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Tuesday - March 13, 1990 - 4:00 P.M.

Regular Meeting

Present: Mayor Kenneth M. Michalove, Presiding; Vice-Mayor William

G. Moore; Councilmen Mary Lloyd Frank, Norma T. Price, Wilhelmina Bratton, Eugene W. Ellison and William W. Estes; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Associate City Manager/City Clerk

William F. Wolcott, Jr.

Absent: None

INVOCATION

The invocation was given by Mayor Michalove.

APPROVAL OF THE MINUTES

Mayor Michalove said approval of the minutes of the March 6, 1990 meeting would be postponed until March 20, 1990.

I. PROCLAMATIONS:

A. Resolution No. 90-34 - Resolution recognizing recent retiree, Charles Wilson.

Police Chief Gerald Beavers introduced retiring employee, Charles Wilson.

Mayor Michalove read the resolution. He said Charles Wilson

had retired effective February 1, 1990, and this resolution is given in appreciation to Mr. Wilson for his 13 years of service to the City of Asheville. Mayor Michalove presented the resolution to Charles Wilson.

Upon motion of Councilman Price, seconded by Councilman

Frank, Resolution No. 90-34 was unanimously adopted.

Resolution Book 18, Page 95

B. Proclamation proclaiming March 12-18, 1990 as "Hi Neighbor Volleyball" week.

Mayor Michalove said this year's 13th annual Hi Neighbor Volleyball Tournament is sponsored by the City Parks and Recreation Department and the Asheville Volleyball Club will be held March 17 and 18, 1990.

Mayor Michalove read the proclamation and presented it to Donny Luke of the Asheville Volleyball Club.

Donny Luke thanked Ray Kisiah and Jeff Joyce for all of their hard work on this year's tournament. He said 240 teams from 25 eastern states and 9 United States Volleyball Association regions, will be competing. He said some teams had to be turned away simply because of the number of people required to run the tournament.

Jeff Joyce of the Parks and Recreation Department said this tournament has surpassed the nationals in attendance. He said the tournament has a tremendous economic impact on the City of Asheville. He said the Great Smokies Hilton is serving as tournament headquarters, and that it and several other motels are already full. He invited the Mayor and Council Members to attend Sunday's games and be available

to present trophies to the winning teams.

C. Proclamation proclaiming the year 1990 as "The Year of The Airborne".

Mayor Michalove said an estimated 50,000 people will gather in Washington, D. C. July 4-8, 1990, to celebrate the 50th Anniversary of the Airborne. Veterans who served with the 11th, 15th, 17th, 82nd and 101st Airborne Divisions in addition to the 187th, 503rd, 508th, RTCs, 173rd Airborne Brigade, Airborne Rangers, Marine Corps Recon, Navy Seals, Air Force Rescue, and Troopers from the 82nd Airborne Division will participate in a mammoth parade.

Mayor Michalove said a memorial service to honor those

troopers who fell in combat will be held followed by a masting of the colors. The Smithsonian Museum will have a special Airborne display.

Mayor Michalove read the proclamation and presented it to Colonel Charles A. Riley of the Appalachian Chapter of the

82nd Airborne Division Association.

II. PUBLIC HEARINGS:

A. Public hearing relative to rezoning property on Glendale

Avenue from R-3 Residential District to LI Light Industrial District.

Mayor Michalove opened the public hearing at 4:20 P.M.

Mayor Michalove noted an error had been made in the

publication of the legal notice. He said the public hearing would be continued to allow time for a correct notice to be published.

Councilman Frank moved to continue the public hearing

relative to rezoning property on Glendale Avenue to March 27, 1990. This motion was Councilman Ellison and carried unanimously.

STAFF RECOGNITION - ROBIN WESTBROOK, PUBLIC INFORMATION OFFICER, AND

PEGGY GARDNER

City Manager Doug Bean said Robin Westbrook, Public

Information Officer, and Peggy Gardner, Graphics Artist, had received awards from the Public Relations Association

of Western North Carolina. He said they had received two awards - first place winners in the Internal Publications category and second place winners in the External Publications category.

Robin Westbrook said she and Peggy Gardner had worked about

a year and a half on the quantity and quality of things to be submitted. She said this is the first competition they have entered, but hopefully it would not be the last.

III. OLD BUSINESS:

A. Third reading of an ordinance amending Section 25-16 of the

Code of Ordinances of the City of Asheville (Parade

Permits).

Mayor Michalove said at a recent City Council meeting, an anti-abortion group made a presentation regarding recommended changes in the parade permit ordinance. He said the Police Department and the City Attorney have reviewed this ordinance and recommend the attached amendment in order to address two of the concerns raised by that group. Other changes requested by the group, he said, were not included in the ordinance amendment. Mayor Michalove said this ordinance passed on first reading on February 27th and on second reading on March 6th.

Mayor Michalove said this ordinance was previously read and will not be reread in its entirety.

Upon inquiry of Councilman Price, City Attorney William F. Slawter said the ordinance presently before Council does include the changes relative to standard size for placards and allows handles.

John Ponti, Project Manager of the Animal Rights Coalition, voiced opposition to the ordinance stating that the sections relative to times of day for protests and charges for permits limit and violate 1st Amendment Rights under the United States Constitution. He said he intended to take the matter before a Federal Judge for an Injunctive Ruling and that he also intends to contact the Civil Liberties Union.

On a roll call vote of 7-0, Ordinance No. 1831 passed on third and final reading.

Ordinance Book 12, Page 87

B. Motion approving variances for the Forest Lake Subdivision.

Mayor Michalove said the developers of the Forest Lake

Subdivision have requested approval of variances for reduced cul-de-sac right-of-way radius and street grades exceeding 12%.

Gerald Green of the Planning Department said the Asheville

Planning and Zoning Commission on February 14, 1990, reviewed and recommended approval of the preliminary plat for the Forest Lake Subdivision subject to the following

contingencies:

(1) Approval by City Council of a variance to permit a

right-of-way radius of 45' at the end of the cul-de-sac;

(2) Approval by City Council of a variance to permit

sections of the street to have grades of 13.78%, 14%, 17%, and 18%; and

(3) Approval of an erosion control plan by the Planning

Department prior to soil disturbance.

Mr. Green said the developer of the subdivision is Harrell and Butler, Inc., and the architect is Joe Enderle, Jensen Engineering. He said the subdivision is situated on 49 acres, is zoned R-3 Residential District, and will consist of 135 lots which are approximately 1/4 of an acre.

Mr. Green said Section 26.33 requires a 50 foot radius for cul-de-sacs, and the developer is requesting a variance to a 45 foot radius in order to produce adequate size lots. He said the Planning and Zoning Commission and the Planning staff have no objections to this request.

Mr. Green said the requested street grade variances due to the hilly topography of the area. Mr. Green said the Planning Department had received a memo from Mike Jones of the Fire Department relative to their ability to provide fire protection service in severe weather when grades exceed 12%. For this reason, Mr. Green said the Planning staff recommends denial of the request for variance of grades. Mr. Green said the specific grades requested are

as follows and pointed them out on a map:

15.99% Grade - Approximately 400 Feet

17% Grade - Approximately 150 Feet

17% Grade - Approximately 150 Feet

13% Grade - Approximately 50 Feet

There was a lengthy discussion among Council relative to grades and the fact that owners know the steepness of the grades when buying such property, the possibility of

requiring the installation of sprinklers.

Mr. Ron Butler passed out copies of the master plan for the subdivision for Council to review. He said only 5 lots are within the City limits and all of these lots are situated on a slightly less than 10% grade. However, he said all of the subdivision is located within the 1-mile perimeter of the City of Asheville, but would be served by the Skyland Fire District.

Upon inquiry of Councilman Price, Mr. Harrell said he did not have a letter from the Skyland Fire District relative to fire protection for the lots located on the steeper grades.

Councilman Estes voiced concern about the grades causing problems when considering annexation and said this is something that needs to be addressed.

Upon inquiry of Councilman Price and Vice Mayor Moore, Mr. Enderle said it is not unreasonable to install sprinklers in the units. He said the estimated cost of installation would be approximately \$1,500 to \$2,000 per unit or \$1 per square foot.

Mr. Enderle advised Councilman Bratton that the developer and himself had been made aware of the variances that City Council would be considering and had been in contact with the Planning staff.

Councilman Ellison said the City should look at acquiring 4-wheel drive fire trucks for use in providing fire protection in the City's mountainous terrain. He said when people buy a home and decide to live up on the mountain they realize the grades and this should not be a basis for Council turning down the project.

Fire Chief John Rukavina said the City has a couple of 4-wheel drive fire trucks, but questioned whether or not they would be able to make an 18% grade in bad weather. He said if the truck has a difficult time doing this in good weather and cited the Highland Gate subdivision as an example. He said staff is currently conducting a study relative to the use of 4-wheel fire trucks, but that it would take time and money to provide a 4-wheel truck at each station. Chief Rukavina said there had been two incidents where fire trucks couldn't make the grades -

fires on Norwood and Ascension Drive. Fortunately, he said, there was no loss of life at either of these fires.

Responding to Mayor Michalove, Mr. Green said the reason the issue of the grades is coming up more frequently is because most of the level land has been used up and developers are forced to use mountainous terrain. Therefore, he said, the Fire Department and staff is becoming more and more concerned about providing city services such as garbage collection, fire protection and other city services to these areas. He said staff is preparing a study relative to grades and will be forwarding this information to City Council in the near future.

Councilman Ellison suggested inserting language on the deeds of those properties exceeding a 12% grade as a method to give notice to prospective buyers.

City Attorney William F. Slawter said City Council could require a statement on the final subdivision plat stating that specific lots would require sprinklers for fire protection.

Councilman Ellison moved to approve the variances for the Forest Lake Subdivision as recommended by the Planning and Zoning Commission. This motion was seconded by Councilman Bratton.

Councilman Frank made a substitute motion to approve the variances proposed by the Planning and Zoning Commission for the Forest Lake Subdivision with the exception that any homes affected by variances would be identified in the final plat and that those homes be required to have NFPA 13D Standard Sprinklers installed. This motion was seconded by Vice Mayor Moore. The substitute motion failed on a vote of 3-4 with Vice Mayor Moore and Councilmen Frank and Price voting "yes".

The original motion passed on a vote of 5-2 with Vice Mayor

Moore and Councilmen Frank voting "no".

C. Ordinance No. 1834 - Ordinance amending Chapter 5 (Animals

and Fowls) of the Code of Ordinances of the City of

Asheville.

Mayor Michalove said Section 5-9 of Article III of

Ordinance 1481 was very vague. He said there were no limits to the number of animals which could be kept, there were no definitions of items, the power to give a permit was solely with the Animal Control Officer, and there was no appeal process.

Mayor Michalove said this ordinance was discussed by the Council and public comments were taken at the January 30th meeting. However, he said, no action was taken by the City Council.

Mayor Michalove said this ordinance was previously presented to members of City Council and will not be read in its entirety.

City Attorney William F. Slawter said the primary focus of the amendment before Council was to empower the City

Manager or his designee (and not the Animal Control Officer) to issue permits, that permits be required for 6 or more animals, that permits not exceed 6 months, and that chickens and fowl, regardless of the number, must be kept in an enclosure.

Mr. William Darden said he would like to be assured that when a complaint has been made against someone that all of the information is made available to the person. For the record, he said he had been inspected 97 times and only one (1) time was he given advance notice.

City Attorney William F. Slawter said the evidence against anyone relative to a complaint would be public record and the law would permit access to the information on the complaint. Mr. Darden requested that person making the final decision be required to inspect the premise he/she is making a decision about.

Upon inquiry of Councilman Ellison, Mr. Slawter said a letter would be mailed by the City notifying the holder of the permit that a complaint had been received and scheduling a hearing prior to any revocation of a permit. He said the effective date of the revocation would be the date the hearing is held and a determination made.

Mr. John Robinson of Springside Drive said his lot is adjacent to Mr. Darden's property. He said he had filed a number of complaints about odor and the large number of animals being kept by Mr. Darden on less than one-half acre

of a lot. He said he and other residents of Springside Drive feel the number of animals permitted should be determined upon the lot size and the distance between houses. He also questioned whether or not Section D of the proposed ordinance relative to the definition of "premise" includes a person's house and whether or not the inspector has the right to go into the house. He said surprise, "no notice" inspections should be required.

City Attorney William F. Slawter said the application for a permit contains a consent statement giving the animal control officer permission to come onto premises to make inspections. He said applicants must sign this consent prior to a permit being issued. In addition, he said "premise" as referred to in the ordinance refers to where the animals are kept.

It was the consensus of City Council to request that staff prepare a future report regarding an amendment to the ordinance providing for increased setbacks as the number of animals increase.

Councilman Ellison moved for the adoption of Ordinance No. 1834. This motion was seconded by Vice Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1834 passed on first reading.

Councilman Bratton moved to suspend the rules and proceed to the second reading of Ordinance No. 1834. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1834 passed on second reading.

D. Discussion relative to Globe Furniture on Broadway.

Mayor Michalove said after a fire which destroyed the Globe Furniture building, the building was demolished except for the facade. He said negotiations have taken place with the current owner to obtain an easement to insure the facade will be retained. In exchange for this easement, Mayor Michalove said the owner requires that the City pay for the stabilization costs. He said the retention of the facade would assist in salvaging some of the urban character on Broadway, and that the preliminary estimate obtained from

an engineering firm to stabilize the facade is \$3,500.

Councilman Bratton moved to authorize the City Manager to negotiate an easement with the property owner and that staff come back to City Council with the budget amendment to authorize the stabilization work. This motion was

seconded by Councilman Price and passed on a voice vote of 5-2 with Councilman Estes and Vice Mayor Moore voting "no".

Mr. Bob Carr, representing the Downtown Commission, said the property owner has continually caused delays in negotiations relative to the facade. He said some of the new members of City Council may not be informed to the degree that would permit them to respond in a well-informed manner to the decision made by the Downtown Commission. He said the Downtown Commission is fortunate to have had the leadership of key principals. He said the downtown is vital to the community, and that the City will received a return on its investment.

Councilman Ellison said the fact that he raised questions doesn't mean that he is uninformed and the fact that he may disagree doesn't make him less informed or less intelligent. He said any decision he makes will not be predicated by actions of previous Councils.

Councilman Estes said the building on Broadway is an eyesore. He said he would like to see it replaced by a new building and not a 1920 facade. He said whatever vote he makes will represent all the people of Asheville not just one segment of Asheville.

Roger McGuire, Pack Place Education, Arts and Science Center, thanked Council for their vote. He said the Downtown Department, Downtown Commission, Downtown Association, Streetscape Task Force, Preservation Society of Asheville and Buncombe County, American Institute of Architects, and other organization and neighbors have gone on record in support of maintaining the facade. He said saving the building is much like saving money for the future.

Wayne Caldwell said his interest in saving the facade is because his business is located directly across the street. He passed out drawings by Architect Jim Samsel showing what the facade could look like with a new infill building and parking at the rear, with the facade being stabilized with alley and accessible parking behind it, and with the facade demolished and the area used as a parking lot. He said he felt it would be better to maintain the facade and not use the area as a parking lot.

E. Resolution No. 90-35 - Resolution fixing date of public

hearing on the question of annexation of property located on

U. S. 25 pursuant to N. C. Gen. Stat. Sec. 160A-58.2.

City Manager Douglas O. Bean said a petition for the annexation of a noncontiguous parcel of property has been received by the City Clerk and certified as valid. He said this resolution will schedule public hearing on the question of the annexation for March 27, 1990. At that time, he said a report will be presented describing how the areas proposed for annexation meets all the standards set forth in 160A-58.1(b).

Mayor Michalove said members of Council were previously furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Frank, seconded by Vice Mayor

Moore, Resolution No. 90-35 was unanimously adopted.

Resolution Book 18, Page 96

IV. NEW BUSINESS:

V. CONSENT:

At the request of Councilman Bratton, Mayor Michalove said Item

D would be deleted from the Consent Agenda and considered separately.

A. Resolution No. 90-36 - Resolution authorizing the Purchasing

Director to dispose of approximately 600 tons of waste asphalt by sealed bid.

SUMMARY; The Public Works Department has declared as

surplus, approximately 600 tons of waste asphalt located at Deaverview Park in West Asheville. The Director of Public Works has requested that this asphalt be removed/disposed of - should produce an

estimated \$2,400.00 in revenues.

Resolution Book 18, Page 97

B. Resolution No. 90-37 - Resolution authorizing the Purchasing

Director to dispose of approximately 20 tons of scrap metal by sealed bid.

SUMMARY: The City of Asheville Water Maintenance Division

has accumulated approximately 230 tone of scrap metals consisting of approximately 8 tons of fire hydrants, 10 tons of cast iron, and 2 tons of brass. The Utility Director has requested that the City dispose of these metals - should produce

an estimated \$1,000.00 in revenues.

Resolution Book 18, Page 98 and 99

C. Resolution No. 90-38 - Resolution to waive bid deposit

requirement for formal bids on purchase contracts less than \$100,000.

SUMMARY: N. C. General Statute Section 143-129 has been

amended to waive bid deposit requirements for formal bids on apparatus, supplies, materials or equipment when such purchase contracts are less than \$100,000. This waiver to be applicable to purchase contracts only, not for bids on construction and repair contracts. This waiver will benefit the City by reducing the cost of goods purchased; encourage more small and minority business participation in City bids; stimulate the competitive bidding process, and reduce the cost incurred by bidders in submitting bids to the City. Other N. C. cities that have waived the bid deposit are Charlotte, Durham, Greensboro,

Raleigh, and Winston-Salem.

Resolution Book 18, Page 100

E. Resolution No. 90-39 - Resolution appointing member to the Western North Carolina Air Pollution Board.

SUMMARY: This resolution will reappoint Mrs. Shirley Turner

as a member of the Western North Carolina Air Pollution Control Board for a 6 year term, term expiring March 20, 1996, or until her successor is

duly appointed and qualified.

Resolution Book 18, Page 101

Councilman Price moved for the adoption of the Consent

Agenda. This motion was seconded by Councilman Bratton and carried unanimously.

D. Resolution No. 90-40 - Resolution appointing member to the Asheville Regional Airport Authority.

Mayor Michalove said William G. Moore has resigned as a member of the Asheville Regional Airport Authority. He said City Council had identified three individuals that they felt would have the credentials to serve on the Airport Authority - Joe Eblen, Dr. Otis Michael, and Ivor Barrett. He said the Council had interviewed these individuals last week. He said at that time, it appeared that Mr. Ivor Barrett had a majority vote.

Councilman Bratton nominated Dr. Otis B. Michael, pilot and former member of City Council, to serve the unexpired term of Mr. Moore.

Mayor Michalove asked for a show of hands in favor or appointing Ivor Barrett to serve the unexpired term of Mr. Moore.

On a vote of 5-2, Ivor Barrett was appointed to fill the unexpired term of William G. Moore, term expiring June 30, 1990, or until his successor is duly appointed and qualified. Councilman Bratton and Frank voted "no".

Councilman Price moved that the City request the County to amend the ordinance establishing the Asheville Regional Airport Authority to provide that the member of the State Aviation Commission from this area serve as an ex officio member of the Authority with full voting rights. This

motion was seconded by Councilman Bratton and carried unanimously.

Mayor Michalove announced that he would contact the County about this matter.

VI. OTHER BUSINESS:

Group Development Action by the Planning and Zoning

Commission

Gerald Green of the Planning Department 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. The action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. The following action was taken by the Planning and Zoning Commission at their meeting on March 7, 1990:

A. Mini-Storage Buildings at 1897 Hendersonville Road

Mr. Green said the Asheville Planning and Zoning Commission

on March 7, 1990, reviewed and approved the site plan for the proposed mini-storage buildings to be located at 1897 Hendersonville Road as presented. He said the project consists of one- and two-story, self-service storage facility

buildings and retail space being slab on grade with masonry walls on lower levels and metal frame and stucco finish on upper levels. He said the retail building will be 13,600 square feet and six (6) self-service, storage units that would range in size from 2200 square feet to 6300 square feet. He said the Planning and Zoning Commission recommended approval with no contingencies. However, he said, staff recommended approval contingent upon (1) compliance with erosion control; (2) driveway permit from the N. C. Department of Transportation, and (3) a sprinkler system as recommended by the Asheville Fire Department.

City Council accepted the recommendation of the Planning and Zoning Commission by taking no action.

CLAIMS - RITA WRIGHT (SANITATION) - MCDONALD' S (POLICE) - SOUTHERN BELL (SEWER) AND MRS. JOHN LANNING (SEWER)

The City Manager presented claims received from Rita Wright (Sanitation), McDonald's (Police), Southern Bell (Sewer) and Mrs. John Lanning (Sewer).

Mayor Michalove referred the claims to the City Attorney for investigation and recommendation.

STAFF RECOGNITION - JIM EWING, DIRECTOR OF PUBLIC WORKS

City Manager Doug Bean said he thought the City Council would be interested in knowing that Jim Ewing, Director of Public Works, was not only successful in convincing the American Public Works Association to bring their Pavement Management Conference here, but that he is also teaching a course at the conference for the next three (3) days.

REPORT BY CITY ATTORNEY - DISPOSITION ON CASES BEFORE THE NORTH CAROLINA SUPREME COURT

(1) Chestnut-Liberty Historic District - The North Carolina

Supreme Court entered an order to dismiss the City's appeal and denied the petition of intervening neighbors to appeal, thus invalidating the historic district.

(2) Transfer of Assets from Police Pension Fund to LGERS -

The North Carolina Supreme Court refused to hear the appeal of the four (4) police officers challenging the transfer of pension funds into the LGERS, thus upholding the City's transfer of those assets to LGERS.

RALPH BISHOP

Mr. Bishop said he would like to get some legal answers from the City Attorney.

Mayor Michalove told Mr. Bishop that the City Attorney works for the City of Asheville and that it would be necessary for him to get his own attorney.

Mr. Bishop cited several statutes relative to meetings being

open, records are to be available for public inspection, that the City Clerk is to keep full and accurate minutes of the proceedings of City Council, and that certified copies are to be furnished at a cost to be determined reasonable by the local governing board.

VII. ADJOURNMENT

Mayor Michalove adjourned the meeting at 6:35 p.m.

City Clerk Mayor
