

Tuesday - May 12, 1987 - 4:00 p.m.

## Regular Meeting

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

Absent: City Manager Douglas O. Bean, Associate City Manager/City Clerk William F. Wolcott, Jr., and Deputy City Clerk Carol Hensley.

## INVOCATION

The invocation was given by Councilman Walter Boland

## APPROVAL OF THE MINUTES - MAY 5, 1987 MEETING

Consideration was given to the approval of the minutes of the May 5, 1987, meeting.

Mayor Bisette announced the approval of the minutes as submitted.

## I. PROCLAMATION

### A. RESOLUTION NO. 87-83 - RESOLUTION IN MEMORIUM OF FRANK COXE.

Mayor Bisette read a resolution in memorium of Frank Coxe, former Vice President of First Union National Bank and civic leader who recently passed away.

Upon motion of Councilman Tisdale, seconded by Councilman Boland, Resolution No. 87-83 was unanimously adopted.

Complete text of Resolution No. 87-83 will be found in Resolution Book

No. 16 at page 339.

### B. RESOLUTION NO. 87-81 - RESOLUTION COMMENDING ASHEVILLE JUNIOR HIGH

#### SCHOOL ODYSSEY OF THE MIND TEAM.

Mayor Bisette said Asheville Junior High School had a team to place first in both the Western Regional and the State levels of Odyssey of the Mind competition. He said they will now represent Asheville City Schools and the State of North Carolina in the World Odyssey of the Mind finals.

Mayor Bisette recognized Shelly Smith, sponsor for the Asheville Junior High School Odyssey of the Mind Team, and the team members.

Upon motion of Vice Mayor Frank, seconded by Councilman Price, Resolution No. 87-81 was unanimously adopted.

Complete text of Resolution No. 87-81 will be found in Resolution Book

No. 16 at 337.

### C. RESOLUTION NO. 87-82 - RESOLUTION COMMENDING ASHEVILLE JUNIOR HIGH

#### SCHOOL HISTORY DAY TEAM.

Mayor Bissette said Asheville Junior High students participated in all categories of the History Day in North Carolina and won first and second places in the group projects Junior Division.

Mayor Bissette recognized Mrs. Helen Edington, sponsor for the Asheville Junior High School History Day Team, and the team members.

Upon motion of Councilman Michalove, seconded by Councilman Boland, Resolution No. 87-82 was unanimously adopted.

Complete text of Resolution No. 87-82 will be found in Resolution Book

No. 16 at page 338.

## **II. PUBLIC HEARINGS**

### **A. SITE PLAN OF SUNSET POINT CONDOMINIUMS TO BE LOCATED ON TOWN MOUNTAIN**

#### **ROAD.**

Mayor Bissette said the Asheville Planning and Zoning Commission, at a meeting held April 8, 1987, reviewed the site plan of Sunset Point Condominiums to be located on Town Mountain Road. The site plan was prepared by Freeman, Wells and Major, Architects, for W. R. Martin Corporation, Developer, and submitted in accordance with the Group Development Section of the Asheville Zoning Ordinance. After review and discussion, the Commission voted to recommend approval of the site plan to City Council subject to the following: 1) compliance with the Erosion Control Ordinance and Erosion Control Plan; 2) compliance with height ordinances, Ordinance No. 1514, Restriction of Structural Heights in R1 and R2 zones, and Ordinance No. 1558 concerning protection of mountain ridges; 3) indicate adequate road access in accordance with Article 6, Group Developments, and contingent upon the driveway on the west side of the existing parking lot being taken from the area where there is a legal easement; 4) insuring the appropriate legal document be provided prior to the project going to City Council, that addresses restriction of development on rest of site, restriction of tree cutting and color of buildings; 5) adequate fire protection; 6) compliance with parking requirements; 7) establishment of a liaison committee between developer and Grove Park - Sunset Homeowners Association; 8) compliance with buffering ordinance.

Mayor Bissette opened the public hearing at 4:15 p.m.

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

Verl Emrick, Director of Planning, said the Planning and Zoning Commission did review and approve the site plan for the Sunset Point Condominiums with a number of contingencies. He said the Erosion Control Plan had been submitted and approved by the City Engineering Department; based on information provided, the developers have complied

with height ordinances, Ordinance No. 1514, and restriction of struc

tural heights in R1 and R2 zones and Ordinance No. 1558 concerning protection of mountain ridges; based on information provided, the entrance will be on the west side of the existing parking lot; a development rights easement had been presented to the Corporate Counsel which addresses restriction of development on the rest of the site, restriction of tree cutting and color of the buildings, and would be binding on the existing owner, as well as future owners of the property; the fire protection plan had been presented and approved by the Asheville Fire Department; the parking requirement is in compliance, and the developers had agreed to the establishment of a liaison committee between the developer and the Grove Park - Sunset Homeowners Association. He said the developers also agreed to and have shown on the plans a 20' buffer from Overlook Castle, which would be planted or left natural.

Albert Sneed, Attorney for the developer, outlined the history of the proposed project, stating that when the developer first purchased the property, the zoning allowed ten units per acre or 220 units total; however, the developer had first

submitted plans consisting of 196 units. He said in the meantime, the City Council changed the law limiting heights on buildings and remanded the project back to the Planning and Zoning Commission. He said the developer has reworked the plans and is proposing 48 condominium units. He said the City also down-zoned the property to allow for only six units per acre instead of ten units per acre. He said the project was turned down by City Council, Council then passed a "Hillside Ordinance" again down-zoning the property, and the developer has again submitted another plan for Council's consideration which is in total compliance with all codes of the City of Asheville.

Mr. Sneed said the developer will be furnishing 50,000 gallons of water on-site at all times for fire protection, as recommended by the Asheville Fire Department. He said 14 acres of the land has been dedicated by an easement for no further development whatsoever. He said the developer has also agreed to restrictions on the color of the buildings and tree cuttings. He said the North Carolina Department of Transportation has approved a driveway entrance to the proposed project. He said water and sewer services are adequate to service the proposed units. He said the Erosion Control Plan submitted to, and approved by, the City Engineering Department meets and exceeds all requirements of the City's Erosion Control Ordinance. He said the residents had expressed concern relative to additional water runoff created by this project. He said with the Erosion Control Plan as outlined, the water runoff would be somewhat corrected after the project is complete.

Alan Freeman, Architect for the project, presented a three dimensional model of the proposed project.

Mr. Sneed indicated that the developer had made a number of concessions to satisfy the concerns of residents in the area, including the removal of one story of the buildings. He said the buildings will not be higher than a two-story house. He said a detailed landscaping plan would be submitted, a new sewer line would be installed at the developer's expense expending 450' of their property. He said the Erosion Control Ordinance requires a capacity for a 10-year storm and their plan

provides for the capacity of a 25-year storm.

Bob Dungan, Attorney for the Sunset Ridge Homeowners Association,

expressed concerns relative to the road access. He said they would recommend that if approved, the road access be on the east side of the property rather than the west side. He said the potential problems with having the road access on the west would be erosion control, and a dangerous "S" curve, visibility problems. He said almost no tree cutting would be required if the developer uses the east side for the road access. He said the residents of Sunset Ridge Homeowners Association does not want the developers to use their pull for their 50,000 gallon reservoir for fire protection purposes.

George Saenger, Attorney for the Grove Park - Sunset Mountain Association, spoke in opposition to the project stating that the project was originally denied by members of Council in June, 1986, because the project was improper. He said they also felt the fire protection is not adequate for the project, and there would be many problems concerning erosion control in the area.

Max Haner, Secretary for the Grove Park - Sunset Mountain Association expressed concerns relative to the project relative to erosion control and fire protection.

Kenneth Pankow, Engineer hired by the Grove Park - Sunset Mountain Association to review the project, said he had reviewed the erosion control plan for the proposed project. He said he felt the engineering plans were inadequate and comparing the group development check-off list, there were many inadequacies. He said the trees on the model presented were out of scale. He said one of the major problems would be the storm water runoff and erosion control. He said the developers had failed to take into consideration three old storm water control structures presently on the property of which two were filled in and could not be used. He said when the developers started clear cutting for the Tiara Apartments in 1984, without a permit, the water runoff in the area tremendously increased. He said he has requested the revocation of the Provisional Erosion Control Permit due to several problems including very steep slopes, retention bases that will have too great of a slope which would cause problems with runoff. He also commented that the plan shows dumpsters and buildings within 12' of the Overlook Castle property of which the developer has indicated a 20' buffer. He said in his opinion, the storing of the 50,000 gallons of water for fire protection on-site is not

adequate. He said the water would only last approximately 17 minutes, and it would take two to four hours to fight a fire in such a complex. He also indicated that there is an existing sanitary sewer line on the property, probably serving the Tiara Apartments, that the developer shows construction over.

Upon inquiry of Councilman Michalove, Verl Emrick, Director of Planning, said all three questions raised by Mr. Pankow, being the sanitary sewer, erosion control, and fire protection concerns have been reviewed by the Planning Department, the Fire Department, and the Water & Sewer Services and Engineering Department.

Albert Sneed, responding to concerns expressed by the individuals, said

the developer has not and will not mislead anyone regarding the project. He said the developers attempted to meet with the Grove Park - Sunset Mountain Association; however, the residents would not listen. He said the developers would be bound by the 20' buffer zone from the Overlook Castle and the height limitations. He said the complex would comply with all laws and ordinances of the City of Asheville. He said the Erosion Control Plan engineered to a 25-year storm would improve current problems with runoff. He said all plans were properly presented and in order.

Upon inquiry of Councilman Price, Mr. Freeman, Architect, and Mr. Sneed said the dumpster shown on the plan within the 25' buffer zone would be moved and the buffer zone would be completely clear. They also indicated that the developer would be willing to work with the residents in any way possible to eliminate problems.

George Jenson, Engineer for the proposed project, said he had reviewed all the concerns expressed by Mr. Pankow and the residents. He said he used the "rationale formula" in designing the Erosion Control Plan. He said the plan is designed to control silt and water runoff in the area. He said the main areas of the property to be disturbed would be the parking areas, the entrance, and the retention areas. He said he discussed all points outlined by Mr. Penkow with Dale Pennell in the Engineering Department. He said, in his opinion, there would be no problems with the proposed plans, and the water runoff will not be at a greater velocity than currently exists.

Chief John Rukavina, with the Asheville Fire Department, said after review of the plans, the Fire Prevention Bureau has recommended that 50,000 gallons of water be stored on-site without obstruction or interference to meet appropriate standards and appropriate level of protection for the project. He said the storage of the 50,000 gallons would be used for the initial attack flow, giving an opportunity to mobilize additional sources. He said the building would be constructed at all building code requirements, and considering all factors, the complex would be relatively safe for fire protection. He also indicated that the access proposed would be adequate for fire apparatus.

Councilman Michalove requested that he be excused from the meeting due to an out-of-town meeting. Vice-Mayor Frank moved to excuse Councilman Michalove from the meeting. This motion was seconded by Councilman Price and carried unanimously.

Harold Huff, Director of Water, Sewer and Engineering Department, said the water for the proposed project had been approved by the Asheville Buncombe Water Authority on April 18, 1987. He said his department has not received plans for sewer facilities but felt that after reviewing the plans, they would be adequate. He said a soil erosion permit was issued on April 8, 1987, after an intensive review of the Erosion Control Plan. He said the City's Erosion Control Plan is a model ordinance with the State and is very stringent. He said the Erosion Control Plan submitted by the developer is probably the most comprehensive plan submitted to the Engineering Department within two years.

Mr. Huff said the rationale method used by the engineer for the project

is the widely and accepted used method.

Mr. Jensen, Engineer for the project, said he felt that major inadequacies of erosion control in the area is problems with the State not providing erosion control measures.

Gary Hobbs, of 106 Old Toll Road, spoke in opposition to the proposed project stating that major runoff problems occurred after the developer cleared land at Sunset Ridge. He presented photographs showing damages that have occurred at his residence since the developer had cleared land on Sunset Ridge.

Harvey Haywood, of 12 Sunset Summitt, also expressed concern relative to the proposed plans for erosion control for the project.

Peter Gentling, of 241 Old Toll Road, spoke in opposition of the project, citing increased water runoff that would be created by the development of the project.

Cecil Patterson, of Sunset Ridge Condominiums, spoke in opposition to the project.

Francis Manley, of 310 Town Mountain Road, spoke in opposition to the project also stating that Phil Green with the Institute of Government had reviewed the plans for the project and indicated the project should not be approved.

Lauren and Kela Whales, of 710 Town Mountain Road, owners of Overlook Castle, spoke in opposition to the project stating that the project is not in harmony with the district.

Ray and Lola Myers, of 4 Crowning Way Drive, also spoke in opposition to the project.

Barbara Pate, of 30 Sunset Summit, spoke in opposition to the project stating that the complex would create additional problems for residents in the area as far as storm drainage is concerned.

John Lehman, of 410 Sunset Ridge, requested that if the project is approved that the entrance to the project be on the east side of the building. He also felt there was a lack of communication between the residents in the area and the developer of the proposed project.

Bonnie Scully, of 17 Bluebrier Road, said she felt the proposed project would cause a large amount of water damage to her property. She said she felt Council should have some accountability for the damages.

George Singer, Attorney for the Grove Park Sunset Mountain Association, again appealed to members of Council not to approve the project. He said the project in the form presented is no different that the project Council denied over a year ago. He also stated that the developer's

corporation charter is in a state of suspension.

Albert Sneed reiterated that the residences in the area is not going to

get more water run-off in this project and felt this complex is the best use for the area. He said a developer could put in single-family residences which would call for more extensive road work and land disturbance. He said the developer is not going to use the Sunset Ridge Condominiums swimming pool for the 50,000 gallon water storage. He asked for an alternate approval for the access road to be in the rear of the building which would require another erosion control plan be submitted. He said the developers would like the alternate approval to put the access road on the east side of the property but did not want to be made to put the road on the east side. He said the only reason the developer's corporate charter may be in a state of suspension is because of the filing of a franchise tax. He said there is no evidence of fraud relative to the corporation. He said the project is being constructed by a partnership of W. R. Martin Corporation and the U. S. Shelter Corporation of Greenville, South Carolina.

Upon inquiry of Councilman Price, Mr. Sneed said the corporation would own and pay taxes on the undeveloped 17 acres.

Mayor Bissette closed the public hearing at 7:59 p.m.

Upon motion of Councilman Boland, seconded by Councilman Bratton, Council adjourned to executive session to discuss a legal matter concerning Sunset Point Condominiums site plan.

The Council went into open session at 8:52 p.m.

Upon inquiry of Councilman Bratton, Mr. W. R. Martin said there is no other reason that his corporation charter is in a

state of suspension other than the filing of a franchise tax.

After a good deal of thought and lengthy deliberations, Councilman Boland moved to approve the site plan of Sunset Point Condominiums located on Town Mountain Road contingent upon the following conditions being satisfied prior to the issuance of a zoning permit: 1) entrance road to be located along the roadbed on east side of site; 2) compliance with erosion control ordinance and erosion control plan with prior approval of amended plan; 3) compliance with height ordinances, Ordinance No. 1514, Restriction of Structural Heights in R-1 and R-2 Zones, and Ordinance No. 1558 concerning protection of mountain ridges; 4) ensuring that appropriate legal documents be provided that addresses restriction of development on the rest of site, restriction of tree cutting and trimming, color of buildings and landscape plan (to be approved by City staff); 5) adequate fire protection as approved by the Asheville Fire Department; 6) compliance with parking requirements; 7) establishment of a liaison committee between developer and Grove Park-Sunset Homeowners Association and Sunset Ridge Association; 8) compliance with buffering ordinance with nothing permitted in buffered area on southern property line; 9) prior approval of water and sewer line plans with the replacement of the existing 4" line; 10) tree plantings of 6' to 8' trees on the west side as shown on the plans.

This motion was seconded by Councilman Tisdale and carried unanimously.

with Councilman Michalove being excused.

Mayor Bisette said members of Council pledges a thorough monitoring system of this site plan and in the making of immediate storm water improvements in the area. He said the City staff is in the process of completing a storm water master plan and improvements should begin in

the near future.

**B. RESOLUTION NO. 87-84 - RESOLUTION TO CLOSE UNNAMED ALLEY BETWEEN  
RIDGEWAY AVENUE AND TOXAWAY STREET IN THE CITY OF ASHEVILLE, NORTH  
CAROLINA**

Mayor Bisette said a petition has been filed by Paul A. Bradish and Marion Kuykendall requesting that an unnamed alley between Ridgeway Avenue and Toxaway Street be permanently closed to be public use. This alley is under the sole and exclusive authority and control of the City of Asheville and is not under the authority of the NCDOT. Permanent closing of this unnamed alley would not be either detrimental to or contrary to the public interests or to the property rights of any individual and no individual owning property in this vicinity of this alley would be deprived of ingress and egress to his property.

Mayor Bisette opened the public hearing at 9:01 p.m.

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

Mayor Bisette noted that members of Council were briefed relative to the closing during the pre-Council work session.

There being no further comments, the Mayor closed the public hearing at 9:02 p.m.

Mayor Bisette said members of Council were previously furnished copies of the resolution and it would not be read in its entirety. He said any individual requesting a copy of the resolution would be furnished one at no cost.

Upon motion of Councilman Price, seconded by Councilman Tisdale, Resolution No. 87-84 was unanimously adopted.

Complete text of Resolution No. 87-84 will be found in Resolution Book

No. 16 at page 340.

### **III. OLD BUSINESS**

None scheduled.

### **IV. NEW BUSINESS**

#### **A. APPROVAL OF THE BIDS FOR ONE EACH ASPHALT PAVER, ASPHALT ROLLER, AND STREET FLUSHER.**

Mayor Bissette said recommendation of acceptance of the following low bids for one self-propelled asphalt paver, one self-propelled vibratory roller and one street flusher for the Public Works Department, Street Division. Six (6) bids were received.

Self Propelled, Rubber Tired Asphalt Paver - Arrow Equipment, Inc., Greensboro, North Carolina, for a "Blow-Knox" in the amount of \$101,445.00.

Self-Propelled, Tandum Vibratory Roller - Recommend to re-bid once specifications are revised to meet the new "Standard Specifications for Roads and Structures" as published by the North Carolina Department of Transportation.

Street Flusher - A. E. Finley and Associates, Inc., Charlotte, North Carolina, for a 1987 "Ford" cab and chassis with a Hydrostatic flusher body in the amount of \$52,769.00.

Councilman Price moved to approve the bids for an asphalt paver and street flusher as recommended by the Public Works Department. This

motion was seconded by Councilman Boland and carried unanimously.

### **V. CONSENT AGENDA**

#### **A. RESOLUTION NO. 87-85 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN**

**AN AGREEMENT WITH POINSETT SELF-INSURANCE SALES AND SERVICE, A SUBSIDIARY OF POINSETT FEDERAL SAVINGS AND LOAN ASSOCIATION FOR THE PURPOSE OF PROVIDING LOSS PREVENTION SERVICES TO THE CITY OF ASHEVILLE UNDER ITS SELF-INSURANCE PROGRAM OF WORKERS' COMPENSATION AS REQUIRED BY**

#### **THE REINSURER.**

Mayor Bissette said the City of Asheville is a self-insured municipality

for purposes of Workers' Compensation and in order to secure reinsurance for specific and aggregate excess liabilities, the various reinsurance markets require the services of an outside loss prevention consultant. Poinsett Self-Insurance Sales and Service has provided such services in the past in a cost effective and efficient manner, and has provided the City with a responsible quotation for the services for the contract period March 27, 1987 through March 26, 1988. This resolution will

authorize the execution of such an agreement.

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