

Tuesday - June 26, 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:

INVOCATION

The invocation was given by Mayor Michalove.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the minutes of the June 19, 1990 meeting noting one minor correction.

I. PROCLAMATIONS:

II. PUBLIC HEARINGS:

A. Public hearing relative to the Public Works Complex.

Mayor Michalove said the Asheville Planning and

Zoning Commission on June 6, 1990, reviewed and approved the site plan with four (4) contingencies.

Mayor Michalove opened the public hearing at 4:12 PM

The City Clerk presented the notice to the public

setting the time and date for the public hearing and

the affidavit of publication.

Gerald Green, Senior Planner, said the City of

Asheville proposes to construct the Public Works Complex on a 7 acre site located on South Charlotte Street. The complex will consist of 6 buildings with approximately 80,000 square feet under roof. Administrative offices, storage space, and maintenance facilities will be provided at the complex. A variance from the front setback requirements established by the Zoning Ordinance is requested to permit the development of the interior storage yard. Development of the complex will require the closing of a portion of Beaumont Street and Dixon Alley. After reviewing the project plans and hearing comments from staff, the project architect, and neighboring property owners, the Planning and Zoning Commission recommended approval of the group development request with the following

contingencies:

1) Approval of driveway permit, as required, by

NCDOT;

2) Approval by City Council of the closing of a portion of Beaumont Street and Dixon Alley;

3) Approval by City Council of a variance permitting a reduction in the required front setback; and

4) The developer (the City of Asheville) and the architect meet with representatives of Mt.

Zion Baptist Church to discuss impacts of the project on the church.

Mr. Green said the project also meets the Downtown Design Review criteria.

Charles Penny, Assistant City Manager, said a meeting was held on June 25, 1990 with representatives of Mt. Zion Baptist Church. He said they had no complaints about the Public Works Complex. He said they were assured that they would not have to constantly view the back of garbage trucks. He said the design plans and model were reviewed by the representatives of the church. He said it was announced at the meeting that Council would be conducting the public hearing at today's Council meeting.

The City Manager noted that this project has been underway for about five (5) years. He said the existing building is in need of repair, unsanitary, and unsafe for the employees. He

said the new facility will also provide adequate assembly area for employees, office space, and storage buildings for vehicles. He said funding is available in the CIP Budget.

Carroll Hughes, Architect, for the project, presented the model of the complex and answered general questions from members of Council.

Mayor Michalove closed the public hearing at 4:34 PM

Councilman Bratton moved to approve the group development plan for the Public Works Complex as recommended by the Planning and Zoning Commission. This motion was seconded by Vice-

Mayor Moore and carried unanimously.

B. Public hearing relative to the Cottages at Richmond Hill

Inn.

Mayor Michalove said the Asheville Planning and Zoning

Commission on June 6, 1990, reviewed and approved the site plan contingent upon approval by City Council of a variance for a reduction in the required width of the

landscaped buffer from 20 feet to 10 feet.

Mayor Michalove opened the public hearing at 4:35 PM

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the affidavit of publication.

Gerald Green, Senior Planner, requested that the public hearing be continued until a concern about zoning use can be resolved.

Councilman Ellison moved to continue the public hearing until July 17, 1990 without further publication. This motion was seconded by Councilman Frank and carried unanimously.

III. OLD BUSINESS:

IV. NEW BUSINESS:

A. Awarding of bids for Janitorial Contract.

Mayor Michalove said members of Council reviewed the janitorial contract information and is now prepared to hear comments from the staff and public.

The City Manager said bids were advertised and received

for janitorial services within City Hall. The lowest responsible bid was received from the present contractor, Mr. D's Cleaning Service, in the amount of \$37,760.00. This is approximately \$29,000 less than the current contract, and reflects the improved cleaning techniques which can be used because of new construction. The present contractor, Mr. D's Cleaning Service, has satisfactorily supplied cleaning services for City Hall Building for the past five years. He presented a summary of the bids.

The City Manager said it is his understanding that there

was confusion about the bid specifications that have not been adequately addressed and he recommended that Council reject all bids and re-advertise the janitorial contract.

Councilman Ellison moved to reject all bids and re-

advertise the janitorial contract giving the staff an opportunity to review the bid process before bidding the service contract. This motion was seconded by Vice-Mayor Moore.

Dee Williams, with the Asheville Business Development

Council, representing Anthony Strickland, one of the bidders on the contract, said she would not agree that Council should reject all bids and start the process over. She said her client, Mr. Strickland, presented the lowest responsible bid and should be awarded the contract. She said the bid specifications required the posting of a performance bond which she had never seen as a requirement on a service contract. She said this provision precluded many minority businesses from bidding on the service contract.

Ms. Williams noted that the low bidder, Mr. D's Cleaning

Service, is owned by Dorvan Farmer, and the second low bidder, SKF Enterprises, is owned by Mr. Farmer's wife. She contended that the City does not have a process for service contracts and this process of "front" companies or "closely held affiliates" should stop and desist. She contended that Mr. D's Cleaning Service and SKF Enterprises should not have been allowed to bid on the contract since they are "closely held affiliates". She said, according to copies of check

orders obtained, Mr. D's Cleaning Service was paid \$78,155,70 in 1989-90 and

his bid for the service was \$68,000. She said she also felt something was wrong with the procedure when Mr. D's

Cleaning Service is now bidding \$37,376.00 or 45 (%) percent lower for 1990-91. She said the city staff has refused to furnish her with the 1099 forms for Mr. D's Cleaning Service.

Ms. Williams said she is questioning Council's

commitment to minority contractors. She said the City has no contracts with minority contracting firms, even though the City recently adopted a Minority Business Plan. She said many individuals in the community worked on the plan for two years and there is no evidence that the City is committed to this plan. She said she felt the community will be destroyed by this attitude.

Anthony Stickland spoke to members of Council regarding

the bidding process and said he felt positive steps and changes should be made to clean up the process. He said it is not a practice to require security bonds or performance bonds on service contracts. He said in his opinion he presented the lowest responsible bid in a fair and honest manner. He said, in reference to monies paid to Mr. D's in 1989-90, he felt one individual should not have the authority to sign off on all change orders issued by Mr. D's.

Dorvan Farmer, owner of Mr. D's Cleaning Service, said

the General Statutes provide that a satisfactory surety bond is to be posted. He said the state has several options as far as the bond is concerned in their contracts to allow minorities to bid on contracts.

Mr. Farmer explained his price has dropped 45 percent

because he no longer had to split profit with a partner since he now owns the company in its entirety. He said he had also purchased new equipment that made the job less expensive.

Mr. Farmer said he had been given cost of living

increases for the past five years based on his original contract in 1985.

Mr. Farmer answered general questions about the

relationship of Mr. D's Cleaning Service to his wife's business, SKF Enterprises. He said this is the first contract he and his wife had bid on together. He said the city staff informed him there would be no problem in

both of them submitting separate bids.

Larry Linney, Attorney representing a minority business

contractor, said Council should define a lowest responsible bidder. He said Council should award the bid to Mr. Stickland which is the lowest responsible bidder. He said the City of Asheville can not achieve minority business goals with legal discriminations.

Mike Plemmons, Executive Director of the Council of

Independent Business Owners, said the City staff and individuals in the community spend several years on the Minority Business Plan and this should be enforced by the city staff. He requested that the committee that worked on the Minority Business Plan get together and review all purchases and contracts of the City and take the discretion from just a few.

Viola Williams said she bid on the janitorial contract

in 1985. She said the building is no cleaner today than it was when the City crews were performing the service. She said it is hopeless for a minority business to obtain a contract from the City.

David Williams said it is unfair that the City does not have a minority contract.

The owner of Sam's Construction Company spoke relative to competitive bids. He said the two low bids were not competitive bids.

Upon inquiry of Mayor Michalove, Ray Kisiah, Director of Parks, Recreation and Facility Services, said exact bid specifications were forwarded to prospective bidders.

Jackie Howell, President of the Black Professional

League, said Council should award the contract to the lowest responsible bidder rather than reject all bids. She said she was also concerned about Council's commitment to minority businesses.

Marilyn Bass, with the YMI Cultural Center, said she

felt there is a lack of commitment from Council for minority businesses. She asked if all the work done on the Minority and Women Business Procurement Plan was an exercise in futility.

Clarence Benton said the City should clean up their bid

process and make strong policy moves. He said Council should make an effort to help minority businesses.

Matthew Bacoate said members of Council should be more

aware of policies being implemented. He said Council members should not allow laws to be broken and should protect the taxpayers money in that respect.

Councilman Bratton said the City should implement the

Minority Business Plan which was recently adopted.

Several members of Council expressed that they were not

prepared to vote on the janitorial contracts and needed time to take all issues under consideration.

Vice-Mayor Moore said all bids should be legitimate and

on a level playing field.

Mayor Michalove expressed appreciation to all the

individuals that brought this matter to the attention of Council. He said he did not feel anything legally was wrong with the bid process but morally wrong as far as Affirmative Action is concerned. He said he was concerned about the dramatic difference between the costs. He said Council should keep in mind the implementation of the Minority Business Plan.

He said the process for establishing the Minority

Business Committee is underway and should be completed in the near future. He said provisions in the plan indicates

that the Committee get started in July.

Councilman Ellison said he would like to have signed

affidavits from the owners of Mr. D's Cleaning Service and SKF Enterprises stating that their bids were sealed and they did not know what each other bid on the janitorial contract.

After considerable discussion, Councilman Ellison

withdrew his motion to reject all bids and to re-advertise the bids. Vice-Mayor Moore accepted the withdrawal of the motion.

Councilman Bratton made a motion to continue discussion

on the janitorial contracts for two (2) weeks, July 17, 1990, giving members of Council an opportunity to review all the pertinent data and decide what process to use for the janitorial contracts. This motion was seconded by Vice-Mayor Moore and carried unanimously.

Anthony Stickland asked that the 1099 forms furnished to

Mr. D's Cleaning Service for 1989 be made available.

B. Ordinance No. 1857 - Budget ordinance amendment - year-end adjustments.

The City Manager said this budget amendment is to

incorporate final "clean-up" budget revisions into the accounting system. This amendment distributes the 1989/90 pay package cost, longevity pay and fringe benefits from the Non-departmental budget to the operating departments. Other "bookkeeping" adjustments are also included.

Councilman Estes moved for the adoption of Ordinance No.

1857. This motion was seconded by Councilman Ellison.

On a roll call vote of 7-0, Ordinance No. 1857 passed on

first and final reading.

Ordinance Book No. 12 - Page 171

C. Ordinance No. 1858 - Ordinance amending Section 28-52(b)

of the Code of Ordinances relative to Truck Regulations - Wendover Road and School Road.

The City Manager said this action will include Wendover

Road and School Road in the Malvern Hills Community, in the ordinance regulating truck traffic on certain residential streets.

Councilman Ellison moved for the adoption of Ordinance

No. 1858. This motion was seconded by Councilman Bratton.

On a roll call vote of 7-0, Ordinance No. 1858 passed on

first reading.

Councilman Price moved to suspend the rules and proceed

to the second reading of Ordinance No. 1858. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1858 passed on

second reading.

Councilman Price moved to suspend the rules and proceed

to the third reading of Ordinance No. 1858. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1858 passed on

third reading.

Ordinance Book No. 12 - Page 172

D. Resolution No. 90-85 - Resolution authorizing the Mayor

to execute on behalf of the City of Asheville a contract and any change orders within the budgeted amount with Lyons Construction Company for the project known as Chestnut Street Bridge Replacement Project.

The City Manager said bids were opened for replacement

of the Chestnut Street Bridge on June 15, 1990. Lyon Construction Co. of Rogersville, Tennessee was low bidder on the project. The bids have been tabulated and reviewed by Thompson Gordon and Shook Engineers and it is recommended that the contract be awarded to Lyon Construction Co. in the amount of \$648,650.50. 20% of the replacement cost will be the City's share and 80% will be the Federal Highway Administration. City funds

are in the Capital Projects Program budget.

Upon motion of Councilman Price, seconded by Councilman

Frank, Resolution No. 90-85 was unanimously adopted.

Resolution Book No. 12 - Page 155

V. CONSENT:

A. Announcement of cancelled meeting for July 3, 1990.

B. Resolution No. 90-86 - Resolution of intent to close

Beaumont Street between South Charlotte Street and South

Market Street and scheduling a public hearing for July

24, 1990.

SUMMARY: Closing of this section of Beaumont will allow

maximum usage of the area for the Public Works Operations Complex. Access from east end residential area will be available by one additional block of travel for both vehicles and pedestrians.

Resolution Book No. 18 - Page 156 - 157

C. Resolution No. 90-87 - Resolution authorizing the Mayor

of the City of Asheville to file a Section 3 Discretionary Grant Application with the North Carolina Department of Transportation, Public Transportation

Division.

SUMMARY: The Asheville Transit Authority has placed in

the TIP specific capital items for procurement during FY '91 and '92. The City of Asheville does not have surplus Section 9 funds for capital needs; therefore, the need to be a part of the statewide Section 3 grant to UMTA is warranted.

Resolution Book No. 18 - Page 158

D. Resolution No. 90-88 - Resolution authorizing the Mayor

to execute on behalf of the City of Asheville a North Carolina Department of Transportation Grant Agreement - Project No. 9.9584893 for the Asheville Regional Airport

Authority.

SUMMARY: The City of Asheville and the County of

Buncombe are cosponsors of the grant agreement and the NCDOT requires each sponsor to execute the grant agreement. This grant of State Airport Aid funds, in the amount of \$101,330, will be used for the following approved project: "AIP-10: Construct & Light Angled Taxiway; Rehabilitate & Expand Air Carrier Ramp & Connecting Taxiway; Acquire & Install Guidance Taxiway Signs and Runway Distance Markers"

Resolution Book No. 18 - Page 159

Upon motion of Councilman Frank, seconded by Vice-Mayor

Moore, the consent agenda was unanimously approved.

VI. OTHER BUSINESS:

A. Group development action by the Planning and Zoning

Commission

Mr. Gerald Green, Senior Planner, 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 actions were taken by the Planning and Zoning Commission at their meeting on June 13, 1990:

1. Leicester Highway Shopping Center

Gerald Green, Senior Planner in the Planning Department,

said that the Planning and Zoning Commission, at its June 13, 1990 meeting, reviewed and approved the site plan for the Leicester Highway Shopping Center, contingent upon the following: 1) Approval of driveway permit(s), as required by NCDOT; 2) Developer contact the NCDOT to assure that there are no conflicts between the proposed development and the planned widening of Leicester Highway (NC 63); and 3) Place the buffer at the top of the steep cut slope on the south side of the site in a 10 foot wide strip not to exceed a 2:1

slope.

He said the proposed development is a 14 acre shopping

center to be located on Leicester Highway at its intersection with Old County Home Road. Approximately 99,000 square feet of retail and storage space will be located in the center, which is proposed to include Food Lion, Roses, and Eckerd's. The site has severe topography and will require extensive grading. Cut banks with 1:1

slopes of up to 80 feet are proposed.

Council accepted the report of the Planning and Zoning

Commission, approving the group development by taking no

action.

2. Overlook Village - Landscape Plans

Gerald Green, Senior Planner in the Planning Department,

said revisions to Overlook Village landscape plan dated 8/2/89 were denied approval by the Asheville Planning and Zoning Commission at their May 2, 1990 meeting. The developer appealed this matter to City Council, who remanded it to the Planning and Zoning Commission. At a special meeting June 13, 1990, the Planning and Zoning Commission approved the revised landscape plan, dated 8/2/89, with the following contingencies: 1) Complete the planting at the top

of the wall adjacent to the K-Mart Plaza property, for the length of the wall, with at least 15 Bradford Pear trees. The trees shall have a minimum caliper of 2-1/2" and be at least 12' tall; 2) Complete planting of White Pines in the northern most corner behind Circuit City and Phar-Mor as shown on the plans dated 8/2/89; 3) Plant enonymus in the criblock wall; and 4) Complete hydroseeding of the project

as required.

Council accepted the report of the Planning and Zoning

Commission, approving the landscape plans by taking no

action.

Thornridge Subdivision located on Old Haw Creek Road - Final plat

Gerald Green, Senior Planner in the Planning Department,

presented the final plat of Phase I of Thornridge Subdivision located on Old Haw Creek Road. He said Windsor-Aughtry Company, developer, has presented the final plat for Phase I to the City for acceptance and approval. The preliminary plat for the subdivision was approved by the Planning and Zoning Commission on October 4, 1989. In lieu of installing utilities and constructing roads, the developer has submitted a letter of credit sufficient to cover the cost of installing the required improvements. The final plat and the letter of credit have been reviewed by staff and found to meet the requirements of the City's

regulations and ordinances.

Mr. Green said Phase I consists of 18 lots, upon which the

developer proposes to construct single-family homes. The homes and lots will be sold as a package. Approximately 700 feet of new street and new water and sewer lines are to be constructed as part of the development of the subdivision. All contingencies placed upon the approval of the preliminary plat by the Planning and Zoning Commission have

been met.

Councilman Ellison moved to approve the Final Plat for Phase

I of the Thornridge Subdivision located on Old Haw Creek Road. This motion was seconded by Vice-Mayor Moore and

carried unanimously.

William Darden - Comments relative to obtaining Animal Permit

William Darden appeared before Council expressing

frustration in obtaining a permit to keep animals. He said he has been trying to obtain the permit since March, 1990. He cited many dates and conversations in his attempt to obtain the permit. He said his premises had been inspected approximately 111 times by various inspectors and not one violation has been determined.

He asked Council to check into why he can not obtain his permit.

Council asked the City Manager to look into Mr. Darden's problem and report his findings back to Council at the next meeting.

Mike Plemmons - Council of Independent Business Owners - Request relative to Sign Ordinance

Mike Plemmons requested a printed list of all the

individuals receiving letters relative to compliance/noncompliance with the Sign Ordinance. He requested that the information be furnished to CIBO by

Friday, June 28, 1990.

Mayor Michalove requested that the City Manager furnish this information to CIBO as soon as it is available.

EEOC Claims - Elizabeth Budd-Webb - Deborah Faulkner - Janet C. Wilson - Barbara C. Hensley

The City Attorney reported that the EEOC Claims involving

Elizabeth Budd-Webb, Deborah Faulkner, Janet C. Wilson, and Barbara C. Hensley have been settled as authorized by City

Council.

Claim - Jean Hedrick (Sewer)

The City Manager said the City received a claim from Jean Hedrick.

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

CONTINUATION OF NEW BUSINESS

B. Appeal of Jackie Babb - Disability Review Board

Mayor Michalove announced that, since he had participated in

the deliberations and decision of the Disability Review Board concerning the request of Mr. Babb, he would ask to be excused from participation in the consideration of this matter by the City Council in order to avoid the possibility of a conflict of interest. Upon motion of Councilman Bratton, seconded by Councilman Frank, the City Council voted unanimously to excuse Mayor Michalove from participation in

consideration of this matter.

Mr. Babb was present at the City Council meeting for the

presentation of his appeal, and was represented by his attorney, Gary A. Dodd. Following the presentation on behalf of Mr. Babb, the City Council held an executive session to discuss the merits of Mr. Babb's claim, which executive

session was called for by motion of Councilman Ellison, seconded by Councilman Estes, and adopted unanimously by the City Council. Following deliberations in executive session, the City Council returned to open session and upon a vote of 5-1 voted to deny Mr. Babb's supplemental benefits, based upon Findings of Fact and Conclusions of Law to be prepared by the City Attorney and approved by the City Council. A copy of the transcript of proceedings is on file in the

Office of the City Clerk.

VII. ADJOURNMENT.

The meeting adjourned at 8:50 PM.

MAYOR CITY CLERK
