

Tuesday - July 23, 1991 - 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

Absent: Councilman Bratton arrived at 4:50 p.m.

INVOCATION

The invocation was given by Councilman Price.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the minutes of the July 8, 1991 meeting as submitted.

I. PROCLAMATIONS:

A. Resolution No. 91-122 - Resolution of appreciation to retiring employee, Howard Stamey.

Mayor Michalove read the resolution of appreciation for retiring employee, Howard Stamey.

Upon motion of Councilman Ellison, seconded by Councilman Price, Resolution No. 91-122 was unanimously adopted.

Resolution Book No. 18 - Page 468

B. Resolution No. 91-123 - Resolution of appreciation to retiring employee, Carlton Penley.

Mayor Michalove read the resolution of appreciation for retiring employee, Carlton Penley.

Upon motion of Councilman Price, seconded by Vice-Mayor Moore, Resolution No. 91-123 was unanimously adopted.

Resolution Book No. 18 - Page 469

C. Proclamation proclaiming the week of July 27th through August 4th as "American Red Cross Swim-A-Cross Week" and proclaiming Saturday, July 27, 1991, as "Celebrity Belly Flop Day."

Mayor Michalove read the proclamation and presented the proclamation to John Teeter.

D. Recognition of City Manager Intern Mike Greene.

The City Manager recognized City Manager Intern Mike Greene from the Asheville Fire Department and presented him with a Certificate for completion of the three (3) month program.

E. City Manager Interns - Introduction

The City Manager introduced Betty Hyatt, Customer Services Department, and Tony Lewis, from the Engineering Department, as the City Manager Interns for the next three (3) months.

II. PUBLIC HEARINGS:

A. Public hearing relative to zoning of Beaverdam annexation property.

Ordinance No. 1932 - An Ordinance amending the Zoning Ordinance and map to include the Zoning of the Beaverdam Valley Annexation Area.

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

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

David Mitchell, with the Planning Department, said there are county regulations in effect for the Beaverdam annexation area. Pursuant to N.C. General Statutes, Section 160A-360 (f), those regulations and powers of enforcement remain in effect until either the city has adopted its regulations or 60 days has elapsed from the effective date of the annexation. The effective date of the Beaverdam annexation area was Midnight on May 30, 1991; therefore, the 60 days runs out as of Midnight on July 29, 1991. As a result, the Council must hold all three (3) readings of the ordinance at today's meeting. He said the Asheville Planning and Zoning Commission met on July 3, 1991 and recommended that the property in the Beaverdam Valley annexation area be zoned R-1 except for the Brentwood Nursing Facility to be zoned R-3 Residential District and the Beaverdam Fire Station to be zoned R-2 Residential Districts. He said the residents are in favor of the R-1 Zoning Classification.

Carroll Hadley requested that his property be zoned R-2 Residential District since he has received prior approval from the Beaverdam Planning Council and obtained a building permit to develop a multi-family project.

In further discussion relative to Mr. Hadley's property it was determined that the building permit was issued in 1986 and might not be valid since the time limit for the building permit would have expired.

Mayor Michalove ruled that Council would only consider the recommendation of the Planning and Zoning Commission regarding the zoning of the Beaverdam Valley Annexation Area. He said if Mr. Hadley has a valid building permit to construct the multi-family project he could proceed or he could go through the rezoning process after the property is zoned.

Harold Garland, property owner in the Beaverdam Valley Area, spoke in support of the proposed zoning.

Kay Wright, 35 Beaver Valley Road, said she worked with the Beaverdam Planning Council and spoke in support of the R-1 Zoning Classification.

Mayor Michalove closed the public hearing at 4:48 p.m.

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

Vice-Mayor Moore moved for the adoption of Ordinance No. 1932. This motion was seconded by Councilman Frank.

On a roll call vote of 6-0, Ordinance No. 1932 passed on first reading.

Vice-Mayor Moore moved to suspend the rules and proceed to the second reading of Ordinance No. 1932. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 6-0, Ordinance No. 1932 passed on second reading.

Vice-Mayor Moore moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1932. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 6-0, Ordinance No. 1932 passed on third and final reading.

Ordinance Book No. 12 - Page 453-464

Councilman Bratton arrived at the meeting at 4:50 p.m.

III. OLD BUSINESS:

A. Ordinance No. 1929 - Second reading of an ordinance relative to the rezoning of 466 Swannanoa Road from LI Light Industrial District to CS Commercial Service District and rezoning of 456 Swannanoa Road CH Commercial Highway to CS Commercial Service District.

Mayor Michalove said the Asheville Planning and Zoning Commission on June 5, 1991, reviewed and recommended approval of rezoning 466 Swannanoa Road (Ward 9, Sheet 15, Lot 65) from LI to CS zoning and rezoning 456 Swannanoa Road (Ward 8, Sheet 15, Lot 65-1/4) from CH to CS zoning.

466 Swannanoa Road is currently split-zoned LI and CS. The petition requests that both properties owned by them to be rezoned to CS. On July 8, 1991, a public hearing was held, and this ordinance passed on first reading.

In response to questions of Councilman Price, Carol Alberice from the Planning Department, said the Planning Director has interpreted the Commercial Service zoning classification use of "supply and distribution facility" as an appropriate use for petroleum storage. She said a parallel use by Andy Oxy at 27 Heritage Drive is located in a CS zone within the city limits.

She said as far as safety precautions by the developer to assure that the expansion of the petroleum storage facility does not create a safety/environmental problem, the developer should contact the Asheville Fire Marshall to conduct the final pressure check on all underground petroleum tanks. She said at this time this inspection is voluntary and is not required. She said the developer should also contact the E.P.A. Air Pollution Control division in Asheville to complete a heating oil permit to check safety and code requirements. She said the burden of proof to file for the permit is on the developer.

Councilman Price said although the use of the property is not significant in rezoning properties she is concerned about allowing bulk storage of petroleum in a Commercial Service District. She said she would prefer that the staff look into the feasibility of allowing "bulk storage" in Light Industrial as a Conditional Use.

Mayor Michalove said this ordinance was previously read on first reading and it would not be reread in its entirety unless there was a specific request to do so.

On a roll call vote of 6-1, Ordinance No. 1929 passed on second reading, with Councilman Price voting "no".

Councilman Ellison moved to suspend the rules and proceed to the third and

final reading of Ordinance No. 1929. This motion was seconded by Councilman Bratton, which motion failed on a voice vote of 4-3, with Mayor Michalove, Councilman Price, and Councilman Frank voting "no". (Note: Motions to suspend the rules require an affirmative vote of 2/3 of the members of Council)

B. Ordinance No. 1930 - Second reading of an ordinance relative to the rezoning of a portion of Lot 16-1/4 located on Leicester Highway and County Home Road from R-5 Residential District to CS Commercial Service District.

Mayor Michalove said the Asheville Planning and Zoning Commission on June 5, 1991, reviewed and recommended approval of a split rezoning of a portion of Ward 6, Sheet 13, Lot 16-1/4. The Commission recommended shifting the dividing zoning line to the west leaving only 35 feet of Residential 5 zoning along County Home Road. On July 8, 1991, a public hearing was held, and this ordinance passed on first reading.

Subject property was split-zoned from Commercial Service to a combination of Commercial Service zoning along Leicester Highway and Residential 5 zoning along County Home Road by the Asheville City Council in 1982.

Mayor Michalove said the ordinance was previously read on first reading and will not be reread in its entirety.

On a roll call vote of 7-0, Ordinance No. 1930 passed on second reading.

Councilman Ellison moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1930. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1930 passed on third and final reading.

Ordinance Book No. 12 - Page 450

C. Second reading of an ordinance relative to the adoption of an Ordinance amending Article 9 of Chapter 30 of the Code of Ordinances of the City of Asheville (Standards for Designating Historic Signs).

Note: This item was postponed until August 20, 1991 pending further staff review.

D. Third reading of Ordinance amending Chapters 25 and 26 of the Code of Ordinances of the City of Asheville (Street Grades).

Note: This item was postponed until August 6, 1991 pending further staff review.

E. Third reading of Ordinance amending Chapter 30 of the Code of Ordinances of the City of Asheville (Street Grade Requirements).

Note: This item was postponed until August 6, 1991 pending further staff review.

F. Consideration of the 1991-92 Annual Operating Budget.

Ordinance No. 1933 - An Ordinance adopting the Budget and fixing the Tax Rate of the City of Asheville for the Fiscal Year 1991-92.

The City Manager said this ordinance provides for the Annual Operating Budget for Fiscal Year 1991-92 and sets the tax rate at \$.60 per \$100 assessed valuation for the City of Asheville.

He said the proposed budget has been amended since Council first received it due to the action of the General Assembly on the State Budget creating a revenue loss to the City of Asheville of \$314,000. He said the State decided to freeze state shared funding, reduce beer and wine and state utilities franchise tax funding to provide state match for Water and Wastewater Federal Grants, and to exempt itself from local option sales taxes.

He said a report from the Buncombe County Tax Collector revealed an unexpected tax collection rate of 94% which is less than was budgeted resulting in a revenue loss of approximately \$200,000. He said this makes for a total loss in the 1991-92 Budget of \$535,000.

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

After discussion, Vice-Mayor Moore moved for the adoption of Ordinance No. 1933. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1933 passed on first and final reading.

Ordinance Book No. 12 - Page 465-469

IV. NEW BUSINESS:

A. Approval of final plat for the Heath Ridge Acres Subdivision.

Gerald Green, Senior Planner, said construction of Heath Ridge Acres Subdivision began before the preliminary plat was presented to the Planning and Zoning Commission for review. The road has been graded and graveled and all utilities (water, sewer, electric power, and telephone) have been installed. Four lots are contained in the subdivision located on Johnson School Road in the City's extra-territorial planning area. He said the developer is requesting a variance to permit the 470-foot subdivision street to be constructed as a private street. As a private street, there would be no pavement, and the street would not meet city or state design standards for width, pavement, etc.

Mr. Green said the Asheville Planning and Zoning Commission on July 3, 1991, reviewed and recommended approval of the preliminary plat for the Heath Ridge Acres Subdivision. The Commission also recommended approval of variances to permit the subdivision street to be constructed as a private street and to permit a street grade of 14%.

After discussion, Councilman Ellison moved to approve the Heath Ridge Acres Subdivision as recommended by the Planning and Zoning Commission including the requested variances; provided that the gravel road meet NCDOT standards. This motion was seconded by Councilman Price and carried on a voice vote of 6-1, with Vice-Mayor Moore voting "no."

B. Action relative to Bele Chere Festival - Defense for offices and volunteers

Councilman Ellison moved that the City Council confirm that Resolution No. 79-253, adopted by the Asheville City Council on November 29, 1979, relating to claims and judgments sought or entered against City officers or employees, shall apply in all respects to members of the Bele Chere Board of Directors

and the Bele Chere Board of Trustees. This motion was seconded by Vice-Mayor Moore and carried unanimously.

Mayor Michalove asked the City Manager to write a letter to the Chairman of the Bele Chere Board of Trustees advising of Council's action.

NOTE: Councilman Ellison left the meeting "un-excused" indicating that he votes "aye" on the remaining matters considered by Council.

C. Approval of "Permit to Repair or Alter a Type VI Building in the Fire District." - 92 Patton Avenue

Jeff Trantham, with the Inspections Department, said the applicants, Robert and Cynthia Camille, are requesting a permit to repair or alter a Type VI building in the fire district. He said the building is located at 92 Patton Avenue and is the location of the Old Patton Avenue Cigar Store. Section 303.4 of the North Carolina Building Code states "...no Type IV building or structure shall be erected, repaired, moved into the fire district, or addition thereto except upon the approval by the City Council, and approved by the Commissioner of Insurance or his designee." He said the applicants plan to upgrade the building and to occupy the building as a residence and a small business. He said the Inspections Department would recommend approval of this permit.

Vice-Mayor Moore moved to approve the "Permit to Repair or Alter a Type VI Building in the Fire District" located at 92 Patton Avenue. This motion was seconded by Councilman Price and carried unanimously.

D. Resolution No. 91-124 - Resolution revising Section 49, Military Leave of the City's Personnel Policy.

Pam McGrayne, Personnel Director, said this amendment will provide that military leave shall be granted to all employees who are members of a reserve component of the United States Armed Forces or National Guard for annual training, monthly drills, war, or national emergency. She said such leave shall be with pay for up to fifteen (15) scheduled work days per Federal fiscal year for annual military training and one hundred eighty (180) calendar days for a national emergency or war. She said the one hundred eighty days (180) days may be extended by the City Manager for an additional one hundred eighty days (180) unless additional time is authorized by City Council.

She said employees granted leave with pay will be paid the difference between their base military pay and their current City salary provided the military pay is the lesser.

She said the amendment is being recommended by a committee of ten (10) to twelve (12) reservists that reviewed policies of twenty-three (23) other municipalities.

Mayor Michalove said as a matter of courtesy the Civil Service Board should be advised of proposed amendments to the Personnel Policy.

Upon motion of Vice-Mayor Moore, seconded by Councilman Frank, Resolution No. 91-124 was unanimously adopted.

Resolution Book No. 18 - Page 470

E. Resolution No. 91-125 -Resolution amending City's Personnel Policy to include a new Article 8 relative to employee personnel records.

Pam McGrayne, Personnel Director, said this amendment will allow for compliance

with North Carolina General Statute 160A-168 in regard to employee personnel records.

Upon motion of Vice-Mayor Moore, seconded by Councilman Bratton, Resolution No. 91-125 was unanimously adopted.

Resolution Book No. 18 - Page 471

F. Ordinance No. 1934 - Project Ordinance for the Public Works Facility.

The City Manager said this project ordinance will appropriate the required funds in the amount of \$5,072,272 for the Public Works Complex. He said on June 18, 1991, the construction bids for the Public Works Complex were opened in a public meeting. ARGO Construction Company was the lowest responsible bidder for the project, meeting all specifications as set forth in the bid document. This bid was awarded on July 8, 1991. The appropriation includes the cost for the construction of the project (and all subcontractors) in addition to the furnishings and a five percent (5%) contingency.

Vice-Mayor Moore moved for the adoption of Ordinance No. 1934. This motion was seconded by Councilman Bratton.

On a roll call vote of 7-0, Ordinance No. 1934 passed on first and final reading.

Ordinance Book No. 12 - Page 470

F. Motion to approve INFRACON to provide a Sidewalk Inventory Program.

The City Manager said last year, the Public Works Department completed implementation of the PAVER Maintenance Management System for the City of Asheville street network. This program allows us to review the entire network and prioritize repairs in an orderly and efficient manner. INFRACON has a sidewalk inventory program which uses the same base line as the PAVER System. INFRACON is recommended to provide the street & sidewalk inventory.

He said this program would cost \$40,000 which is carried over from last year and was approved by Council for Sidewalk Inventory.

Vice-Mayor Moore moved to retain INFRACON for inventory of Street & Sidewalk for City of Asheville Street System and authorize the City Manager to execute an agreement with INFRACON for the inventory. This motion was seconded by Councilman Bratton and carried unanimously.

V. CONSENT:

A. Scheduling public hearing relative to the partial rezoning of property located at 6 Clairmont Avenue from R-3 Residential District to CH Commercial Highway District (Petitioner, Groce Properties) for August 6, 1991.

B. Scheduling public hearing relative to the proposed wording amendments to the Zoning Ordinance of the City of Asheville, as amended, concerning Neighborhood Parks for August 6, 1991.

C. Resolution No. 91-126 - Resolution authorizing the Mayor to execute an agreement with the North Carolina Department of Transportation for Highway Project 8.1841602 (Improvement to US 25).

Resolution Book No. 18 - Page 472

Upon motion of Councilman Frank, seconded by Councilman Bratton, the consent agenda was unanimously approved.

VI. OTHER BUSINESS:

A. Sidewalks on N. Ann Street and Carver Street

Councilman Frank requested that the City Manager look into the clearing of the sidewalks on the west side of N. Ann Street and Carver Street.

B. Harold Garland - Parking Garages

Harold Garland said he conducted a five hour survey of the cars parking in the Parking Garages. He said the garages are not being used to their potential. He said, for example, the Civic Center Garage had 134 cars at 11:00 o'clock with a potential of 550 - 600. He suggested that the Civic Center Garage rates be reduced in order to get the cars off the downtown streets.

C. Imgard Gordos - Sovereignty Proposal

Imgard Gordos presented members of Council with materials relative to the sovereignty proposal and a proposed resolution for Council to consider requesting that United States Congress instruct the United States Treasury to create and issue interest-free loans to tax-supported bodies for the purpose of funding capital projects and for paying off existing debts.

D. CLAIMS - Karen Marie Graham (Law Enforcement Liability) - Wheeler Construction Company (Fire) - Robert E. Fields (Sanitation) - Jack Rosenstein (Water) - Joe Holbert (Water) - Margo Knight (Water) - Daniel Wachowiak (Water) - H & M Constructors (Streets) - Reginald Johnson (Sanitation) - Mrs. Lon Hensley (Water) - Mrs. Miriam Kushin (Water)

The City Manager said claims were received from Karen Marie Graham, Wheeler Construction Company, Robert E. Fields, Jack Rosenstein, Joe Holbert, Margo Knight, Daniel Wachowiak, H & M Constructors, Reginald Johnson, Mrs. Lon Hensley, Mrs. Miriam Kushin.

Mayor Michalove said the claims have been referred to the appropriate insurers for investigation.

VII. ADJOURNMENT:

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

MAYOR CITY CLERK
