

Tuesday - November 27, 1990 - 4:00 p.m.

Regular Meeting

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

William G. Moore; Councilmen Wilhelmina Bratton, Mary Lloyd Frank, Norma T. Price, Eugene W. Ellison and William W. Estes; City Attorney 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 Vice-Mayor Moore.

## **APPROVAL OF THE MINUTES**

Mayor Michalove announced that the minutes of the November 13, 1990, meeting would be approved at the December 11, 1990, meeting.

## **STUDENT REPRESENTATIVE - ASHEVILLE HIGH SCHOOL**

Charles Penny, Assistant City Manager, recognized Ms. Sally Fisher, a junior at Asheville High School, who has been chosen as the City's student representative. She will be attending the Council meetings and observing City government.

## **I. PROCLAMATIONS:**

### **A. B\*E\*S\*T QUARTERLY AWARD**

Doug Bean presented Ms. Kim Warren and Mr. Scott Lunsford, employees from the Police Department, with awards as being chosen the B\*E\*S\*T quarterly winners. Ms. Warren and Mr. Lunsford took care of a 2-1/2 year old child while the Department of Social Services made arrangements for him to be picked up. Ms. Warren took the child with her for the night, after obtaining appropriate authority to do so, while the Department of Social Services made these arrangements.

### **B. RECOGNITION OF WATER MAINTENANCE TAPPING TEAM**

Harold Huff, Director of Water, Wastewater and Engineering Services, recognized Mr. Pete Raushenplat, Mr. Dennis Morgan, Mr. John W. Collins and Mr. Greg Allen as the Water Maintenance Tapping Team. He presented the team with awards as well as a jacket.

Mr. Huff, stated that the American Water Works Association/Water Pollution Control Federation sponsor state and national water tapping contests each year. This year's contest, held in High Point earlier, was won by the City of Asheville's Water Maintenance Tapping Team. The City of Asheville has won this award for the 4th consecutive year. He said that the tapping team will be representing the City of Asheville and North Carolina at the national contest to be held in Philadelphia, Pennsylvania, in June of 1991.

### **C. PROCLAMATION PROCLAIMING DECEMBER 1, 1990, AS "WORLD AIDS DAY."**

Mayor Michalove proclaimed December 1, 1990, as "World Aids Day" in the City of Asheville and presented the proclamation to Ms. Ann Biedelman, Chairman of the Buncombe County Aids Commission.

## **II. PUBLIC HEARINGS:**

**A. CONTINUATION OF A PUBLIC HEARING RELATIVE TO ANNEXATION OF AN AREA KNOWN AS THE WEST AREA.**

Mayor Michalove said this public hearing was originally scheduled for November 13, 1990, at the Enka Middle School. Due to conflicts in the schedules of several Council members, an announcement was made at the Enka Middle School meeting on November 13 that comments from interested persons would be taken, but that the public hearing would be continued until today. He said that after receiving comments from all persons wishing to address the members of Council present on November 13, the Council adopted a motion to continue the public hearing until today.

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

Ms. Patty Tallerday, Senior Planner, described the boundaries of the area proposed to be annexed by using a map, and explained the report of the Plan for the Extension of Major Municipal Services for the proposed annexation area..

She said that the total external boundary of the area is approximately 49,020 feet of which approximately 7,000 feet or 14% coincides with the present City of Asheville boundary. Therefore, at least one-eighth of the total boundary of the area under consideration touches the Asheville city limits. She stated that the area does qualify as being urbanly developed in that of the 676 lots in the area, 560 or 82% are used for some developed purpose, such as residential, commercial, industrial, institutional or governmental. She said the area is also subdivided into lots and tracts and 63.7% of the total acreage of land that is used for residential purposes or is vacant and divided into lots of five acres or less in size. She said 415 acres out of 652 acres are divided into these smaller lots.

Ms. Tallerday stated that upon the effective date of

annexation the City will provide to the west area the same level of City services as is provided presently in the City of Asheville. She said that with the exception of water and sewer lines, which will be in place within two years of the effective date of annexation, all other major City services will commence on the actual date of annexation. She stated that these services include police protection, fire protection, street maintenance services, street lighting and sanitation collection.

She stated that in the area of police protection, additional personnel and equipment will be added to the Asheville Police Department to provide regular patrol services, criminal investigation, community relations/crime prevention services, ordinance enforcement and traffic control.

In the area of fire protection, the City is prepared to offer to negotiate a five year contract with the Enka-Candler Fire and Rescue Department which is presently servicing the proposed annexation area to continue to service the area. A written request to negotiate a five year contract has been submitted to the City by Chief Haney of the Enka-Candler Fire and Rescue Department. She said that in the event a contract is signed, response for emergencies will be provided by both the Enka-Candler Fire and Rescue Department from its location on Pisgah Highway and primary response from City of Asheville Fire Station #6.

Ms. Tallerday said that currently the west area is serviced by a private solid waste collection company. She said that upon the effective date of annexation the City will provide solid waste collection services of residential refuse on a weekly basis at curbside. She said special "set out" service to curbside is available for qualified elderly and handicapped individuals.

Street improvements and maintenance services will be provided to the approximately 7.6 miles of state system streets in the area that transfer to the City's system. She said maintenance activities for City streets include resurfacing of public streets, scraping, stoning and paving of un-paved public streets, pothole repair, snow and ice removal and trimming of vegetation on public rights-of-way. She said owners of private or non-state maintained streets may request the City Council to dedicate them as public streets and receive maintenance services.

She said that the City will install and maintain additional street lights, signage and traffic control devices.

By use of a map, Ms. Tallerday pointed out the existing and proposed water lines for the area under consideration. She said improvements to this area will include 22,385 additional feet of 6" or 8" water lines along Grandview Road, Selwyn Road, Acton Circle, Acton Woods Road, Holcome Road, Old Haywood Road, Knoll Ridge Road and Highway 19-23.

By use of a map, Ms. Tallerday said an additional 29,160 feet of 8" sewer line improvements will be needed to serve the area. The majority of new lines will be constructed along Monte Vista Road, Acton Circle, Acton Woods Road west of Highway 19-23, along Pritchard Road, Mayfair Drive and Crestwood Lane and along portions of Sand Hill Road and Gudger Road.

Mayor Michalove stated that there were several questions asked at the November 13 meeting and at that time he stated that the City would investigate each concern and report today their results. He then asked the City Manager to summarize the questions and responses.

Mr. Bean said that a question was raised concerning Hemlock Drive not being paved and it being in the City for a number of years. He said that Hemlock Drive is a paved City maintained street. There is a private road or driveway off of Hemlock Drive that has gravel on it and the City has no record of any petition requesting the City to take over maintenance of that street.

A statement was made at the earlier public hearing about the number of police officers assigned to the west Asheville area. A report from Police Chief Gerald Beavers states that at no time does the Police Department assign only one vehicle to west Asheville. A minimum of three vehicles are assigned per shift and depending upon available manpower, there may be more assigned to the area. A detective is also assigned to the west area.

With regard to the question of snow and ice removal on Thompson Street, the City Manager said that the operation of snow and ice removal is based upon three priorities. Priority 1 streets are bus routes, major City maintained streets and secondary North Carolina Department of Transportation maintained streets that are not serviced by the state. Priority 2 streets are basically collector streets and priority 3 streets are residential streets.

With regard to the question concerning privilege license fees, the City Manager explained that in 1989 the revenue ordinance revision changed the method in which rates were calculated to a percentage of gross receipts. He said the new rate structure was phased in over a two year period.

A question was raised at the November 13 meeting about property annexed in 1983 and not receiving sewer services. He said the location was checked and the closest sewer line is on the opposite side of a railroad track. He said that in order to provide sewer service at the address the City would have to acquire an easement from the railroad to place the line under the track. He said that the line would then have to be encased, which would make the installation of this sewer line a very expensive proposition.

Upon request of Mayor Michalove, City Attorney William

Slawter explained that the City Council meeting convened at 4:00 p.m. on November 13, 1990, recessed at 5:20 p.m., to be reconvened at 7:00 p.m. on November 13, 1990, at Enka Middle School. He said that three members of Council were physically present and the other members were not excused and therefore deemed to be present. Nevertheless, since only three members were physically present at 7:00, the Council decided to continue the public hearing until November 27.

Mr. Bill Best, Acton Circle, spoke in opposition to the proposed annexation. He stated that this was not the right time to annex this property and felt the City was not ready for the added responsibility.

Mr. W. V. Henry spoke in opposition to the proposed annexation stating that he felt the people had no voice in whether or not they wanted their property annexed.

Mr. Ralph Bishop spoke in opposition to the proposed annexation stating that he felt the Council has already made up their minds to annex this property and raise taxes.

Mayor Michalove closed the public hearing at 4:46 p.m.

Mayor Michalove stated that the first reading of this proposed ordinance would be held on December 11, 1990.

## **B. PUBLIC HEARING - REVISED SITE PLAN FOR HAW CREEK HEIGHTS.**

Mayor Michalove opened the public hearing at 4:47 p.m.

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

Mr. Gerald Green, Senior Planner, said that the Asheville Planning and Zoning Commission on November 7, 1990, reviewed and recommended approval of the site plan with one contingency. That contingency being the approval by the City Council of a variance to permit the location of two buildings, as shown on the revised plan dated August 13, 1990, within 30 feet of the edge of the street. He said that due to the surveyor's error, the buildings were constructed too close to the street.

It was the consensus of Council to have staff look into imposing a civil penalty to be levied per day in order to try to cut down on these types of mistakes in the future.

Mayor Michalove closed the public hearing at 4:52 p.m.

Councilman Ellison moved to grant the variance to permit the location of the two buildings, as shown on the revised plan dated August 13, 1990, within 30 feet of the edge of the street and to

approve the site plan. This motion was seconded by Vice-Mayor Moore and carried unanimously.

## **B. PUBLIC HEARING - SITE PLAN FOR THE LAKEVIEW MOBILE HOME PARK EXTENSION.**

Mayor Michalove opened the public hearing at 4:57 p.m.

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

Mr. Gerald Green, Senior Planner, said that the Asheville Planning and Zoning Commission on November 7, 1990, reviewed and recommended approval of the site plan with two contingencies. One of the contingencies being approval by the City Council of a variance to permit the placement of seven mobile homes on a site of 47,700 square feet. The other contingency is that all relocated mobile homes shall be at least 20 feet from internal streets.

Mr. Green stated that the Fire Department has a concern that fire protection is not available due to the lack of adequate water pressure in the water line serving the project area. He said that the developer plans to install a fire hydrant, but according to the Fire Department, water pressure is inadequate to serve this hydrant.

Mr. Green stated that based upon the guidelines set forth in the zoning ordinance for mobile home parks, an area of 49,651 square feet is required for 7 mobile homes. He said the project area is 47,700 square feet, therefore, a variance will be required to permit the placement of the 7 mobile homes on the site.

Councilman Price stated that she received a petition containing 28 signatures from the residents of the Lakeview Mobile Home Park, expressing their opposition to the addition of the 7 mobile homes. Councilman Price summarized the residents' concerns as spacing problems, water pressure problems, sewer line problems and grounds upkeep.

Upon inquiry of Councilman Ellison on the number of mobile homes being requested, Mr. George Jensen, consulting engineer for the project, stated that 7 mobile homes were needed to make this group development profitable for the owner, Mr. Lawrence Elbaum.

Vice-Mayor Moore voiced concern over the owner wanting to add more mobile homes to an area that already has inadequate water pressure.

Mr. Jensen stated that the City and the Asheville-Buncombe Water Authority should be responsible for providing adequate water pressure and felt that the owner should not be punished

because the City and the Water Authority are not providing that service.

Upon inquiry of Mayor Michalove, Mr. Slawter explained that when an area is annexed (as is the case of the Lakeview Mobile Home Park), the City is responsible for providing services to that area on the same basis as they are providing services in the existing City boundaries.

Councilman Price expressed concern about the overall mobile home park's spacing.

Councilman Estes voiced concern about the lack of playground space for the children in the area.

Councilman Frank felt that she could not agree to complicate problems that already exist. She asked if the residents of the mobile home park could go to the Fair Housing Commission to get results concerning some of their concerns regarding safety.

City Attorney Slawter stated that there are clear cut statutory options available to the residents if they own their mobile homes.

Councilman Ellison voiced concern about the City having no policy when inadequate water pressure is evident and felt it was unfair for us to punish businesses when there is no policy.

Councilman Bratton voiced concerns from the safety standpoint and stated that the Council is responsible to provide safety to our residents.

Ms. Lin Sitnik spoke in opposition to granting the variance stating that she felt no more mobile homes should be added until the water pressure problems are alleviated.

Mayor Michalove closed the public hearing at 5:30 p.m.

Councilman Ellison moved to grant the variance in order to

permit the placement of seven mobile homes on a site of 47,700 square feet. This motion died for a lack of a second.

Vice-Mayor Moore moved to reject the site plan. This motion was seconded by Councilman Bratton and carried on a 6-1 vote, with Councilman Ellison voting "no."

Councilman Ellison suggested that the City adopt a consistent policy regarding water inadequacies and treat everyone on an equal basis. He felt that the City needed to send someone out in any proposed annexation area to see if there is adequate water pressure and asked that the Fire Chief make that assurance. He felt that would be a criteria for him in voting in these matters.

Councilman Frank asked for a report to be furnished to the Council relative to how many locations have inadequate water pressure and what the City is doing about those areas. She also asked for a report on why the City did not do a hydraulic testing of water pressure on the new line that was installed by the mobile home park.

Councilman Price stated that each year 1/2 million dollars is spent on upgrading the existing systems by the Asheville-Buncombe Water Authority.

**D. PUBLIC HEARING - ORDINANCE NO. 1879 - ORDINANCE AMENDING SECTION 30-5-15  
(CONSERVATION OVERLAY FOR HISTORIC LANDMARKS) OF THE CODE OF ORDINANCES OF  
THE CITY OF ASHEVILLE.**

Mayor Michalove opened the public hearing at 5:38 p.m.

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

Mrs. Julia Cogburn, Planning Director, stated that this amendment would allow for the creation of conditional use zoning for historic landmarks. She said that it was discovered, in researching this section, that technical amendments were needed but the basic premise of the section would remain unchanged. She said that this section provides a mechanism whereby a property, which has been designated as an historic landmark by the City, may be zoned with a conditional use zone designation to allow for the use of the property in a manner other than that which is permitted under its current zoning. She said that to grant such a zone it must be determined that the property could not be preserved under the current zoning and that the granting of the conditional use designation enables its preservation. She then explained the procedure for obtaining this designation.

Mrs. Cogburn stated that the ordinance as currently written (1) does not adequately set out the procedure that must be followed in using conditional use zones; (2) provides (improperly) for the protest petition standards on the issuance of the conditional use permit; (3) allows (improperly) conditions to be placed on the serving of alcohol; and (4) allows (improperly) for revocation of a conditional use permit upon transfer of property.

A resident voiced that there needed to be some sort of review process so that the new owner is clearly made aware of the conditions imposed. She also raised a question about what standards would be applied under Section (E) (4) regarding the revocation of the permit, and what procedure would be followed in conducting a public hearing.

Mayor Michalove asked that the Planning staff review the comments made and make any additional wording changes before the

second reading.

Ms. Jean Warner, President of the Preservation Society, spoke in support of the proposed ordinance.

Mayor Michalove closed the public hearing at 6:00 p.m.

Mayor Michalove stated that members of Council have previously been furnished with copies of this ordinance and it would not be read in its entirety.

Councilman Bratton moved for the adoption of Ordinance No. 1879. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1879 passed on its first reading.

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

#### **A. RESOLUTION NO. 90-179 - RESOLUTION DECLARING THAT PORTIONS OF PORTER STREET, ATKIN AVENUE AND AN UNNAMED ALLEY ARE NOT PART OF THE STREET PLAN OF THE CITY OF ASHEVILLE ADOPTED PURSUANT TO N. C. GEN. STAT. SEC. 136-66.2.**

City Attorney William F. Slawter explained the procedure whereby a developer can petition the city council to adopt a resolution stating whether streets that the developer has withdrawn from dedication are not part of the City's Street Plan.

Mr. Jim Ewing, Director of Public Works, stated that, pursuant to Council's request from the November 13, 1990, City Council meeting, they contacted all the utilities in subject area and made them aware of Council's intent. He said Southern Bell and Public Service Gas Company have utilities in the right-of-way, there are no water or sewer easements in the subject area and they have not heard back from Carolina Power and Light Company.

Vice-Mayor Moore stated that the City has made every effort to contact the utility companies and property owners to make them aware of Council's intent.

Councilman Ellison moved for the adoption of Resolution No. 90-179. This motion was seconded by Vice-Mayor Moore and carried unanimously.

**RESOLUTION BOOK NO. 18 - PAGE 276-277**

**IV. NEW BUSINESS:**

**A. RESOLUTION NO. 90-180 - RESOLUTION IN SUPPORT OF MANOR TRUST.**

Mayor Michalove stated that this resolution expresses

support for the efforts of the Preservation Society of Asheville and Buncombe County in preserving the local historic property known as "The Manor."

Councilman Bratton moved for the adoption of Resolution No. 90-180. This motion was seconded by Councilman Frank and carried unanimously.

**RESOLUTION BOOK NO. 18 - PAGE 278 - 279**

**B. RESOLUTION NO. 90-181 - RESOLUTION PROVIDING FOR THE ISSUANCE OF \$3,300,000 STREET AND SIDEWALK BONDS, SERIES 1990.**

City Manager Bean stated that this resolution sets forth the details of the bonds as required by N. C. Gen. Stat. sec. 159-65. He said the bonds will be sold pursuant to an order adopted by the City Council on July 22, 1986, which was approved by a vote of the Asheville citizens at a referendum on September 23, 1986. He said the revenue from these bonds will provide additional funding for the City's Street and Sidewalk Improvement Program.

Mayor Michalove said that members of Council have been previously furnished with copies of this resolution and it would not be read in its entirety.

Councilman Estes moved for the adoption of Resolution No. 90-181. This motion was seconded by Councilman Price. The motion was passed by the following vote:

Ayes: Mayor Michalove, Vice-Mayor Moore, Councilmen Bratton, Frank, Price, Ellison and Estes.

Noes: None.

**RESOLUTION BOOK NO.18 - PAGE 280 - 312**

**C. RESOLUTION NO. 90-182 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH TAX MANAGEMENT ASSOCIATES, INC.**

Bob Wurst, Audit/Budget Director stated that Buncombe County has entered into an agreement with Tax Management Associates, Inc., to provide for audits of business personal property values. He said that the City will benefit from the discovery of any taxable personal property values resulting from said audits of businesses located within the City. He said that the agreed upon fee for taxes realized from such audits is 35% of the proceeds collected.

Mayor Michalove said that members of Council have been previously furnished with copies of this resolution and it would not be read in its entirety.

Councilman Ellison moved for the adoption of Resolution No.

90-182. This motion was seconded by Vice-Mayor Moore and carried unanimously.

**RESOLUTION BOOK NO. 18 - PAGE 313****D. RESOLUTION NO. 90-183 - RESOLUTION AUTHORIZING THE CITY MANAGER OF THE CITY OF ASHEVILLE TO SIGN AN APPLICATION FOR GRANT FUNDS FROM THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA, INC., FOR PARKS AND RECREATION AFTERSCHOOL PROGRAM.**

City Manager Bean said that the Afterschool Program began two years ago in cooperation with the Asheville City Schools. He said that recent expansion of the program now includes a total of five elementary schools served by the program. He said that grant funds, in the amount of \$5,065, are sought to expend the cultural enrichment opportunities of the 250 children participating in the Afterschool Program, many of which are from low income, socially deprived home environments.

Mayor Michalove said that members of Council have been previously furnished with copies of this resolution and it would not be read in its entirety.

Councilman Price moved for the adoption of Resolution No. 90-183. This motion was seconded by Vice-Mayor Moore and carried unanimously.

**RESOLUTION BOOK NO. 18 - PAGE 314****E. RESOLUTION NO. 90-184 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND DELTA DENTAL PLAN OF NORTH CAROLINA, INC., FOR THE PURPOSE OF CONTINUING DENTAL BENEFITS TO THE CITY OF ASHEVILLE EMPLOYEES, FAMILIES, AND THE STAFF OF THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL.**

City Manager Bean stated that this resolution would renew the contract with Delta Dental Plan of North Carolina, Inc., from January 1, 1991, through August 31, 1991.

Mayor Michalove said that members of Council have been previously furnished with copies of this resolution and it would not be read in its entirety.

Councilman Ellison moved for the adoption of Resolution No. 90-184. This motion was seconded by Councilman Price and carried unanimously.

**RESOLUTION BOOK NO. 18 - PAGE 315****V. CONSENT AGENDA:****A. SCHEDULE PUBLIC HEARING RELATIVE TO NEW ZONING OF RECENTLY ANNEXED - WARD 12, SHEET 24, LOT 80 (RICHMOND HILL) TO**

**OI OFFICE INSTITUTIONAL FOR DECEMBER 11, 1990.**

**B. SCHEDULE PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON RICHMOND HILL DRIVE FROM R-3 RESIDENTIAL DISTRICT TO OI OFFICE INSTITUTIONAL (PETITION OF JAMES E. SAMSEL) FOR DECEMBER 11, 1990.****C. SCHEDULE PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON SOUTH LOUISIANA AVENUE FROM R-3 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT (PETITION OF LESTER AND SALLIE SHARP, OWNERS) FOR DECEMBER 11, 1990.****D. SCHEDULE PUBLIC HEARING RELATIVE TO DESIGNATING THE FLAT IRON BUILDING AS A LOCAL HISTORIC LANDMARK FOR DECEMBER 11, 1990.**



Vice-Mayor Moore moved for the adoption of the consent agenda. This motion was seconded by Councilman Bratton and carried unanimously.

## **VI. OTHER BUSINESS:**

### **A. DECEMBER 4, 1990, CITY COUNCIL MEETING CANCELLED.**

Mayor Michalove stated that the December 4, 1990, City Council meeting was being cancelled due to the number of Council members attending the National League of Cities - Congress of Cities Conference.

### **B. COUNCILMAN FRANK**

Councilman Frank passed out information relative to the Minority Business Plan.

She asked if the City was currently using recycled paper and the City Manager responded that the City was, as much as possible.

She asked about the legislative briefing and the Mayor stated that the Council members would be meeting about that soon.

### **C. COUNCILMAN PRICE**

Councilman Price passed out a questionnaire relative to transportation and asked that Council members fill it out and return it to the Planning Department.

### **D. APPOINTMENTS**

Mayor Michalove announced that Vice-Mayor Moore and Councilman Frank would be the City Council liaison members for the unified development ordinance.

Mayor Michalove stated that Councilman Estes would continue

to be the City Council liaison for normal Planning and Zoning activities.

### **E. BIRTH**

Mayor Michalove and members of Council congratulated Councilman Ellison on the birth of his son.

### **F. CLAIMS**

The following claims were received by the Risk Management Office for the week of November 5 - 9, 1990: St. Mary Episcopal Church and Frances Aiken. These claims have been referred to the appropriate insurers for investigation.

### **G. LAWSUIT**

The City was served with the following lawsuit on November 27, 1990: Charles W. Shipman, personal injury from fall in water meter box. This lawsuit has been referred to the appropriate legal counsel for action.

### **H. ADJOURNMENT**

Mayor Michalove adjourned the meeting at 6:30 p.m.

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**MAYOR CITY CLERK**

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