

Tuesday - June 23, 1987 - 4:00 p.m.

Regular Meeting

Present: Mayor W. Louis Bisette, Presiding; Vice-Mayor Mary Lloyd Frank; Councilmen 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: Councilman Wilhelmina Bratton (broken foot)

INVOCATION

At the request of Councilman Tisdale, the audience stood for the pledge of allegiance to the flag. The invocation was given by Councilman Tisdale.

APPROVAL OF THE MINUTES - JUNE 16, 1987 MEETING

1. Consideration was given to the approval of the minutes of the June 16, 1987, meeting with one minor correction.

I. PROCLAMATIONS

II. PUBLIC HEARINGS

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON FAIRWAY DRIVE, KNOWN

AS THE CARMELITE PROPERTY

ORDINANCE NO. 1636 - AN ORDINANCE AMENDING ORDINANCE 322, KNOWN AS "AN ORDINANCE PROVIDING FOR THE ZONING OF THE CITY OF ASHEVILLE," AS AMENDED, REQUESTS TO CITY COUNCIL THAT COMMISSION CONSIDER REZONING PROPERTY ON

FAIRWAY DRIVE (CARMELITE PROPERTY)

Mayor Bisette said the Asheville Planning and Zoning Commission at a meeting held May 13, 1987, reviewed the requests of City Council that the Commission consider rezoning a portion of Lot 61, Sheet 15, Ward 8, from OI Office Institutional District to R-2 Residential District. The property is located on Fairway Drive and is known as the Carmelite property. After review and discussion, the Commission voted to recommend to City Council that a portion of Lot 61, Sheet 15, Ward 8, be rezoned from OI Office Institutional District to R-2 Residential District.

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

The 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 Asheville City Council had requested that the Planning and Zoning Commission consider rezoning a portion of Lot 61 from OI Office Institutional District to R-2 Residential District when a site plan for the Cloister Condominiums project was approved. He said the property on which the project would be built was split zoned. He said the Planning and Zoning Commission recommended the R-2 Residential District in order to have consistent zoning. He said this rezoning would have no effect on the proposed development as approved.

Mayor Bisette closed the public hearing at 4:17 p.m.

Mayor Bissette 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 Price moved for the adoption of Ordinance No. 1636. This motion was seconded by Councilman Michalove.

On a roll call vote of 6-0, Ordinance No. 1636 passed on first reading.

B. PUBLIC HEARING RELATIVE TO CLOSING A PORTION OF DALE STREET

RESOLUTION NO. 87-10 - RESOLUTION TO CLOSE A PORTION OF DALE STREET IN THE CITY OF ASHEVILLE, NORTH CAROLINA

Mayor Bissette said a petition has been filed by Christ Fellowship Church requesting that a portion of Dale Street be permanently closed to public use. Said portion is under the sole and exclusive authority and control of the City of Asheville and is not under the authority and control of the North Carolina Department of Transportation. The closing will not be either detrimental to or contrary to the public interest or the property rights of any individual owning property in the vicinity of the portion to be closed. The portion to be closed is described as "lots bordering the portion of Dale Street are Lots 11, 20 $\frac{1}{4}$, and 247 of Ward 5, Sheet 214, and Lot 1 of Ward 5, Sheet 9 of the Buncombe County Tax Maps." A 20 foot utility easement shall be established along the existing sanitary sewer line crossing the above described property and Dale Street. In accordance with the North Carolina General Statutes, a public hearing is required before the street is closed.

Mayor Bissette opened the public hearing at 4:20 p.m.

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

Clark Brown, Director of Public Works, said the petitioner controls both sides of the property on the portion of Dale Street proposed to be closed.

Councilman Price suggested that if the resolution is adopted, that there be a provision that the Christ Fellowship Church construct a 50 foot cul-de-sac for emergency type vehicle use.

Robert Hyatt, of Dale Street, spoke in opposition to the closing. He also inquired as to why another ramp from Brevard Road could not be installed to this property rather than to close Dale Street.

Mayor Bissette informed Mr. Hyatt that the City of Asheville does not have authority to build a road over their property without first condemning the land.

Mr. Hyatt said he felt the closing of Dale Street would endanger the property rights of individuals on Dale Street.

Howard T. Watkins, of 45 Dale Street, also spoke in opposition to the closing of a portion of Dale Street.

Mayor Bissette noted that the Christ Fellowship Church was only requesting that the road be closed at their property line.

Mr. Watkins said he felt Dale Street should continue to remain open to Amboy Road.

Robert Hyatt offered the Christ Fellowship Church a 20 foot right-of-way on his property in order to keep Dale Street open.

Alan Bragwell, Pastor of the Christ Fellowship Church, said due to the topography of the land, the architect had requested that the building be constructed in the middle of Dale Street where it is proposed to be closed. He said the church proposes to erect a barricade at this location, then open a private road through to old Amboy Road. By the use

of a map, Mr. Bragwell showed members of Council the location proposed to be closed.

Upon inquiry of members of Council, Mr. Bragwell said there would be no problem with the church installing a 50 foot cul-de-sac if required.

Mayor Bissette closed the public hearing at 4:38 p.m.

Mayor Bissette 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 resolution would be furnished one at no cost.

Councilman Price moved for the adoption of Resolution No. 87-110 with the provision that Christ Fellowship Church construct a 50 foot cul-de-sac to City standards that would then be dedicated to the City of Asheville. This motion was seconded by Vice-Mayor Frank and carried unanimously.

Complete text of Resolution No. 87-110 will be found in Resolution Book No. **16** at page **371** and **372**.

III. OLD BUSINESS

Mayor Bissette said the following resolutions deal with approving the report

of plans for extension of City services into several areas proposed for annexation. He said North Carolina General Statutes 160A-49 requires that the governing body approve a report of plans for an extension of City services at least 30 days prior to the date of the public hearing on the question of annexation which is scheduled for July 28, 1987.

Verl Emrick, Director of Planning, said this is the next step in concluding the annexation process. He said the plans for extension of these areas would be made a part of the resolution. He said the plan along with water and sewer maps would be available in the City Clerk's office for inspection by the public June 26, 1987.

Councilman Tisdale requested that the City Manager ask the County of Buncombe if they would like to review the plans for services for the proposed annexation areas. He also requested that the Planning staff meet with the various volunteer fire departments to go over the plans for services.

Mayor Bissette noted that the Planning staff would be holding community meetings relative to annexation on July 7th at the Haw Creek Elementary School, July 9th at Sand Hill Elementary School, and July 10th at T. C. Roberson High School.

Harry Burnette, of 776 Haw Creek Road, Chief for the Haw Creek Volunteer Fire Department, requested that members of Council attend the community meeting at the Haw Creek Elementary School to hear the residents' concerns regarding the Haw Creek Volunteer Fire Department and concerns that the area known as Chunn's Cove will be without fire protection.

Upon inquiry of members of Council, Chief John Rukavina said North Carolina General Statutes provide that volunteer fire departments can provide fire protection coverage in newly annexed areas. He said a five year contract could be executed with the Haw Creek Fire Department to make up for lost revenues the fire department would experience by this annexation, or the City of Asheville could assume the indebtedness the Haw Creek Fire Department would have by annexation taking 80% of their revenue. He also addressed the concern of the Chunn's Cove area which lies outside both the Asheville Fire Department and Haw Creek Fire Department districts. He said Haw Creek Volunteer Fire Department is presently providing service to the Chunn's Cove area at no cost but a concern has been expressed as to what will happen after this annexation. Chief Rukavina suggested that members of Council bring this to the attention of the County Commissioners.

A. RESOLUTION NO. 87-111

RESOLUTION APPROVING THE REPORT OF PLANS FOR THE EXTENSION OF MUNICIPAL SERVICES INTO THE AREA TO THE SOUTH OF THE EXISTING CORPORATE LIMITS

PROPOSED FOR ANNEXATION

Upon motion of Councilman Boland, seconded by Councilman Price, Resolution No. 87-111 was unanimously adopted.

Complete text of Resolution No. 87-111 will be found in Resolution Book No. **16** at page **373**.

B. RESOLUTION NO. 87-112

RESOLUTION APPROVING THE REPORT OF PLANS FOR THE EXTENSION OF MUNICIPAL SERVICES INTO THE AREA LYING TO THE WEST OF HENDERSONVILLE ROAD PROPOSED FOR ANNEXATION

Upon motion of Vice-Mayor Frank, seconded by Councilman Michalove, Resolution No. 87-112 was unanimously adopted.

Complete text of Resolution No. 87-112 will be found in Resolution Book No. **16** at page **374**.

C. RESOLUTION NO. 87-113

RESOLUTION APPROVING THE REPORT OF PLANS FOR THE EXTENSION OF MUNICIPAL SERVICES INTO THE AREA TO THE WEST OF THE EXISTING CORPORATE LIMITS PROPOSED FOR ANNEXATION

Upon motion of Vice-Mayor Frank, seconded by Councilman Boland, Resolution No. 87-113 was unanimously adopted.

Complete text of Resolution No. 87-113 will be found in Resolution Book No. **16** at page **375**.

D. RESOLUTION NO. 87-114

RESOLUTION APPROVING THE REPORT OF PLANS FOR THE EXTENSION OF MUNICIPAL SERVICES INTO A PORTION OF THE AREA GENERALLY KNOWN AS THE OTEEN AREA PROPOSED FOR ANNEXATION

Upon motion of Councilman Price, seconded by Councilman Michalove, Resolution No. 87-114 was unanimously approved.

Complete text of Resolution No. 87-114 will be found in Resolution Book No. **16** at page **376**.

E. RESOLUTION NO. 87-115

RESOLUTION APPROVING THE REPORT OF PLANS FOR THE EXTENSION OF MUNICIPAL SERVICES INTO A PORTION OF THE AREA GENERALLY KNOWN AS THE HAW CREEK AREA PROPOSED FOR ANNEXATION

Upon motion of Councilman Boland, seconded by Vice-Mayor Frank, Resolution No. 87-115 was unanimously approved.

Complete text of Resolution No. 87-115 will be found in Resolution Book No. **16** at page **377**.

IV. NEW BUSINESS

A. RESOLUTION NO. 87-116 - RESOLUTION AWARDING THE BIDS AND AUTHORIZING EXECUTION OF THE CONTRACTS FOR CONSTRUCTION OF THE WALL STREET AND RANKIN AVENUE PARKING DECKS

Mayor Bisette said on June 11, 1987, separate bids were received for the general work, electrical wiring and installation, plumbing and gas fittings and accessories, and heating, ventilating, air conditioning and accessories components for construction of the Wall Street and Rankin Avenue Parking Decks. He said three bids were not received for each of the electrical wiring and installations, plumbing and gas fittings and accessories, and heating, ventilating, air conditioning and accessories components for the project. He said the City, therefore, rebid those components and those second bids were received on June 22, 1987.

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

The City Manager presented the bid tabulations for the parking decks stating that the total bids for the two parking decks is \$25,000 under estimates. He said the bids have been reviewed by the consultant, Enwright Associates, Inc. and Enwright recommends that the bids be awarded for the combined projects to the lowest responsible bidders as follows:

General Work

Freeman and Wood Construction Company \$3,627,000

Plumbing and Gas Fittings and Accessories

Easley Mechanical, Inc. 102,660

Heating, Ventilating, Air Conditioning and

Accessories

Asheville Heating and Cooling, Inc. 23,800

Electrical Wiring and Installations

Starr Electrical Company, Inc. 269,200

TOTAL \$4,022,600

The City Manager noted that Dixie Construction Company submitted the low bid for the mechanical and electrical portions but would only accept if they were awarded the general contract.

The City Manager said revenue bonds would be sold beginning July 14 for financing of the parking decks.

Steve Warren, Attorney representing Dixie Construction Company, objected to the awarding of the contracts to Freeman and Wood Construction Company. He said his client based his opposition on the fact that Freeman and Wood Construction Company failed to fill in the blank for expected date of completion relative to the Rankin Avenue Parking Deck. He said Freeman and Wood Construction Company gave the City a completion date of 266 days after the bids were formally opened.

Mr. Warren said Dixie Construction Company presented a total bid of \$3.8 million with a completion date on the Wall Street project of 210 days and 300 days for the Rankin Avenue Parking Deck. He said his client objects because the Freeman and Wood Construction Company bid does not comply with the Public Building Contractor's Statutes, North

Carolina General Statutes 143-129. He said that statute specifically states that among other things, bidders must specify a time for completion. He said in requesting the bids the City had presented the bidders a form which specified that the Wall Street Parking Deck be completed within 210 days and the time for completion on the Rankin Avenue Parking Deck had been left blank for the bidder to fill in, however, the instructions were, relative to the Rankin Avenue Parking Deck, that time was of essence and the completion time would be a factor in consideration. He said his client would contend that the Freeman and Wood Construction Company bid did not comply with the statutes and therefore, would not constitute a valid bid. He said he felt his client is the lowest bidder because they submitted the lowest responsive bid.

Upon inquiry of Mr. Warren, the City Manager said Freeman and Wood Construction Company had given the City of Asheville a time of completion of 266 days during the same meeting in which the bids were opened.

The City Manager noted that in the AIA Instructions to Bidders there is a provision that the City has a right to waive informalities or irregularities on bids.

Mr. Warren said it would be his client's position that the statutes will not allow the City to waive any informalities or irregularities. He said modification of sealed bids are inadmissible, and Freeman and Wood did not have a valid bid under North Carolina General Statutes.

Upon inquiry of Ralph Bishop, Mayor Bissette said the parking decks would be constructed with revenue bonds.

Tommy Parker of 486 Windswept Drive Project Manager for Dixie Construction Company for the Wall Street Project, said when Dixie Construction Company was awarded the work on Wall Street they hired local people and spent local money. He said at first Dixie Construction Company had a contract with the Wall Street developers to construct the parking deck, therefore, Dixie Construction Company kept all the employees for that reason. He said the employees were never notified that the parking deck was being turned over to the City of Asheville for construction since Dixie Construction Company had a contract with the developer. He said they now feel they are losing construction of the parking deck for the second time. He said two contractors working in one particular area will be impossible.

Upon inquiry of Mr. Warren, Mayor Bissette said the contracts for the parking decks would be signed seven days after the award of bids.

After discussion, Vice-Mayor Frank moved for the adoption of Resolution No. 87-116. This motion was seconded by Councilman Price and carried unanimously.

Complete text of Resolution No. 87-116 will be found in Resolution Book No. **16** at page **377**.

B. ORDINANCE NO 1637 - BUDGET ORDINANCE AMENDMENT FOR MATCHING FUNDS FOR FEDERAL GRANTS FOR HISTORIC RESOURCES COMMISSION

Mayor Bissette said the Historic Resources Commission has been awarded two federal survey and planning grants totaling \$7,000. The Historic Resources Commission has Department and City Manager approval to contract with a consultant to develop design review guidelines for Biltmore Village and the Downtown and to write several National Register nominations. The grants have a cash match requirement of \$6,000. This budget amendment will allocate that \$6,000 cash match. The State Historic Preservation Office needs certification of the matching funds. He said this budget amendment will allow the cash match to be made available from nondepartmental contingency funds.

Councilman Boland moved for the adoption of Ordinance No. 1637. This motion was seconded by Councilman Tisdale.

On a roll call vote of 6-0, Ordinance No. 1637 passed on first and final reading.

Complete text of Ordinance No. 1637 will be found in Ordinance Book No. **11** at page **141**.

C. ORDINANCE NO. 1638 - ORDINANCE AMENDING SECTION 28-52(B) OF CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO INCLUDE MURDOCK AVENUE AND MARTIN LUTHER KING DRIVE AS STREETS WHERE TRUCK TRAFFIC IS PROHIBITED

Mayor Bissette said this ordinance will prohibit truck traffic on Murdock Avenue, requested by the Claxton community group, and Martin Luther King Drive, requested by Mr. Larry Holt, on behalf of the residents of the area. He said the Traffic Engineer has recommended that these streets be added to the ordinance prohibiting truck traffic.

Councilman Price moved for the adoption of Ordinance No. 1638 restricting truck traffic on Murdock Avenue from Hillside Street to Evelyn Place until the completion of the construction at Grove Park Inn and to include Wilburn Road off Patton Avenue to Johnson Boulevard in Wilshire Park. This motion was seconded by Vice-Mayor Frank.

On a roll call vote of 6-0, Ordinance No. 1638 passed on first reading.

Councilman Michalove moved to suspend the rules and proceed to the second reading of Ordinance No. 1638. This motion was second by Councilman Boland.

On a roll call vote of 6-9, Ordinance No. 1638 passed on second reading.

Councilman Price requested that the City staff look into restricting truck traffic on Murdock Avenue to determine if the language in the ordinance is sufficient to comply with the agreement of Grove Park Inn for construction traffic.

V. CONSENT AGENDA

A. SCHEDULING PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED AT 169 and 171 DRUID DRIVE FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT FOR JULY 14, 1987

SUMMARY: The Asheville Planning and Zoning Commission considered the petition of Mr. Peter Wilson et al that Ward 6, Sheet 13, Lots 27 and 41 be rezoned from R-3 Residential District to CH Commercial Highway District. The property is located at 169 and 171 Druid Drive. After review and discussion, the Commission voted to recommend that the petition be denied and that the property remain as it is now zoned. The petitioner, Mr. Peter Wilson, has appealed the decision of the Planning and Zoning Commission, by letter dated June 8, 1987, and has requested that Council hold a public

hearing relative to the rezoning request.

B. SCHEDULING PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON N.C. 81 ACROSS FROM SAYLES-BILTMORE BLEACHERS FROM R-2 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT FOR JULY 14, 1987

SUMMARY: The Asheville Planning and Zoning Commission considered the petition of Mr. Charles Ashton that Ward 8, Sheet 15, portion of Lot 87, be rezoned from R-2 Residential District to CH Commercial Highway District. The property is located on N.C. 81 across from Sayles-Biltmore Bleachers. After review and discussion, the Commission voted to recommend that the petition be denied and that the property remain as it is now zoned. The petitioner, Mr. Charles Ashton, has appealed the decision of the Planning and Zoning Commission, by letter dated June 15, 1987, and has requested that

Council hold a public hearing relative to the rezoning request.

C. SCHEDULING PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON CLINGMAN

AVENUE FROM R-3 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT FOR JULY 14, 1987

SUMMARY: The Asheville Planning and Zoning Commission at a meeting held June 3, 1987, considered the rezoning petition, plus lots in an area north of Hilliard, west of Clingman and southeast of West Haywood Street for possible inclusion in the Commercial Service District. The Commission voted to recommend to City Council that Ward 4, Sheet 3, Lots 22, 26, 27, 28, 29, 31, 32¼, 34, 36, 36¼, 37, 38, 237, 240, 241, and 252 be rezoned from R-3

Residential District to CS Commercial Service District.

D. SCHEDULING PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED AT 243 EMMA ROAD FROM LI LIGHT INDUSTRIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT FOR JULY 14, 1987

SUMMARY: The Asheville Planning and Zoning Commission at a meeting held June 4, 1987, considered the petition of Mr. Ernest Porshia that Lots 23 and 24, Sheet 37, Ward 6, be rezoned from LI Light Industrial District to CH Commercial Highway District. The property is located at 243 Emma Road. After review and discussion, the Commission voted to recommend to City Council that Lots 23 and 24, Sheet 37, Ward 6, be rezoned from LI Light

Industrial District to CH Commercial Highway District.

E. APPROVAL OF BIDS RECEIVED FOR ONE ASPHALT ROLLER FOR PUBLIC WORKS DEPARTMENT

SUMMARY: Four (4) bids were received for an asphalt roller for the Public Works Department. It is recommended to award this purchase to the low bidder, Arden Equipment Company, Arden, North Carolina, in the amount of \$42,812.00.

F. RESOLUTION 87-117 - RESOLUTION REQUESTING A LOCAL WARNING WEATHER RADAR FOR WESTERN NORTH CAROLINA

SUMMARY: Incomplete and inaccurate forecasts produce unnecessary losses in lives, in property, in business, school and public agency closings, in air and ground transportation navigation, and in other productive activity. This resolution will join with other local agencies requesting the acquisition of a local warning radar by the National Weather Service.

Resolution Book No. 16 at page 377.

Upon motion of Councilman Michalove, seconded by Councilman Price, the Consent Agenda was unanimously approved.

VI. OTHER BUSINESS

A. RESOLUTION NO. 87-109 - SEWER MAINTENANCE CHARGE - RESCINDED

Councilman Tisdale moved to rescind Resolution No. 87-109 which established a sewer maintenance charge of \$.70 per 100 cubic feet of water consumed effective July 1, 1987, and that the City Council place reconsideration of the establishment of a sewer maintenance charge on its agenda in two weeks. This motion was seconded by Councilman Boland and carried unanimously.

B. CLAIMS - VIOLA WILLIAMS (SEWER) - BRAD HAYES (WATER) - CLINT SLUDER (WATER)

The City Manager presented claims received from Viola Williams, Brad Hayes, and Clint Sluder.

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

C. BILL SOUTHWICK - 60 GREELEY AVENUE - PERMIT FOR KEEPING GOAT

Bill Southwick, of 60 Greeley Avenue, spoke to members of Council relative to his problem in obtaining a permit to keep a goat in the City of Asheville. He presented a petition with approximately 64 signatures of neighboring property owners stating that they did not have a problem with the Southwick's keeping of a goat. He said the reason for keeping the goat is as a pet and for clearing a steep bank. He said according to the Code of the City of Asheville only milking goats can be kept inside the City of Asheville with a permit. He said his goat is a gelding and requested that the City amend the ordinance to include geldings.

The Corporation Counsel was instructed to review the ordinance to determine the feasibility of adding geldings as a permitted animal to be kept inside the City of Asheville with a permit.

It was noted that the Corporation Counsel would report back to Council relative to amending the ordinance in two weeks.

Upon inquiry of Mr. Southwick, Mayor Bissette said the City Manager would be requested to temporarily hold off issuing a citation to Mr. Southwick for the removal of the goat.

RALPH BISHOP - ASHEVILLE POLICE DEPARTMENT - LOTTERY SALES

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

ADJOURNMENT

Mayor Bissette adjourned the meeting at 6:05 p.m.

Mayor City Clerk
