTION 3 OF BILTMORE PARK

ORDINANCE NO. 2961 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, SECTION 3 OF BILTMORE PARK

Mayor Worley opened the public hearing at 6:45 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to annex property located north of Long Shoals Road and identified as Oakbrook, Section 3 at Biltmore Park. The public hearing was advertised on September 27, 2002

Biltmore Farms Inc. and The Broadlands Company, LLC, have submitted an annexation petition for Oakbrook, Section 3 at Biltmore Park. This area is contiguous to the existing corporate limits, being bordered to the south by sections of Biltmore Park that have been previously annexed

The area proposed for annexation consists of 16.911 acres and is platted for 18 single-family residential lots, corresponding street rights-of-way, and a common area. The area will be accessed primarily by White Ash Drive and Red Cedar Lane. This area is within the extraterritorial jurisdiction and is currently zoned RS-2 Residential Single Family Low Density District.

Biltmore Farms Inc. is developing utilities and streets. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance, which would be April 8, 2003.

This would be the 25th section of the Biltmore Park development to be annexed.

City staff recommends City Council adopt an ordinance to annex property located north of Long Shoals Road and identified as Oakbrook Section 3.

Councilman Dunn asked why the City was not asking Biltmore Park to spend any money on traffic mitigation because a developer in Shiloh was required to spend \$84,000 on traffic mitigation for his development, which was already in the City.
Planning & Development Director

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Scott Shuford explained that that the Shiloh development dealt with public safety with regard to the widths of the streets and some of the intersections needing improvements, as well as the speed of traffic. This particular development is a planned development that has continued to develop in phases. While the Master Plan has changed a little over time, the infrastructure that is being put in by the developer is adequate and safe at the time it is put in. The developer is building all the streets and after they are built they are brought into the City. If, for example, we had a multi-family project that was part of a master plan development, we wouldn't need to go back and say we've got to have exactions to deal with the public safety issues or traffic claming, because those issues would have been taken care of in the original planning. It's when we go to infill-type development that greatly increases the density above and beyond what is designed planned for the area that we need to start looking at those types of public service exactions.

Mayor Worley closed the public hearing at 6:53 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. 2961. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 95

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 02-165 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Bellamy said that the term of Ted Patton as a member on the Regional Water Authority expired on September 30, 2002.

On October 1, 2002, it was the consensus of City Council to appoint a Council member to said Authority.

Mayor Worley moved to appoint Councilman Peterson to serve a three year term, term to expire September 30, 2005, or until his successor has been appointed. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilman Peterson said that all of Council appreciated Mr. Ted Patton's contribution and his technical expertise that he has brought to the table on the Water Authority. But that given some changes in the direction that Council may have about the Water Authority and the potential significant changes, there needs to be a little bit more direct involvement with City Council on the Water Authority. Mr. Patton's technical expertise has been a big contribution, but at this stage, City Council needs something slightly different.

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VI. OTHER BUSINESS:

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A. CLAIMS

The following claims were received by the City of Asheville during the period of September 20-26, 2002: Melissa Doyle (Sanitation), Jimmy Deese (Streets), Tameca Mills (Streets), Shea D. Knupp (Water) and Marcus Ban-Lokeren (Sanitation).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilwoman Jones announced that the YMI is sponsoring "In the Footsteps of Pilgrims, Historic Travels of Faith" which explores the cultural and historical issues of travels of faith from the viewpoints of Judaism, Christianity, Islam, Hinduism and Buddhism. She invited Council and the public to take advantage of this opportunity, which will run from October 16 through November 29, 2002.

Councilman Ellis congratulated Councilwoman Jones, who is Executive Director of the YWCA, in making the new YWCA available to the entire community.

Mayor Worley also was pleased to announce that Vice-Mayor Terry Bellamy received the prestigious Grace Dorn and Sophie Dixon First Annual award at the NAACP banquet on October 5, 2002.

Mr. Mickey Mahaffey stated that Mr. Ted Patton was the least political member on the Water Authority and one of the most knowledgeable people on the Water Authority over the past three years. He hoped Councilman Peterson would keep as his primary initiative the issue that there are more people in our area who are having a difficult time of affording to live here, and urged him to remember that when there is talk of raising water rates.

Ms. Hazel Fobes, representing Citizens for Safe Drinking Water and Air, stressed how we need regionalism and a true Regional Water Authority. She spoke highly of Mr. Ted Patton and stated that he knows more about the water system than anyone around here.

CLOSED SESSION

At 7:06 p.m., Councilwoman Jones moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Morris Communications, Inc. d/b/a Fairway Outdoor Communications, Lamar OCI - South Corp., Maple Cove, Inc., Carl and Janis Ricker, Asheville Board of Adjustment, City of Asheville, James E. Martin, Jeffrey A. Martin, Susanne A. Zuerner, Donald E. Williams, Paul E. Fruits, B. Joy MacFadyen Bulluck, Buncombe County, and City of Asheville - the statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To prevent the disclosure of information that is privileged or confidential pursuant to the laws of the State or the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed privileged or confidential is N.C.G.S. 132-1.1. This motion was seconded by Councilman Ellis and carried unanimously.

At 8:20 p.m., Councilman Dunn moved to excuse Vice-Mayor Bellamy due to her health. This motion was seconded by Councilman Ellis and carried unanimously.

At 8:35 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

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VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:35 p.m.

CITY CLERK

MAYOR