

Tuesday - January 20, 1987 - 4:00 p.m.

## Regular Meeting

Present: Mayor W. Louis Bissette, Presiding; Vice-Mayor Mary Lloyd Frank; Councilmen Wilhelmina Bratton, Walter R. Boland; Kenneth M. Michalove, Norma T. Price, and George M. Tisdale; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Associate City Manager/City Clerk William F. Wolcott, Jr.

Absent: None

## INVOCATION

The invocation was given by Councilman Walter Boland.

## APPROVAL OF THE MINUTES - JANUARY 13, 1987 MEETING

1. Consideration was given to the approval of the minutes of the January 13, 1987, meeting.

Mayor Bissette announced the approval of the minutes as submitted.

## PUBLIC HEARING CONTINUATION - REZONING PROPERTY LOCATED AT 218 EAST CHESTNUT STREET (MR. CHRIS PETERSON, PETITIONER)

2. A public hearing was continued relative to a request to rezone property located at 218 East Chestnut Street, Ward 2, Sheet 16, Lot 138 (Mr. Chris Peterson, petitioner).

Mayor Bissette said on November 12, 1986, the Asheville Planning and Zoning Commission considered the petition of Mr. Chris Peterson that Ward 2, Sheet 16, Lot 138 (218 East Chestnut Street) be rezoned from R-4 Residential District to CG Commercial General District. After review and discussion, the Commission voted to recommend that the petition be denied and that the property remain as it is now zoned. On December 10, 1986, the City Clerk received written notice of appeal from the petitioner for this matter to be heard by the City Council. A public hearing was held on January 6, 1987, and was continued until January 20, 1987, without further advertisement.

Verl Emrick, Director of Planning, said on January 6, 1987, City Council requested that the Planning staff review this property to determine whether it could be classified under the "Historical Overlay Zone." He said the Historic Resources Commission investigated the possibility of 218 East Chestnut Street being designated as historical property. He said in a memorandum from Carolyn A. Humphries, Executive Director of the Historic Resources Commission, it was noted that the Peterson property at 218 East Chestnut Street is a contributing structure in the local historic district. He said the house was built about 1900 as a residence, and although it was later divided into apartments, it has maintained residential use throughout its structural life. He said the Historic Resources Commission questioned whether the "Conservation Overlay for Historic Properties" would be appropriate for this project since the ordinance states "Conditional Uses

Permitted. The uses permitted herein shall be limited to uses that are not inconsistent with the design and/or uses for which the structure on the property has been designated or used during the life of the structure." He said the Historic Resources Commission has no record that the house at 218 East Chestnut Street was ever used for a restaurant, although it may have been used as a boarding or rooming house or apartments. He said he would agree with the Historic Resources staff that the property would not comply for the "Historic Conservation Overlay Zone." He said the owner could go forward with the "bed and breakfast" proposal.

Eugene Ellison, attorney for Chris Peterson, spoke in support of the rezoning of the property to the CG Commercial General District as requested. He said the area around 218 East Chestnut Street is basically for commercial use. He said there are only eight residences left in the area, and he did not feel the property being used as a "Victorian style restaurant" would be impeding on the residential area.

Chris Peterson, owner of the property, spoke in support of the rezoning. He said he thought Council had two issues to think about in considering this request. He said 90% of the area is used commercially, and the few houses that are left in the area are for sale. He said Gateway Realty and Erwin Ball, property owners in the area, support his request for the rezoning. He said he felt that Council needs to carefully consider such requests since the old structures should not be demolished, but restored. He said, in his opinion, the "Victorian style restaurant" would enhance the neighborhood. Secondly, Council should support the small businessman in the City of Asheville.

Robert Dungan, of 89 North Liberty Street, spoke in opposition to the rezoning, stating that after the property is zoned Commercial General, any allowable use in that zone could be used. He said the owner of 218 East Chestnut Street is primarily a nightclub owner, and nothing would stop the owner from eventually placing a nightclub in the area.

Marian Gebhardt, of 81 North Liberty Street, said, as a realtor/ resident and a member of the Claxton Homeowners Association, she strongly opposed the request for the rezoning.

It was noted that the owner of the property could, on his own, pursue the historical designation of the property and, if approved, could be considered under the "Conservation Overlay" for Historic Properties Zone.

After discussion, Mayor Bissette closed the public hearing at 4:37 p.m.

Mayor Bissette said the ordinance was previously presented to members of Council, and it would not be read in its entirety. He said any individual requesting a copy of the ordinance would be furnished one at no cost.

Councilman Bratton moved to adopt the ordinance, rezoning the property located at 218 East Chestnut Street to Commercial General District. She said she felt the "Victorian style restaurant" would be in the best interest of the City of Asheville. Councilman Bratton's motion received no second.

Councilman Price moved to accept the recommendation of the Planning and Zoning Commission that the petition be denied and that the property remain as it is now zoned, that being R-4 Residential District. This motion was seconded by Councilman Boland and carried on a voice vote of 6-1, with Councilman Bratton voting "No."

Upon inquiry of Council, Corporation Counsel Slawter said, in his opinion, it is always best to accept or deny a particular issue to clarify any technicalities that may be brought about in the future. He said, in his opinion, if Council moves to deny a request, the petitioner cannot request a rezoning for at least one year.

### **PUBLIC HEARING - SITE PLAN OF BEAUCATCHER CINEMAS, LOCATED AT U.S. 70 AND HAW CREEK LANE - ADDITION OF HARDEE'S RESTAURANT**

3. A public hearing was held relative to a site plan of Beaucatcher Cinemas, located at U.S. 70 and Haw Creek Lane showing the addition of a Hardee's Restaurant.

Mayor Bissette said the Asheville Planning and Zoning Commission, at a meeting held December 10, 1986, reviewed a site plan of Beaucatcher Cinemas, located at U.S. 70 and Haw Creek Lane showing the addition of a Hardee's Restaurant. The site plan was prepared by Franchise Enterprises, Inc., Rocky Mount, N.C., and submitted by Litchfield Company of South Carolina, Developer. After review and discussion, the Commission voted to approve the project subject to: 1) provision of a 10' buffer on the west property line along Haw Creek Lane; 2) City Council granting a variance of 12 parking spaces or 3% of total parking requirements; 3) submission of signage package; and 4) compliance with Erosion Control Ordinance.

Mayor Bissette opened the public hearing at 4:46 p.m.

The City Clerk presented the notice to the public, setting the time and date of the public hearing and the affidavit of publication.

Verl Emrick, Director of Planning, said the Asheville Planning and Zoning Commission had recommended approval of the project subject to the provision of a 10' buffer on the west property line along Haw Creek Lane which is shown on

the site plan. He said the approval of the site plan should include the granting of a variance of 12 parking spaces or 3% of the total parking requirements. He said Hardee's would be providing 43 parking spaces and handicapped parking would be complied with. He said the signage is less than required, being that 500 square feet is allowable, and Hardee's would be using 312 square feet. He said the sign would be 40' in height.

Vice Mayor Frank said she would support the sign being 30' in height rather than 40'.

Upon inquiry of Councilman Boland, Mr. Emrick said, in his opinion, there would be no increase in traffic congestion because of this development.

Gary Rowe, attorney for the developer, said cross easements with the Litchfield Company, operating the theaters, would be executed for parking requirements. He said he did not feel that the area would increase traffic

in the area due to statistics showing that Hardee's Restaurants do 75% of their business at the breakfast and lunch times rather than in the evening hours.

Mayor Bissette closed the public hearing at 4:59 p.m.

Councilman Boland moved to approve the site plan of the Beaucatcher Cinemas, located at U.S. 70 and Haw Creek Lane, showing the addition of a Hardee's Restaurant, subject to the conditions outlined by the Planning and Zoning Commission and further that the sign be no higher than 30'. This motion was seconded by Councilman Tisdale and carried unanimously.

#### **ORDINANCE NO. 1622 - BUDGET ORDINANCE AMENDMENT TO APPROPRIATE CURRENT YEAR CDBG ENTITLEMENT FUNDS**

4. Consideration was given to a budget ordinance amendment to appropriate current year CDBG Entitlement Funds.

Mayor Bissette said the City has recently received its letter of Credit from HUD for \$1,072,000 in Community Development Block Grant funds for the current year program. The allocation of these funds was approved by City Council on May 27 and November 18, 1986. This ordinance will appropriate the funds into the budget.

Councilman Michalove moved for the adoption of Ordinance No. 1622. This motion was seconded by Councilman Price.

On a roll call vote of 7-0, Ordinance No. 1622 passed on first and final reading.

Complete text of Ordinance No. 1622 will be found in Ordinance Book No. 11 at page 108.

#### **RESOLUTION NO. 87-7 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PRICE WATERHOUSE FOR AUDITING SERVICES FOR THE FISCAL YEAR ENDING JUNE 30, 1987**

5. Consideration was given to a resolution authorizing the City Manager to execute an agreement with Price Waterhouse for auditing services for the fiscal year ending June 30, 1987.

Mayor Bissette said N.C. Gen. Stat. Sec. 159-34 requires that local governments of North Carolina submit an annual audit to the Local Government Commission. Price Waterhouse, current auditors for the City of Asheville, has submitted a proposal to perform auditing services as independent accountants for the City of Asheville for the fiscal year ending

June 30, 1987. Audit fees for fiscal year ending June 30, 1986 - \$29,100; CPI increase for all items, all urban consumers June 30, 1986, over June 30, 1985 - 1.7%; Audit fees for fiscal year ending June 30, 1987 - \$29,600.

Mayor Bissette said after an intensive audit selection, three years ago, by a Council Auditing Selection Committee, Price Waterhouse was contracted for auditing services for three years. He said the three year contract expires this year,

and the City staff is recommending that the City continue with Price Waterhouse for auditing services for the fiscal year ending June 30, 1987.

The City Manager said that Price Waterhouse has done an excellent job and recommended that the contract be extended for a one year period and that Price Waterhouse be evaluated next year.

Upon motion of Councilman Tisdale, seconded by Vice Mayor Frank, Resolution No. 87-7 was unanimously adopted.

Complete text of Resolution No. 87-7 will be found in Resolution Book No. **16** at page **257**.

**RESOLUTION NO. 87-8 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE AN AGREEMENT AND ANY AMENDMENTS WITH MCGILL ASSOCIATES, P.A., FOR ENGINEERING SERVICES FOR STREET AND SIDEWALK IMPROVEMENT AND REHABILITATION PROJECTS TO BE LET IN CALENDAR YEAR 1987**

6. Consideration was given to a resolution authorizing the Mayor to execute on behalf of the City of Asheville an agreement and any amendments with McGill Associates, P.A., for engineering services for street and sidewalk improvement and rehabilitation projects to be let in calendar year 1987.

Mayor Bisette said the citizens of the City of Asheville approved a bond issue for the purpose of improvements and rehabilitation to streets and sidewalks within the City. The services of a consulting engineer are required to prioritize, coordinate, evaluate, design, specify, administer, inspect and provide public information and relations in regard to these projects and their contracts. This resolution will authorize the Mayor to execute on behalf of the City of Asheville an agreement and any amendments with McGill Associates to provide consulting services to the City in regard to the Street and Sidewalk Improvement Projects let for contract during Calendar Year 1987.

Mayor Bisette said the first phase of the projects would be let in April, 1987, and the second phase would be let in September, 1987.

Upon motion of Councilman Boland, seconded by Councilman Michalove, Resolution No. 87-8 was unanimously adopted.

Complete text of Resolution No. 87-8 will be found in Resolution Book No. **16** at page **258**.

**SCHEDULING PUBLIC HEARING - ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO BEAVER LAKE CAB COMPANY FOR AN ADDITIONAL THREE TAXI CABS FOR FEBRUARY 10, 1987**

7. Consideration was given to a motion to schedule a public hearing relative to the issuance of a Certificate of Public Convenience and Necessity to Beaver Lake Cab Company for February 10, 1987.

Mayor Bisette said the adoption of this resolution will authorize the City Manager to issue a Certificate of Public Convenience and Necessity to Beaver Lake Cab Company pursuant to Section 27-34 of the Code of Ordinances of the City of Asheville upon proof of financial responsibility in accordance with N.C. Gen. Stat. Sec. 20-280 for the operation of three (3) additional cabs.

Councilman Michalove moved to schedule a public hearing relative to the issuance of the Certificate of Public Convenience and Necessity to Beaver Lake Cab Company for February 10, 1987. This motion was seconded by Councilman Price and carried unanimously.

Cecil Jackson, attorney for Paul Davis, owner of the Beaver Lake Cab Company, said Mr. Davis was issued three Certificates of Public Convenience and Necessity in September, 1986. He said his client had originally asked for 12 Certificates, and City Council issued three. He said he would request that the Certificate of Affidavit presented in September, 1986, would still apply to this additional request.

## **SCHEDULING PUBLIC HEARING - SITE PLAN - INDUSTRIAL PARK**

8. Councilman Michalove moved to schedule a public hearing relative to the site plan of the Airport Industrial Park for February 3, 1987. This motion was seconded by Councilman Tisdale and carried unanimously.

## **DISCUSSION RELATIVE TO AFFIRMATIVE ACTION PLAN**

9. Mayor Bissette said members of Council received a report from the Chairman of the Equal Employment Opportunity Task Force relative to the adoption of an Affirmative Action Plan in the Pre-Council work session. He said Council would be scheduling a public hearing relative to the Plan in the near future. He said the City is currently looking into requested amendments to the Civil Service Law. He said Mr. Don Hayman, former staff member of the Institute of Government, is currently looking into revisions to our Civil Service Law. He said the City Staff is going to check with Mr. Hayman to see when his report would be ready.

Councilman Boland requested that the following letter, relative to the Affirmative Action Plan, be included in the minutes:

MEMORANDUM TO: Mayor and Members of Council

FROM: Walt Boland, Chairman

Equal Employment Opportunity Task Force

DATE: January 16, 1987

SUBJECT: Affirmative Action Plan

This memorandum is to give you some idea of the thoughts and sentiments of the Equal Employment Opportunity Task Force as we reviewed the revised draft of the plan. I hope it will help to put the plan in a proper perspective.

All members of the Task Force feel it is important that the Mayor, the City Council, and the City Manager be committed to a vigorous implementation of an Affirmative Action Plan. I mentioned to the members that it was my belief that there was such a commitment and that we should proceed accordingly.

As you will notice, the plan includes goals and timetables for achieving

the goals which were requested by the Task Force. The underutilization of minorities and females is noted in appropriate EEO job categories. Further detail is provided by data on City departments, as well as for the City government as a whole. By providing information on each department, information is also provided on the placement of minorities and women in City specified job classifications by simple inspection of the data. At least one member of the Task Force felt that even more specificity was called for and should indicate the number of minorities and females to be hired, promoted, etc., by June, 1987. Other members felt that since the goal is to decrease underutilization, percentages were adequate. It was also pointed out that any greater specificity comes close to "quotas" which are legally problematic and that this could lead to increasing devisiveness in the City's labor force.

The definition of the Relevant Labor Market was also of concern to the members of the Task Force. (It is defined as the labor force within the Buncombe County SMSA.) There was some support for limiting it to the City's labor force but it was also mentioned that the SMSA is used by other cities and that the Relevant Labor Market should reflect the whole area from which the City's labor force is drawn. The Task Force concluded that over the next six (6) months, the City should collect relevant data for the City and to "blend" this data with that from the SMSA in determining the goals of Affirmative Action.

There was a consensus that the City should appoint a full-time recruiter to ensure a vigorous recruitment effort. This effort would be focused on recruiting high quality recruits in general, as well as blacks and females, to meet the goals of Affirmative Action.

It was felt that some modification may be necessary in the Civil Service Law to make it possible to reach the City's Affirmative Action goals. I feel that Don Hayman's report on possible modifications should be in hand before the City Council passes an Affirmative Action Plan. That is, it may be difficult to reach our goals if the "Rule of 3" is retained. This may cause some delay because any amendments would have to be supported by legislative act.

As you will recall, the NAACP complaint concerning the absence of any black police officer above the rank of Sargeant, led to the creation of the Equal Employment Opportunity Task Force. With this in mind, the Task Force proposed that this situation be corrected as soon as possible. It was felt that the City Manager should explore what other cities have done to remedy similar situations and any other legal options that may come to mind.

While some members of the Task Force argued for an independent agency to handle all aspects of testing, it was finally decided that this should remain with Civil Service. It was felt, however, that greater attention should be given by Civil Service to the validity of tests, their possible racial bias, and how the tests are corrected.

WB/cah

**RESOLUTION NO. 87-9 - RESOLUTION AUTHORIZING CONDEMNATION OF PROPERTY IN THE CHESTNUT STREET BRIDGE REPLACEMENT PROJECT**

10. Consideration was given to a resolution authorizing condemnation of property in the Chestnut Street Bridge Replacement Project.

Mayor Bissette read the resolution, stating that the City has, through the Housing Authority of the City of Asheville, dealt with the property owners owning property along the Chestnut Street Bridge Replacement Project. He said negotiations with the property owners have not resulted in a mutually agreeable purchase price of the properties involved in the project. He said the City of Asheville desires that the Housing Authority provide acquisition and relocation services to the City for this project. He said this resolution would authorize the Housing Authority to acquire by condemnation, if necessary, the following parcels in order that the City of Asheville might carry out its approved plan of replacing the Chestnut Street Bridge;

**PARCEL OWNER ADDRESS**

1 Adams 67 Woodlawn Avenue

3 Tucker 66 Elizabeth Street

4 Murphy West Chestnut Street

7 McGowan West Chestnut Street

Upon motion of Councilman Tisdale, seconded by Councilman Price, Resolution No. 87-9 was unanimously adopted.

Complete text of Resolution No. 87-9 will be found in Resolution Book No. **16** at page **259**.

**RALPH BISHOP - COMMENTS RELATIVE TO LOTTERY SALES IN THE CITY OF ASHEVILLE**

Ralph Bishop again spoke to members of Council relative to lottery sales in the City of Asheville.

**ADJOURNMENT**

Upon motion of Councilman Price, seconded by Councilman Boland, the meeting adjourned at 5:45 p.m.

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Mayor City Clerk

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