

Tuesday - May 19, 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 Deputy City Clerk Carol Hensley.

Absent: City Clerk William F. Wolcott and Councilman Norma Price (Councilman Price, representing the City of Asheville, is attending Land-of-Sky Regional Council meeting).

## INVOCATION

The invocation was given by Councilman George Tisdale. He requested that the audience stand for the Pledge of Allegiance to the Flag.

## APPROVAL OF THE MINUTES - May 12, 1987 MEETING

Consideration was given to the approval of the minutes of the May 12, 1987, meeting.

Mayor Bissette announced the approval of the minutes as submitted.

## I. PROCLAMATIONS

### A. RESOLUTION NO. 87-87 - RESOLUTION OF APPRECIATION TO NEIGHBORING FIRE

#### DEPARTMENTS, RESCUE/SUPPORT AGENCIES AND AREA BUSINESSES

Mayor Bissette read the resolution stating that the Asheville Fire Department was recently confronted with a major fire on April 29, 1987, at Asheville Terrace Apartments. He said many neighboring fire departments, rescue/support agencies, and area businesses rendered their services.

Mayor Bissette recognized those individuals in attendance at the meeting who helped with the fire and expressed the City of Asheville's appreciation for their assistance and dedication to the City of Asheville.

Upon motion of Councilman Boland, seconded by Councilman Michalove, Resolution 87-87 was unanimously adopted.

Complete text of Resolution No. 87-87 will be found in Resolution Book No. **16** at Page **344**.

## II. PUBLIC HEARINGS

### A. REZONING PROPERTY ON VANDERBILT ROAD FROM R-3 RESIDENTIAL DISTRICT TO R-1 RESIDENTIAL DISTRICT

#### ORDINANCE NO. 1629 - AN ORDINANCE AMENDING ORDINANCE NO. 322, KNOWN AS "AN ORDINANCE PROVIDING FOR THE ZONING OF THE CITY OF ASHEVILLE" AS AMENDED, PROPERTY ON VANDERBILT ROAD.

Mayor Bissette said the Asheville Planning and Zoning Commission at a meeting held March 25, 1987, discussed the request of Asheville City Council that consideration be given to rezoning certain lots on Vanderbilt Road from R-3 Residential District to R-1 Residential District. After review and discussion, the Commission voted to recommend to

City Council that Lots 58-1/2, 56-1/2, 56-1/4 and a portion of Lots 54 and 53-1/2, Sheet 4, Ward 7, be rezoned from R-3 Residential District to R-1 Residential District.

Mayor Bisette 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.

Julia Cogburn, with the Planning Department, said the properties recommended for rezoning are located on Vanderbilt Road on the perimeter of the Biltmore Forest town limits. She said two of the properties extend to Hendersonville Road; however, the Commercial Highway zone facing Hendersonville Road would not be rezoned. The portion to be rezoned includes vacant property and three single-family dwellings. She said the properties conform to R-1 zoning regulations.

Bob Musselwhite, Town Manager for Biltmore Forest said the property proposed to be rezoned is on the perimeter of the Biltmore Forest town limits, and three single-family dwellings exist on the properties. He said property owners previously felt they were a part of Biltmore Forest, and that the R-1 zoning would protect their property from any other use other than single-family dwellings. He requested favorable consideration of the rezoning.

Upon inquiry of Councilman Tisdale, Mr. Musselwhite said on a short-term basis, Biltmore Forest and the residents feel the rezoning would protect their properties; however, on a long-term basis, the Town of Biltmore Forest and the residents would like the boundaries adjusted to allow the properties to be included in the Biltmore Forest town limits. However, in order to change the boundary limits, he said, the legislature would have to take such action.

Councilman Tisdale said since the Town of Biltmore Forest and the residents are still interested in changing the boundaries to allow these properties to be included in the Biltmore Forest town limits, he felt the request was not unreasonable and should be investigated.

Mayor Bisette closed the public hearing at 4:20 p.m.

Mayor Bisette said members of Council were previously furnished copies of the ordinance 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 Michalove noted that, as a matter of record, that the boundary adjustments for Biltmore Forest town limits is not a matter for consideration at today's Council meeting, even though Mr. Musselwhite suggested that the boundaries be changed on a long-term basis.

On a roll call vote of 6-0, Ordinance No. 1629 passed on first reading.

## **B. SITE PLAN OF WALL-MART DISCOUNT CITY TO BE LOCATED ON HENDERSONVILLE ROAD.**

Mayor Bisette said the site plan was prepared by Gray Engineering Consultants, Inc. for Wyatt Development Company, Inc., Developer, and submitted in accordance with the Group Development Section of the Asheville Zoning Ordinance. After review and discussion, the Commission voted to approve the project subject to the following conditions: 1) erection of a 6' high chainlink fence beginning at Southwest corner and continuing around perimeter to intersection of Hendersonville Road at Northwest corner; 2) submission of sign package in accordance with Zoning Ordinance; 3) removal of access to Peachtree Road; 4) closing of Oak Street; and 5) compliance with Erosion Control Ordinance.

Mayor Bisette opened the public hearing at 4:24 p.m.

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

Al Kopf, with the Planning Department said a Wall-Mart Discount City Shopping Center is proposed to be located on Hendersonville Road on property formally occupied by Nettlewood Nurseries. He said the property consist of 23 acres, and is zoned Commercial Highway District. He said the developer proposes 175,000 square feet of retail space with a major retail store, as well as 16 other retail stores. He said parking exceeds Zoning Ordinance requirements. He said access to the project would be off Hendersonville Road, and this has been approved by the North Carolina Department of Transportation. He said the Planning and Zoning Commission had recommended approval of the project contingent on the erection of a six-foot fence beginning at the Southwest corner and continuing around the perimeter to the intersection of Hendersonville Road at the Northwest corner. He said, as shown on the plans, the developer is proposing the removal of the access to Peachtree Road and the closing of Oak Street. He said the developer had submitted and received approval for their erosion control plan.

Jim Price, with Wyatt Development Company, spoke in support of the project. He also requested that Council allow the developer to stop with the chainlink fence at the Oak Street location. He said they do not wish to have the complex look like a detention center, and people living in the rear of the development may want to walk to the shopping center. He said the developer is in conformance with the Group Development regulations, and a 20 foot buffer is planned around the property. He said he felt the fence is an overkill of protection. He said a plan has been formulated with a tree line drive with trees also planned for the interior of the parking lot. He said it is the developer's desire to have the complex both functional and appealing.

Eugenia Gibson of 1640 Hendersonville Road said her property adjoins the proposed complex, and she requested that a buffer and fence be required around the project to control vandalizm and trash.

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

Vice-Mayor Frank moved for the approval of the site plan for Wall-mart Discount City as recommended by the Planning and Zoning Commission including the six-foot high chainlink fence beginning at the Southwest corner and continuing around the perimeter to the intersection of Hendersonville Road at the Northwest corner and to include tree plantings within the interior of the parking area. This motion was seconded by Councilman Boland and carried unanimously.

## **C. SITE PLAN OF THE PROPOSED EXTENSION OF AUTOHAUS OF ASHEVILLE, INC. AT 2**

### **KENILWORTH KNOLL**

Mayor Bissette said the Asheville Planning and Zoning Commission at a meeting held April 8, 1987, reviewed the site plan of the proposed expansion of Autohaus of Asheville, Inc. at 2 Kenilworth Knoll. The site plan was prepared by David Aiton, Architect, and submitted in accordance with the Group Development Section of the Asheville Zoning Ordinance. After review and discussion, the Commission voted to approve the project subject to compliance with the Erosion Control Ordinance.

Mayor Bissette opened the public hearing at 4:49 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.

Al Kopf, with the Planning Department, said the proposed extension is an addition to the existing buildings for Autohaus of Asheville. He said the project will consist of 6,000 sq. ft. to be used by another dealership.

David Aiton, Architect for the project, spoke in support of the proposed expansion. He said the only reason the site plan had to be presented to Planning and Zoning Commission and to City Council is that it is over the 5,000 sq. ft. limit.

Mayor Bissette closed the public hearing at 4:51 p.m.

Vice-Mayor Frank moved for the approval of the site plan of the proposed expansion of Autohaus of Asheville, Inc. at

2 Kenilworth Knoll as recommended by the Planning and Zoning Commission. This motion was seconded by Councilman Boland and carried unanimously.

### III. OLD BUSINESS

#### A. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE IMPROVEMENT OF U.S. 25 SOUTH FROM I-40 TO THE BLUE RIDGE PARKWAY

Mayor Bissette said the North Carolina Department of Transportation has prepared and adopted plans to make certain street and highway improvements with the City under Project No. 8.1900801. These plans consist of the improvement of U.S. 25 south from I-40 to the Blue Ridge Parkway in Asheville. The Department of Transportation and the City propose to enter into an agreement in which the City agrees: 1) to affect the necessary adjustment of any utilities under franchise without cost to the Department of Transportation; and 2) to provide for the adjustment of any municipally owned utilities without cost to the Department of Transportation. The Department of Transportation will acquire the right-of-way and construct the project according to the project plans. The City will reimburse the Department of Transportation 25% of the right-of-way cost for the project in nine (9) equal annual installments to begin on October 15, 1987.

Mayor Bissette said this matter was previously discussed by members of Council, and members of Council felt the requested 25% of the right-of-way costs for the project to be paid by the City of Asheville was extremely high. He said the Council had previously directed the Mayor and the City Manager to negotiate with the North Carolina Department of Transportation relative to the percentage being requested. He said in talking with the North Carolina Department of Transportation, the City Manager and the Mayor were presented with percentages charges to other cities for rights-of-way participation, which indicated that the City of Asheville was not being singled out with such a high percentage in requested right-of-way cost. He said in the meantime, Representative Hunter of McDowell County and Representative Nesbitt of Buncombe County has introduced a bill in the General Assembly requesting that municipalities be exempt from all right-of-way cost participation. He said after discussion, Council had previously requested that no action be taken on the municipal agreement relative to Hendersonville Road until after action is taken on the proposed bill. He said the North Carolina Department of Transportation has requested that the City, in order to go forward with the widening of Hendersonville Road, authorize the execution of the municipal agreement with the understanding that if the bill pending in legislation is adopted, the City of Asheville would be exempt from right-of-way costs on this project.

Mayor Bissette said, contrary to newspaper reports, he did not say Asheville City Council would take this action on the municipal agreement but, however, he would recommend its approval. He said he would recommend approval of the resolution with the stipulation that if the bill passes, that the City would be exempt from the right-of-way cost since the Hendersonville Road widening has been the number one priority under the Transportation Improvement Program, and the citizens of the area are in dire need of this project.

Councilman Tisdale, disagreeing with Mayor Bissette's recommendation, said he felt this was the highest request percentage-wise right-of-way participation. He said the widening of Hendersonville Road would be of benefit to the City of Asheville as well as Buncombe County, Hendersonville County, and Biltmore Forest. He said he would also like to see Hendersonville Road widened but the cost should be shared equitably.

Councilman Tisdale said he would not be in favor of supporting this resolution, and felt the Council members should wait until a decision is made on the pending bill before taking action on the municipal agreement.

Councilman Boland said he felt this was a complex issue, and it would be premature for Council to approve a resolution. He also suggested that Council wait until a decision is made on the proposed bill.

Vice-Mayor Frank said in talking with the Legislature, Council's delay in taking action on the municipal agreement will not delay the project. She said the requested right-of-way cost of \$1,155,500.00 is equal to 6 cents on the tax rate,

and felt members of Council should wait until a decision is made on the proposed bill.

Councilman Michalove noted that the Hendersonville Road widening has been a number one priority for a long time, and felt the adoption of this resolution would speed up the process for the widening of Hendersonville Road.

Councilman Bratton said she felt the resolution is a fair compromise and would allow the project to go forward.

Councilman Michalove moved for the adoption of the resolution. This motion was seconded by Councilman Bratton, which motion failed on a 3-3 deadlock vote with Councilman Boland, Vice-Mayor Frank, and Councilman Tisdale voting "no".

#### **IV. NEW BUSINESS**

##### **A. ORDINANCE NO. 1630 - AN ORDINANCE AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO PROVIDE A MISDEMEANOR PENALTY FOR VIOLATIONS OF PROVISIONS OF CHAPTER 13 (LITTERING)**

Mayor Bissette said Section 13-9 of the Code of Ordinances of the City of Asheville currently provides that "any person continuing to violate any provision or requirement of any section or subsection of this chapter after notice of violation has been issued to him, or any person willfully failing, refusing or neglecting to comply with any such provision or requirements, shall, in addition to any other remedy, be issued a citation in which a penalty of fifty dollars (\$50) shall be assessed for each offense with each and every day of violation being a distinct and separate offense. Upon failure to pay said penalty, a civil action may be instituted to enforce collection of same. The Council desires to amend this subsection to provide for a misdemeanor penalty for such violations in lieu of civil penalties.

Mayor Bissette said this amendment will be comparable with the County's ordinance and allow for a strong standardized enforcement in dealing with violators of Chapter 13 of the Code of Ordinances dealing with litter.

Councilman Boland noted that this is only one step in broading the enforcement of the Litter Ordinance. He said the City staff is now reviewing the current ordinance for amendments and will recommend the utilization of all departments in looking for problems relating to litter.

Evelyn Wyatt of the Montford community presented the following list of concerns that need to be addressed in amending the Litter Control Ordinance. 1) Setting trash out on wrong day; 2) dumping; 3) collecting or storing rubbish on property; 4) mowing of property; 5) automobiles on blocks without wheels, motors, etc.; 6) neglected fences, (maintain them or take them down);

7) neglect of sidewalks and property between sidewalk and gutter; 8) maintenance of property (including rear and sides).

Jim Cairnes of 209 Cumberland Avenue also requested a revision of the Housing Ordinance that would allow for demolition of houses without taking a one to one and a half year process.

Willamay Blankenship of 141 Cumberland Avenue requested that Council look into the problem of litter under the Chestnut Street Bridge.

Councilman Boland moved for the adoption of Ordinance No. 1630. This motion was seconded by Councilman Tisdale.

On a roll call vote of 6-0, Ordinance No. 1630 passed on first reading.

Councilman Michalove moved to suspend the rules and proceed to the second reading of Ordinance No. 1630. This motion was seconded by Vice-Mayor Frank and carried unanimously.

On a roll call vote of 6-0, Ordinance No. 1630 passed on second reading.

Councilman Michalove moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1630. This motion was seconded by Vice-Mayor Frank, and failed on a deadlock vote of 3-3 with Mayor Bisette, Councilman Boland, and Councilman Tisdale voting "no".

Councilman Boland said he felt uncomfortable in adopting a ordinance on three readings on one particular day without giving the public an opportunity to respond.

## **V. CONSENT AGENDA**

### **A. RESOLUTION 87-88 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A RIGHT-OF-WAY ENCROACHMENT AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

Resolution Book No. 16, Page 345

### **B. RESOLUTION 87-89 - RESOLUTION OF INTENT TO CLOSE A PORTION OF DALE STREET AND CALLING A PUBLIC HEARING ON THE QUESTION FOR JUNE 23, 1987**

Resolution Book No. 16, Page 346

Upon motion of Councilman Tisdale, seconded by Vice-Mayor Frank, the Consent Agenda was unanimously approved.

## **VI. OTHER BUSINESS**

### **A. RESOLUTION NO. 87-90 - RESOLUTION AUTHORIZING THE TRANSFER OF LOTS D AND E AS INDICATED ON A SURVEY FROM THE CITY OF ASHEVILLE TO THE ASHEVILLE HOUSING AUTHORITY (SMALL LOTS LOCATED NEAR STEPHENS LEE RECREATION CENTER)**

Mayor Bisette said there are several small lots located near Stephens Lee Recreation Center which are of no apparent benefit to the City of Asheville, and the Asheville Housing Authority desires to purchase this property from the City of Asheville for the Dollar A Lot Program. He said this resolution would authorize the Mayor to execute the documents necessary to transfer these lots from the City of Asheville to the Asheville Housing Authority.

Upon motion of Councilman Tisdale, seconded by Councilman Michalove, Resolution No. 87-90 was unanimously adopted.

Complete text of Resolution No. 87-90 will be found in Resolution Book No. 16 at Page 347.

### **B. REQUEST TO INVESTIGATE MANOR PROPERTY**

Councilman Michalove requested that the City Manager give members of Council a status report relative to the Manor property on Charlotte Street.

### **c. STATUS REPORT ON HOUSES IN MONTFORD AREA**

Vice-Mayor Frank requested that the City Manager give members of Council a status report relative to the condemnation of houses in the Montford area.

**D. RESOLUTION NO. 87-91 - RESOLUTION REQUESTING THAT THE GENERAL ASSEMBLY NOT ENACT ANY LEGISLATION WHICH WOULD PREVENT THE USE OF AMORTIZATION ON NON-CONFORMING SIGNS**

Linn Brown, of 62 Macon Avenue, requested that members of Council adopt a resolution in opposition to a bill being proposed to take away local authority and control which would prevent the use of amortization of non-conforming signs. She said she felt this was an intrusion by the legislature on the powers of local governments.

Councilman Boland read the resolution stating that the City of Asheville has been developing a comprehensive planning strategy known as Alternatives of Asheville which has included the goals, objectives and ideals of many Asheville citizens. He said a major section of the Alternatives plan calls for greater regulation of signs within the City's jurisdiction including a significant recommendation which would establish an amortization schedule for all non-conforming signs inside and outside of the protective federal aid highway corridors. He said the General Assembly of North Carolina is processing a bill (HB1145) which would effectively prohibit the use of the amortization schedule by removing non-conforming signs. He said this resolution would request that the General Assembly not enact any legislation which would prevent the use of the amortization of non-conforming signs for

the following reasons: 1) the General Assembly would be removing a valuable, court-proven tool to improve the aesthetic quality of our mountain area, a quality which is critically important to our way of life and our economy; and 2) the removal of amortization would seriously impact the City's ability to effectively and practically remove non-conforming signs over a reasonable period of time.

The City Manager noted that the League of Municipalities is in opposition to the proposed bill.

Councilman Boland moved for the adoption of Resolution No. 87-91. This motion was seconded by Vice-Mayor Frank and carried unanimously.

Complete text of Resolution No. 87-91 will be found in Resolution Book No. **16** at page **348**.

Councilman Boland said he felt the City Council should adopt a resolution of intent to support the federal highway logo program. He said he would like to see this program exhilarated.

**E. REPORT RELATIVE TO INTERGOVERNMENTAL SERVICES COMMITTEE MEETING**

Vice-Mayor Frank noted that the Intergovernmental Services Committee met today at 12:30 p.m. She said she would be giving members of Council a progress report on the meeting in the near future.

Councilman Bratton said since the County has approved the implementation of the 911 emergency number, she suggested that the Mayor coordinate with the County recognition to Scott Fowler for bringing the 911 emergency number to Council's and County Commissioner's attention.

**F. EEO TASK FORCE MEETING**

Councilman Boland noted that he had met with the City Manager and the Director of Personnel, and a meeting of the Equal Employment Opportunity Task Force has been scheduled for June 1, 1987 at 3:00 p.m.

**G. REPORT RELATIVE TO STORM DRAINAGE ON HARNETT STREET**

Upon inquiry of a citizen on Harnett Street, the Mayor said the City Manager is in the process of presenting a report to members of Council relative to the repair of emergency storm drainage problems. He said the Vance School area will be included in that report.

**H. CLAIMS - EDITH OWENBY (WATER) - GRETA CLARK (PARKS & RECREATION)**

City Manager presented claims from Edith Owenby and Greta Clark.

Mayor Bissette referred the claims to the Corporation Counsel for investigation and recommendation.

**I. RALPH BISHOP - ASHEVILLE POLICE DEPARTMENT - LOTTERY SALES**

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

**ADJOURNMENT**

Mayor Bissette adjourned the meeting at 5:20 p.m.

MAYOR CITY CLERK

---