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Tuesday - September 27, 1988 - 4:00 P.M.

Regular Meeting

Present: Mayor W. Louis Bisette, Presiding; Vice-Mayor Kenneth

M. Michalove; Councilmen Mary Lloyd Frank, Norma T. Price, Wilhelmina Bratton, and Russell Martin; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Deputy City Clerk Carol Hensley.

Absent: Councilman Walter Boland and Associate City

Manager/City Clerk William F. Wolcott, Jr.

### **INVOCATION**

The invocation was given by Councilman Martin.

### **APPROVAL OF MINUTES - SEPTEMBER 20, 1988**

Mayor Bisette announced the approval of the minutes of the September 20, 1988 meeting as submitted.

### **I. PROCLAMATIONS:**

#### **A. Proclamation - September 26 - 30, 1988 - Minority**

##### **Enterprise Development Week**

Mayor Bisette read the proclamation and presented a

copy to Charles McElrath with the Minority Enterprise Council. Mr. McElrath introduced James Grant, Minority Business Person of the Year and outlined the events taking place during Minority Enterprise Development Week.

#### **C. Proclamation - "Foster Care Awareness Week" -**

##### **October 2-9, 1988**

Mayor Bisette read the proclamation. He said the

proclamation was requested by the Foster Care agencies of Buncombe County - Bethany Christian Services - Catholic Social Services - Professional

Parenting, Eliada Home, and the Buncombe County Department of Social Services. He presented a copy to Betsy Candler from the Buncombe County Department

of Social Services.

#### **D. Proclamation - October 2 - 8, 1988 -**

##### **"Mental Illness Awareness Week"**

Mayor Bisette read the proclamation and presented a

copy to Mary Lane Travis from the Western Carolina

Alliance for the Mentally Ill.

## **II. PUBLIC HEARINGS:**

### **A. Public hearing relative to site plan of Lowe's of West**

#### **Asheville to be located on Patton Avenue.**

Mayor Bissette said the Asheville Planning and

Zoning Commission on September 7, 1988, reviewed and approved the site plan subject to the following contingencies:

1. Letters of approval from MSD and Water and Sewer Services;
2. Letter from Asheville Fire Department approving adequacy of proposed lines for fire fighting purposes;
3. Recordable grading easement from adjoining property owners;
4. No grading or tree removal adjacent to R-2 areas until final approval; and
5. Sign package to comply with existing Sign Ordinance.

Mayor Bissette opened the public hearing at

4:37 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.

Patty Tallerday, Acting Planning Director, said the

project will be located on West Patton Avenue. She said approval has been received from the Metropolitan Sewerage District, Water and Sewer Department and the Fire Department. She said the project will be on 13 acres that is currently zoned Commercial Highway and R-2 Residential District. She said the developers met with the Malvern Hills Homeowners' Association regarding construction, buffering, lighting, screening of utilities,

fencing and plantings. She said project will consist of two buildings with 70,000 square feet with a utility building in the rear of the property. She said the proposed project meets all group development regulations. She said the developer has received access approval from Patton Avenue for two entrances. She said grading and drainage permits have been issued. She said the sign package meets the existing sign ordinance requirements but does not meet the proposed sign ordinance and the developer is aware of the proposed regulations.

Ms. Tallerday showed a video of the property

proposed to be developed.

After discussion, Mayor Bissette requested that the

City Attorney review the buffer ordinance and determine, as a matter of interpretation, whether or not a 20' buffer is required on a commercial zone from a residential zone.

E. G. Roberts, School Road, Malvern Hills, said it

was his understanding that there would be a 35' barrier for residents on Arthur Road.

After discussion, Mayor Bisette closed the public

hearing at 5:04 p.m.

Councilman Price moved for the approval of the site

plan of Lowe's of West Asheville to be located on Patton Avenue subject to the recommendations of the Planning and Zoning Commission and further that buffering remain as outlined by the Planning Staff- (being a 35' strip of land zoned R-2 is to serve as an undisturbed buffer strip around the east and north perimeter of the property. In addition a double row of white pines will be planted on the eastern side of the property and a fence will separate the developed portion of the project from areas where vegetation is to remain undisturbed - further described on the site plan approved September 27, 1988 on file in the Planning Department.) This motion was seconded by Councilman Martin and carried unanimously.

Charles Harkins, owner of Lot 50 which adjoins the

property proposed to be developed, asked that the developer put in additional trees to alleviate the residents from seeing the project from their residences.

Mayor Bisette suggested that a committee be

established consisting of a representative from the developer, the Malvern Hills Homeowners' Association, and the Planning Staff to solve any problems or complaints that might arise from the

construction of the project.

## **B. Public hearing relative to closing a portion of Cliff**

### **Street.**

Mayor Bisette said a petition has been filed by

Westgate Shopping Center of Asheville, Inc. requesting that a portion of Cliff Street which has never been paved or otherwise utilized be permanently closed to the public use. This closing is in connection with the Westgate Shopping Center

Expansion Project - Phase II.

Mayor Bisette opened the public hearing at

5:10 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.

Patty Tallerday, Acting Planning Director, said the

street is requested to be closed as a part of the approval requirements for the Westgate Parkway Expansion Project -

Phase II. She said all questions regarding easements have been resolved.

George Coggins, owner of two lots facing on Cliff

Street, opposed the closing of Cliff Street as proposed. He said the closing would eliminate right of way to his property on the north and south. He said no one has contacted him about the proposed closing.

The City Attorney commented that the Cliff Street

proposed to be closed has never officially been paved or opened but is shown on a recorded plat. He said the closing as proposed would conform to public records and would be consistent with what is actually reality.

Alfred Adams, Attorney representing the Westgate

Corporation, said the dedicated right of way for Cliff Street and the actual road construction which was originally done by George Coggins is different. He said this closing would clear up the records. He said when Mr. Coggins sold this property to the Westgate Corporation he reconfirmed the manner in which Cliff Street is recorded by deed reference. He said by making this reference Mr. Coggins reserved the easements from the City. He said Mr. Coggins originally created the present access and the closing would not violate Mr. Coggins rights.

Upon inquiry of Vice-Mayor Michalove, the City

Attorney said the City maintains Cliff Street. He presented a letter to Mr. Coggins from former City Manager Weldon Weir, dated June 26, 1957 stating that the City would accept and maintain Cliff Street.

Mr. Coggins said if the City closes Cliff Street as

proposed they would be taking his property without compensation. He said part of the area proposed to be closed is his property on the south. He said the matter may have to be decided in the courts.

The City Attorney indicated that the survey plat,

prepared by Anders, shows Cliff Street as an official street. He said the 1985 official street inventory shows Cliff Street as a street.

At the request of the City Attorney, Councilman

Price moved that Council go into executive session to discuss a legal matter. This motion was seconded by Councilman Frank and carried unanimously.

After reconvening, Mayor Bissette closed the public

hearing at 5:53 p.m.

Councilman Price moved to postpone action on the

closing of Cliff Street for two weeks. This motion was seconded by Councilman Frank and carried unanimously.

### **III. OLD BUSINESS:**

#### **A. Ordinance No. 1713 - Ordinance relative to the**

#### **annexation of property generally known as the Beaverdam**

## **Valley Area.**

Mayor Bissette said pursuant to Chapter 160A of the

North Carolina General Statutes the City of Asheville has examined certain areas to determine if they qualify for annexation. Certain statutory procedures are required for annexation. A public

hearing was held on September 13, 1988.

Mayor Bissette said members of Council were

previously furnished copies of the ordinance and it would not be reread in its entirety.

Upon inquiry of Mayor Bissette relative to questions

raised during the public hearing, the City Manager said Beaverdam Volunteer Fire Department has indicated an interest in a contract for the continuance of their services in the Beaverdam area. He said there would be several options for the property owners in Beaverdam that will not be in the annexed area. He said as far as the boundaries are concerned the state statute regarding annexation do not allow the forming of straight lines. He said wherever possible the natural topography lines are followed which sometimes creates irregular boundaries.

Dr. Bill Thurman, 180 Webb Cove Road, living outside

the proposed annexation area, presented a petition containing approximately 193 signatures of property owners in the area who oppose the proposed annexation.

George Hyler, speaking on behalf of residents in the

Beaverdam area, said they would seriously question whether the City followed the requirements of the state statute regarding annexation. He said the proposed boundary does not follow ridge lines or street lines. He said in his opinion the Volunteer Fire Department personnel will not fight fires when they are paying taxes for that service no matter what the Fire Board decides. He said they would also dispute the percentages used for the proposed annexation.

Councilman Frank moved for the adoption of Ordinance

No. 1713. This motion was seconded by Vice-Mayor Michalove.

On a roll call vote of 6-0, Ordinance No. 1713

passed on first reading with Councilman Bratton "abstaining".

Vice-Mayor Michalove requested that prior to the

second reading of the ordinance that contact be made with the Beaverdam Volunteer Fire Department to get an interpretation on their requests. He also asked for a report on the individuals that were left out

of the proposed annexation in terms of population.

## **B. Ordinance No. 1714 - Ordinance relative to the annexation of property generally known as the Hansel Avenue Area.**

Mayor Bissette said pursuant to Chapter 160A of the

North Carolina General Statutes the City of Asheville has examined certain areas to determine if they qualify for annexation. Certain statutory procedures are required for annexation. A public hearing was held on September 13,

1988.

Mayor Bisette said the ordinance was previously furnished to members of Council and it would not be read in its entirety.

Councilman Price moved for the adoption of Ordinance No.

1714. This motion was seconded by Councilman Frank.

On a roll call vote of 5-1, Ordinance No. 1714 passed on first reading, with Councilman Martin voting "no" and Councilman Bratton "abstaining".

**C. Ordinance No. 1715 - Ordinance relative to the annexation of property generally known as the Plemmons Property.**

Mayor Bisette said pursuant to Chapter 160A of the

North Carolina General Statutes the City of Asheville has examined certain areas to determine if they qualify for annexation. Certain statutory procedures are required for annexation. A public hearing was held on September 13, 1988.

Mayor Bisette said the ordinance was previously furnished to members of Council and it would not be read in its entirety.

Vice-Mayor Michalove moved for the adoption of Ordinance

No. 1715. This motion was seconded by Councilman Price.

On a roll call vote of 6-0, Ordinance No. 1715 passed on first reading, with Councilman Bratton "abstaining".

**D. Ordinance No. 1709 - Third reading of an ordinance establishing the City Hall Building as historic property.**

Mayor Bisette said plans for a major rehabilitation

of the City Building are now being drafted. The Historic Resources Commission Director is already

been given ample opportunity to express preservation concerns and sees no major problems with the direction of the project; however, the more formalized review designation would be more desirable and appropriate - the City setting an

example with this most significant building.

Mayor Bisette said the ordinance was previously read on first and second readings and it would not be reread in its entirety.

On a roll call vote of 6-0, Ordinance No. 1709

passed on third and final reading.

**Ordinance Book No. 11 Page No. 312-314**

**E. Ordinance No. 1710 - Second reading of an ordinance**

**zoning Oteen property annexed into the City Limits August 31, 1988.**

Mayor Bissette said the Asheville Planning and Zoning

Commission on August 17, 1988 reviewed and recommended zoning for the Oteen Property which was annexed into the

City Limits on August 31, 1988.

Mayor Bissette said the ordinance was previously

read on first reading and it would not be reread in its entirety.

Verl Emrick, from the Planning Department, said

after researching the proposed Heavy Industrial zoning it was determined that the current business could continue in operation with a Light Industrial zoning classification.

Councilman Price moved to amend Ordinance No. 1710

to zone Lot 30, Sheet 47, Ward 8 to Light Industrial in lieu of Heavy Industrial. This motion was seconded by Councilman Frank and carried unanimously.

On a roll call vote of 6-0, Ordinance No. 1710

passed on second reading as amended.

**F. Sign permit for off-premises advertising sign at 535**

**Tunnel Road.**

Mayor Bissette said Holland Outdoor Advertising

Company has requested a sign permit to erect an off-premises advertising sign 14' x 48' at 535 Tunnel Road. This sign permit requires Council approval since it will be situated closer than 600' from a

limited access highway. Action continued from

September 20, 1988 meeting.

Gary Rowe, Attorney representing Holland Outdoor

Advertising Company, said his client does not have additional information to add except if Council desired they could determine the expenses incurred prior to being informed that the sign permit would have to be approved by the City Council. He said his client complied with the sign ordinances and acted in good faith and requested Council's favorable approval on the sign permit.

Rendall Davis spoke in opposition to huge signs near

the interstates.

Councilman Bratton said in her opinion Council

should move in the direction of putting a sign ordinance on the books so businesses would know what requirements they have to meet.

After discussion, Councilman Price moved to deny the

sign permit for an off-premises advertising sign at 535 Tunnel Road. This motion was seconded by Councilman Frank.

Councilman Bratton said under the present sign

ordinance the sign is allowed. She said Council should go by this ordinance until such time as a new ordinance is adopted or a moratorium on off-premises signs is imposed. She said she felt this is unfair to businesses.

On a voice vote of 5-1, Councilman Price's motion

passed with Councilman Bratton voting "no".

Vice-Mayor Michalove moved to schedule a public

hearing relative to imposing a moratorium on off-premise advertising signs for October 11, 1988. This motion was seconded by Councilman Price and carried unanimously.

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

##### **A. Ordinance No. 1716 - Ordinance amending Section 18-12 of the Code of Ordinances regulating noise.**

Mayor Bissette said at Council's direction, the City

Attorney has proposed an amendment to the noise ordinance to regulate noise within 500 feet of a residential district during building operations and has also proposed to include noise from loud speakers and amplifiers.

The City Attorney said recent activities brought to

light that the noise ordinance needs to be revised for the protection of residential citizens. He outlined the new provisions for the noise ordinance regarding building construction and loud speakers.

Councilman Price asked if loud speakers could be

screened to be diverted away from residential property even during day time hours. She asked if the loud speakers could be controlled by decibel levels.

Councilman Frank said there are noise problems 24

hours a day and there should be some means of controlling them.

Ruben Falk from Beverly Hills spoke to members of

Council relative to a noise problem in their neighborhood from loud speakers on Tunnel Road. He requested that the noise ordinance be more specific.



Rendall Davis, 285 White Pine Drive, requested that

when an exception is made to the noise ordinance that the residents be notified in advance. He also suggested that neighborhood organizations be given an opportunity to give input into the ordinance. He also suggested that ordinance define the enforcement of the ordinance and where an individual complains about noise. He said decibel levels at certain lengths should be enforced.

Mr. Wade from Skyland spoke to members of Council

relative to the noise from Clarke Equipment Company particularly at night during the second shift. He said he has talked with city officials as well as officials from Clarke Equipment Company.

Bob Johnson, with Clark Equipment, VME Americas,

said his company did not oppose annexation and looked forward to the advantages of being in the City Limits. He said their property is zoned Heavy Industrial and they manufacture heavy construction equipment. He said it is very difficult at times to keep the noise of the operation down but they have taken several measures to keep the noise to a minimum. He said his company has an expansion program which will invest over \$6 million in 1989 and employ an addition 50 people. He asked that Council take these factors into consideration when acting upon a noise ordinance.

Councilman Frank moved for the adoption of Ordinance

No.1716. This motion was seconded by Councilman Martin.

On a roll call vote of 6-0, Ordinance No. 1716

passed on first reading.

Vice-Mayor Michalove suggested that input be

received from neighborhood groups and to look into the feasibility of including noise from teenagers in residential areas, particularly habitual noise makers. He said Council should also look at the industry side of the ordinance.

Councilman Bratton suggested getting input from

local industries.

**B. Resolution No. 88-143 - Resolution authorizing the City  
Manager to execute an agreement with Municipal Advisors  
for a Pay Plan Contract.**

Mayor Bissette said this contract will authorize the

North Carolina League of Municipalities, through Municipal Advisors, Inc., to conduct a City-wide pay and classification study.

Mayor Bissette said members of Council were

furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Vice-Mayor Michalove, seconded by

Councilman Martin, Resolution No. 88-143 was unanimously adopted.

**Resolution Book No. 17 Page No. 235**

**C. Ordinance No. 1717 - Budget Ordinance amendment for economic loss for garbage haulers in the newly annexed areas.**

Mayor Bisette said this budget amendment would provide funding to pay economic loss to solid waste collectors affected by annexation.

Mayor Bisette said the ordinance was previously presented to members of Council and it would not be read in its entirety.

Vice-Mayor Michalove moved for the adoption of Ordinance No. 1717. This motion was seconded by Councilman Frank.

On a roll call vote of 6-0, Ordinance No. 1717 passed on first and final reading.

**Ordinance Book No. 11 Page No. 365**

**V. CONSENT:**

**A. Scheduling of public hearing relative to rezoning**

**property at 22 Herron Avenue - Petition of Attorney Harold Bennett for Mr. David Caudel for October 11, 1988.**

SUMMARY: The Asheville Planning and Zoning Commission

on September 7, 1988 reviewed and recommended approval of rezoning a portion of Lot 1, Sheet 10, Ward 6, from R-3 Residential District to CS Commercial Service District with a 5' strip along Herron Avenue to remain R-3 Residential District. Ordinance is attached for your consideration.

**B. Scheduling of public hearing relative to zoning property**

**in the South Annexation area including the Racquet Club and Deerfield (Limestone) annexed into the City Limits for October 11, 1988.**

SUMMARY: The Asheville Planning and Zoning

Commission has recommended zoning for the South Annexation Area.

**C. Motion authorizing the City Manager to request the**

**County of Buncombe to amend their contract for a 911 system in order for the City to acquire a public safety answering point.**

**D. Scheduling of public hearing relative to amending Zoning**

**Ordinance No. 322, Section 30-11-3, wording amendment**

**relative to protest petitions for October 11, 1988.**

SUMMARY: The Asheville Planning and Zoning

Commission on September 21, 1988 reviewed and recommended approval of a proposed wording amendment relative to protest

petitions.

**E. Resolution No. 88-145 - Resolution authorizing the**

**Purchasing Director to dispose of two (2) water storage**

**tanks by sealed bid.**

SUMMARY: This is to dispose of two (2) water storage

tanks located at the Southwick Development by sealed bid. The Water and Sewer Services Department has requested that these tanks be sold. They have been

declared as surplus by the Water and Sewer Services Director.

**Resolution Book No. 17 Page No. 237**

**F. Announcement that the October 4, 1988 Council meeting**

**will be cancelled due to the North Carolina League of**

**Municipalities Convention.**

Upon motion of Councilman Martin, seconded by Councilman

Frank, the consent agenda was unanimously approved.

**VI. OTHER BUSINESS:**

**A. Resolution No. 88-144 - Resolution authorizing the City**

**Manager to execute a lease agreement between the City of Asheville and WASV-TV Incorporated.**

At the request of Mayor Bissette Councilman Martin moved

to excuse Mayor Bissette from vote and participation in the matter regarding the lease agreement between the City and WASV-TV Incorporated due to a conflict of interest. This motion was seconded by Councilman Frank

and carried unanimously.

Vice-Mayor Michalove said WASV-TV Incorporated

previously entered into a lease agreement with the City of Asheville for the purpose of leasing space at the City's premises at White Fawn Reservoir, which lease agreement expired on or about March 31, 1988. The City has been negotiating with WASV-TV over the terms of a new lease agreement and an agreement for renewal has been reached. This resolution will authorize the City Manager to execute said lease agreement.

Upon motion of Councilman Frank, seconded by

Councilman Martin, Resolution No. 88-144 was unanimously adopted.

**Resolution Book No. 17 Page No. 236**

**B. Ordinance No. 1718 - Budget Ordinance amendment for communications buildings at White Fawn and Mt. Royal sites**

Mayor Bisette said this budget amendment will provide

funds for buildings at White Fawn and Mt. Royal communications sites. The additional two towers were provided by the private sector and these buildings will

house equipment. This will provide the ability to rent tower space for an estimated \$28,000 per year.

Mayor Bisette said members of Council were previously

furnished copies of the ordinance and it would not be read in its entirety.

Vice-Mayor Michalove moved for the adoption of Ordinance

No. 1718. This motion was seconded by Councilman Frank.

On a roll call vote of 6-0, Ordinance No. 1718 passed on

first and final reading.

**Ordinance Book No. 11 Page No. 366**

**C. Resolution No. 88-146 - Resolution appointing member to the Asheville Downtown Commission**

Mayor Bisette said this resolution will appoint Maurice

Winger as a member of the Asheville Downtown Commission to serve the unexpired term of Robert C. Pew, term expiring June 30, 1990, or until his successor is duly appointed and qualified.

Upon motion of Vice-Mayor Michalove, seconded by

Councilman Martin, Resolution No. 88-146 was unanimously adopted.

**Resolution Book No. 17 Page No. 238**

**Report - Asheville Mall Expansion Project**

The City Manager presented members of Council with an updated report relative to the construction at the Asheville

Mall

Expansion Project.

**CLAIMS - RUBY MAYBIN (SEWER) - MRS. GUS FILKINS (WATER) - CARTER POUNDERS, JR. (WATER) - MRS. BEN WALSH (WATER) - STEPHEN LAWSON (CIVIC CENTER) - KRISTIN KELLY (CIVIC CENTER)- MARK CARLSON (SEWER) - O.C. DAVIS (SEWER) - DEBORAH MILLS (CIVIC CENTER) -**

**W.F. HENNESSEE (SEWER)**

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The City Manager presented claims received from Ruby Maybin, Mrs. Bus Filkins, Carter Pounders, Jr., Mrs. Ben Walsh, Stephen Lawson, Kristin Kelly, Mark Carlson, O. C. Davis, Deborah Mills, W. F. Hennessee.

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

### **REPORT OF GROUP DEVELOPMENT ACTIONS BY THE PLANNING AND ZONING**

#### **COMMISSION**

Patty Tallerday, Acting Director of Planning, said the City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission relative to group developments at the next scheduled regular meeting of the City Council. She said in accordance with the new procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. She said the following action was taken by the Planning and Zoning Commission at their

meeting on September 21, 1988.

#### **(1) WESTERN AUTO ADDITION TO OAKLEY PLAZA SHOPPING CENTER**

Ms. Tallerday said the Asheville Planning and Zoning Commission on September 21, 1988, reviewed and recommended approval of the group development plans of **the Western Auto Addition to Oakley Plaza Shopping Center** to be located on

Fairview Road subject to the following conditions:

a) Buffering on their property in accordance with Section

30-3-14 of the Zoning Ordinance;

b) Participation agreement with City on sewer line.

Ms. Tallerday said no opposition was received prior to or at the meeting, and that this group development had been unanimously approved by the Planning and Zoning

Commission.

The City Council took no action on this site plan, making the action of the Planning and Zoning Commission final.

#### **(2) OAKVIEW APARTMENTS - WEST STREET OFF FAIRVIEW ROAD**

Ms. Tallerday said the Asheville Planning and Zoning Commission on September 21, 1988, reviewed and recommended approval of the group development plans of **Oakview Apartments on West Street off Fairview Road** subject to the following

conditions:

- a) City accepting 6" sewer line; and
- b) Compliance with Erosion Control Ordinance.

Ms. Tallerday said on August 3, 1988, nine property owners spoke in opposition to the project. Concerns were increased traffic on Fairview Road, overcrowded school and apartments coming into the single-family neighborhood. On September 21, 1988, Mr. Adolphus Cook presented a letter of opposition

bearing 55 signatures.

Vice-Mayor Michalove said due to the amount of interest he would prefer to have a public hearing on this group development. He moved to schedule a public hearing on the matter for **Tuesday, October 18, 1988**. This motion was seconded by Councilman Martin and carried unanimously.

### **ADJOURNMENT**

Upon motion of Councilman Martin, seconded by Councilman Frank, the meeting adjourned at 7:55 p.m.

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MAYOR CITY CLERK

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