

Tuesday - August 6, 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 Ellison arrived at 5:15 p.m.

**INVOCATION**

The invocation was given by Mayor Michalove.

**APPROVAL OF MINUTES**

Mayor Michalove announced the approval of the minutes of the July 23, 1991 meeting as submitted.

I. PROCLAMATIONS:

A. Resolution No. 91-127 - Resolution of appreciation to Mike Moser.

Mayor Michalove read the resolution of appreciation to Mike Moser, Chairman of the Planning and Zoning Commission, whose term expires August 14, 1991.

`Upon motion of Vice-Mayor Moore, seconded by Councilman Price, Resolution No. 91-127 was unanimously adopted.

Mayor Michalove presented the resolution to Mike Moser.

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B. Resolution No. 91-128 - Resolution of appreciation to Danie Johnson.

Mayor Michalove read the resolution of appreciation to Danie Johnson, member of the Planning and Zoning Commission, whose term expires August 14, 1991.

`Upon motion of Vice-Mayor Moore, seconded by Councilman Price, Resolution No. 91-128 was unanimously adopted.

Mayor Michalove presented the resolution to Danie Johnson.

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C. Resolution No. 91-129 - Resolution of appreciation to retiring employee, Randy Davis.

`Mayor Michalove read a resolution of appreciation to retiring employee, Randy Davis. Mr. Davis has been with the City for 8 years and worked as a Police Officer, Sr., in the Police Department. He retired May, 1991.

`Upon motion of Vice-Mayor Moore, seconded by Councilman Frank, Resolution No. 91-129 was unanimously adopted.

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D. Proclamation proclaiming Saturday, August 17, 1991, as "Women's Equality Day."

Mayor Michalove read a proclamation proclaiming Saturday, August 17, 1991 as "Women's Equality Day" and presented the proclamation to Julia Hall, Vice-President of WNC Women's Coalition.

E. Presentation of "Certificate of Achievement" to Linda Adams, City Manager Intern.

The City Manager presented Linda Adams with a "Certificate of Achievement" for completing a three (3) month City Manager Intern Program.

#### IV. NEW BUSINESS

A. Resolution No. 91-130 - Resolution directing the Finance Director to apply to the Local Government Commission for approval of the City's proposed General Obligation Water Bond financing.

The City Manager said the City Council is considering the issuance of General Obligation Bonds to pay for the capital costs of acquiring and constructing certain improvements to the water system of the City, including the acquisition of land or rights in land required therefor. This resolution directs the Finance Director to apply to the Local Government Commission for approval of the City's proposed General Obligation water bond financing.

The City Manager said this action sets in motion a special referendum on the November ballot for the General Obligation Water Bond Financing. He said the Bond Order would be introduced on September 10, 1991 and a public hearing would be held on the issue on September 17, 1991 with the Special Referendum being held on November 5, 1991.

He presented a fact sheet showing the financial summary for the General Obligation Water Bond Financing.

Upon motion of Councilman Frank, seconded by Vice-Mayor Moore, Resolution No. 91-130 was unanimously adopted.

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B. Resolution No. 91-131 - Resolution directing the City Clerk to publish the Notice of Intention to Apply to the Local Government Commission for Approval of Bonds.

The City Manager said the City Council is considering the issuance of General Obligation Bonds to pay for the capital costs of acquiring and constructing certain improvements to the water system of the City, including the acquisition of land or rights in land required therefor. This resolution directs the publication of the required Notice of Intention to Apply to the Local Government Commission for approval of bonds.

Upon motion of Councilman Bratton, seconded by Councilman Price, Resolution No. 91-131 was unanimously adopted.

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#### II. PUBLIC HEARINGS:

A. Public hearing relative to rezoning of property located on W. T. Weaver Boulevard (portions of Ward 2, Sheet 8, Lots 3 and 105 and a portion of 94) from R-3 Residential District to OI Office Institutional District.

**Ordinance No. 1935 - Ordinance amending Zoning of Property Located on W. T. Weaver Blvd. and Nantahala Street (Petition of Carroll Hughes, Agent for Owners)**

Mayor Michalove opened the public hearing at 4:22 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.

Carol Alberice, Urban Planner II, said the Asheville Planning and Zoning Commission on June 5, 1991, reviewed and recommended approval of rezoning Ward 2, Sheet 8, Lots 3, 105 and a portion of 94 (Plat #19). The subject property is located behind OI zoned lots fronting on W. T. Weaver Boulevard and is across the street from the entrance to UNC-A. Currently vacant, these lots are gently sloping and visible from W. T. Weaver Boulevard and Nantahala Street. She said a 20' buffer would be required on the non-residential lots. She said the property is within the boundaries outlined in the 2010 Comprehensive Plan.

She said the concerns expressed at the Planning and Zoning Commission meeting were tree removals and the closing of Carolina Lane.

Tom Bacon, Executive Director of MEHEC, said they plan to construct an educational/medical building to be compatible with UNC-A. He said they are committed to the neighborhood and would be saving the trees.

Tom Byers with UNC-A, spoke in support of the rezoning.

Councilman Price noted that the project would come under the group development review before being completed.

Mayor Michalove closed the public hearing at 4:31 p.m.

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

Councilman Bratton moved for the adoption of Ordinance No. 1935. This motion was seconded by Frank.

On a roll call vote of 6-0, Ordinance No. 1935 passed on first reading.

Mayor Michalove noted that the second reading of the ordinance would be held on August 13, 1991 and the third reading on August 20, 1991.

B. Public hearing relative to the proposed wording amendments to the Zoning Ordinance of the City of Asheville, as amended, concerning Neighborhood Parks.

Mayor Michalove opened the public hearing at 4:35 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.

Gerald Green, Senior Planner, said Neighborhood parks currently are not defined in the City of Asheville's Zoning Ordinance, although they are listed as permitted uses in the R-3 and R-5 Residential Districts. The proposed amendment provides a definition of neighborhood parks and identifies them as permitted uses in the R-1 and R-2 Residential Districts. Parks meeting the definition of neighborhood parks, such as the Griffin Boulevard Rose Garden, are currently located in the R-1 and R-2 Districts. The status of these parks as non-conforming uses prevents their expansion and/or improvement. New parks cannot be developed in the R-1 and R-2 districts, limiting the ability of the Parks and Recreation Department to meet the needs of the citizens of Asheville.

This amendment was requested by the Parks and Recreation Department, and the proposed amendment has been reviewed and approved by that department.

Upon inquiry of Mayor Michalove, the City Manager said the proposed amendment was reviewed by the Recreation Advisory Board.

Councilman Price questioned what effect this ordinance would have on the Swain Property on Kimberly Avenue, as well as other similar properties in the City, designated specifically for park purposes.

Councilman Price moved to continue the public hearing for two (2) weeks, August 20, 1991, without further advertisement in order to get further staff. This motion was seconded by Councilman Estes and carried unanimously.

### III. OLD BUSINESS:

A. Ordinance No. 1923 - Third reading of Ordinance amending Chapters 25 and 26 of the Code of Ordinances of the City of Asheville (Street Grades).

The City Attorney reviewed the following memorandum relative to the Street Grades:

MEMORANDUM TO: Ken Michalove, Mayor, and Members of the

Asheville City Council

FROM: Bill Slawter, City Attorney

DATE: August 1, 1991

SUBJECT: Street Grades

The City Council has had before it for consideration two separate ordinances related to street grades. One of the ordinances is related to the subdivision provisions of the Code of Ordinances, and specifically sets forth street grade limitations. The second ordinance, which would be included within the group development provisions of the Code of Ordinances, imposes the same limitations for group developments by making a cross reference to the subdivision provisions.

At the first reading of these ordinances, the City Council had before it two sets of ordinances, one recommended by staff and the other recommended by the Planning and Zoning Commission. The staff version was more detailed, and included standards for the granting of variances to the street grade requirements. The version recommended by the Planning and Zoning Commission, which contained less detail, was approved by the City Council on both first and second readings.

As you may recall, at the time of the first reading of the ordinances, I had stated some concern about the means by which the variances would be granted, with both the City Council and the Board of Adjustment involved in the process. The questions that I had related to which entity had the authority to grant variances, as well as the advisability of having separate boards grant variances for the same type of matter. As we looked into these questions, we had discussions with staff at the Institute of Government regarding how best to proceed, and had just finalized those conclusions when the ordinances came on for third reading. The third reading of the ordinances was postponed in order to prepare revisions to the ordinances that we could recommend to you, consistent with our findings and consistent with the recommendations of the Institute of Government.

The difficulty of deciding which entity should be involved relates to the general ambiguity contained in the General Statutes regarding the approval of subdivisions and group developments and the granting of variances. While the Board of Adjustment is the body that is generally authorized to grant variances from the strict terms of the zoning ordinance, the subdivision ordinance is not a part of the zoning ordinance. Either the City Council or "a designated planning agency" (i.e., the Planning and Zoning Commission) has authority to approve subdivisions pursuant to the statute. The issue is further complicated by the fact that the authority for zoning set forth in the General Statutes does not include any specific authority regarding the regulation of group developments. Most, if not all, cities within the state have such regulations, with procedures somewhat like ours, but this procedure has evolved based upon implied, rather than specific, authority.

This situation leads us to believe, as recommended by the Institute of Government, that the variations from the strict terms of the group development provisions and the subdivision provisions would be more appropriately assigned to the board or boards granting approval for those matters. In the case of both subdivisions and group developments, the Planning and Zoning Commission first considers the matter, and then the City Council considers the matter (except in matters of group development which are approved by the City Council without action, thus adopting the approval of the Planning and Zoning Commission). Attached are two new draft ordinances, similar to the ordinances previously adopted on first and second readings, but placing the authority to grant the modification from the provisions of the subdivision or group development provisions of the ordinance with the Planning and Zoning Commission, subject to appeal to the City Council, rather than with the Board of Adjustment.

Please note that the attached ordinances make reference to "modifications" rather than "variances" from the provisions of the subdivision and group development ordinances. We have in the past referred to such modifications as "variances" and thereby confused them with technical variances from the zoning ordinance that are granted by the Board of Adjustment. By using the term "modifications" in connection with subdivisions and group developments, we will hopefully avoid any ambiguity in this regard.

Since both the Planning and Zoning Commission and the City Council have the opportunity to review all subdivisions and group developments, the question arises as to which of those bodies should grant the modifications. In connection with subdivisions, the Planning and Zoning Commission has authority for preliminary plat approval, the time at which a determination needs to be made about street grades. In connection with group developments, the Planning and Zoning Commission is the only body that now reviews those items, except in the instances where the City Council determines that it should conduct an additional public hearing. It seemed best to us, therefore, to vest the authority to grant such modifications with the Planning and Zoning Commission, as reflected in the attached ordinances.

If the developer of a subdivision or group development were not satisfied with the outcome of his request for a modification before the Planning and Zoning Commission, the developer would be allowed to appeal to the City Council under the attached ordinances.

The attached ordinance draft related to subdivisions also provides for the Planning and Zoning Commission to have authority to grant all appropriate modifications for subdivisions (subject to appeal to the City Council) rather than having the request for such modifications go directly to the City Council. If the attached ordinances are adopted, an additional amendment should probably be made to the group development ordinance providing for all modifications of that ordinance to similarly be considered by the Planning and Zoning Commission

(subject to appeal to the City Council), rather than having some of those items being initially considered by the City Council. That change would require further notice and hearing before being implemented, and could be pursued after adoption of the attached ordinances.

After discussion, Vice-Mayor Moore moved to amend the ordinances as recommended by the City Attorney providing further that an 18% cap be placed on all street grade modifications by the Planning and Zoning Commission. This motion died for the lack of a second.

After further discussion, Councilman Estes moved to table the third reading of the ordinance for two (2) weeks, August 20, 1991, giving members of Council an opportunity to review the suggested changes by the City Attorney. This motion was seconded by Councilman Bratton and carried unanimously.

B. Ordinance No. 1924 - Third reading of Ordinance amending Chapter 30 of the Code of Ordinances of the City of Asheville (Street Grade Requirements).

Councilman Estes moved to table the third reading of the ordinance for two (2) weeks, August 20, 1991, giving members of Council an opportunity to review the suggested changes by the City Attorney. This motion was seconded by Councilman Bratton and carried unanimously.

Mike Plemmons, with CIBO, requested that CIBO, the Board of Realtors, and the Home Builders Association be furnished a copy of the proposed revised ordinances.

#### IV. NEW BUSINESS:

A. Motion to approve final plat for the Thornridge II Subdivision located on Haw Creek Road.

NOTE: It was noted that this matter has to be reviewed by the Planning and Zoning Commission prior to being considered by Council. This matter was rescheduled for August 20, 1991.

Councilman Ellison arrived at the meeting at 5:15 p.m.

B. Motion to approve final plat for the aHaw HHHHaw Creek Trace Subdivision located at 245 Old Haw Creek Road.

Don Sherrill, Urban Planner, said Haw Creek Trace is a proposed four (4) lot residential subdivision to be located at 245 Old Haw Creek Road. The entire site is 1.24 acres in area and the lot sizes range from 9,000 square feet to 19,000 square feet in area. The land is presently vacant and lies within the R-3 Medium Density Residential zone. All services are available.

At their meeting April 3, 1991, the Asheville Planning and Zoning Commission voted to approve the preliminary plat for Haw Creek Trace with two contingencies:

- 1) City Council grant a variance on the street right-of-way width and the cul-de-sac radius.
- 2) The proposed sewer line be approved by the North Carolina Division of Environmental Management prior to issuance of any building permit.

At their April 9, 1991 meeting, the Asheville City Council voted to approve the developer's variance request to reduce the street right-of-way width and the cul-de-sac radius from 50 ft. to 30 ft.

The developer has received a permit from the North Carolina Division of Environmental Management for the construction and operation of the proposed sewer lines.

Councilman Price moved to approve the final plat for the Haw Creek Trace Subdivision as recommended by the Planning and Zoning Commission. This motion was seconded by Vice-Mayor Moore and carried unanimously.

## II. PUBLIC HEARING (cont'd)

C. 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).

### **Ordinance No. 1936 - Ordinance amending Zoning of property located at Six Clairmont Avenue and identified as Pin # 9740-18-41-4861 on the Buncombe County Tax Maps**

Mayor Michalove opened the public hearing at 5:15 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.

The City Attorney noted that protest petitions regarding this rezoning was received by the City Clerk's office. He said protest petitions must be received two (2) working days prior to the public hearing and must contain signatures of property owners immediately adjacent or directly across the street or property extending 100' from the property in question before the signatures are valid. He said the petitions were received on August 1, 2, and 5, 1991. He said the petitions received on August 1 and 2 were timely received but did not contain signatures of property owners as prescribed by law. He said the petition received on August 5 was not timely received; however, the petition did not contain signatures of property owners as required.

At the request of the City Attorney, Vice-Mayor Moore moved that Council accept the staff's recommendation that the protest petitions were not sufficient to invoke a 3/4 affirmative vote of Council and that Council proceed with the rezoning issue with the understanding that a simple majority vote in the affirmative would be all that is required to rezone the property as requested. This motion was seconded by Councilman Bratton and carried unanimously.

Carol Alberice, Urban Planner II, said Number 6 Clairmont Avenue (Ward 6, Sheet 6, Lot 36) is currently zoned R-3 Residential District and is occupied as a single-family dwelling.

Clairmont Avenue is a narrow, one-way residential street with on-street parking. The street is zoned predominantly R-3 and is comprised of single-family and multi-family dwellings (Gracelyn Garden Apartments).

The Planning and Zoning Commission reviewed this request on July 3, 1991, and recommends unanimously the rezoning of 6 Clairmont Avenue, as requested, except for a 10-foot section along Clairmont Avenue to remain R-3 Residential District.

She reviewed the surrounding zoning and uses of property and the history of rezonings in the area.

She said opposition was received relative to the rezoning. She said the residents in the area expressed concerns relative to the narrowness of Clairmont Avenue; the rezoning was not in keeping with the 2010 Comprehensive Plan; increased traffic, and pedestrian circulation.

She said those speaking in support of the rezoning said the rezoning is in keeping with the 2010 Comprehensive Plan; the needs of the business community would be met and the 10' buffer would restrict business encroachment onto Clairmont Avenue.

A lengthy discussion was held as to whether the rezoning was in keeping with the 2010 Comprehensive Plan. It was noted that this determination could be interpreted either way.

Mike Moser, Chairman of the Planning and Zoning Commission, said the Commission felt the rezoning was in keeping with the 2010 Comprehensive Plan and the split zoning is an effective tool to protect residential property.

Larry McDevitt, Attorney representing the petitioner, Jim Groce, Groce Properties (Citizens Hardware/Citizens True Value Store), spoke in support of the rezoning. He said his client want to protect the residential neighborhood but at the same time expand an existing operational business. He also indicated that the 10' buffer would protect the residential property. He said the rezoning is clearly within the 2010 Comprehensive Plan. He encouraged Council to accept the unanimous recommendation of the Planning and Zoning Commission to rezone the property.

Jim Groce, petitioner, spoke in support of the rezoning. He said he has owned the property in question for a number of years. He shared with members of Council a "Master Plan" that he has had for a number of years and has been used as the need arose for expansion. He said he also has an interest in protecting the residential neighborhood.

Vic Buchanan, Attorney representing Mary Veehorn and owners of Gracelyn Garden Apartments, spoke in opposition to the rezoning. He said Clairmont is a viable residential area and the rezoning would undermine the land use spirit as outlined in the 2010 Comprehensive Plan. He strongly requested that the rezoning be denied.

Tom Leslie, 14 Blackwood Road, and Manager of Gracelyn Garden Apartments, spoke in opposition to the rezoning.

Beth Furr, 3 Vineyard Place, speaking on behalf of the residents in the vicinity of Merrimon Avenue, spoke in opposition to the rezoning.

Kevin McDonald, 11 Clairmont Avenue, spoke in opposition to the rezoning.

After discussion, Mayor Michalove closed the public hearing at 7:10 p.m.

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

Councilman Bratton moved for the adoption of Ordinance No. 1936. This motion was seconded by Ellison.

On a roll call vote of 6-1, Ordinance No. 1936 passed on first reading, with Vice-Mayor Moore voting "no".

Mayor Michalove noted that the second reading of the ordinance would be held on August 13, 1991 and the third reading on August 20, 1991.

### III. OLD BUSINESS:

A. Report relative to "T" intersection at White Pine Drive and Brackettown Road.

The City Manager highlighted the history of the Expansion of the Asheville Mall as it relates to the requirement of a "T" intersection at White Pine Drive and Brackettown Road.

He presented members of Council with the latest plan, prepared by the Public Works Department, for a "T" intersection at White Pine Drive and the widening of White Pine Drive within existing road right-of-way. He said this plan not only triples storage capacity for White Pine Drive traffic, but also minimizes a significant safety hazard. He said it appears to be the best plan for both a short and long term solution to the existing traffic problem. However, the residents of White Pine Drive are not in agreement with the proposed plan, since they would like to discourage the use of Brackettown Road as an ingress and egress to the shopping center.



He said staff needs direction as to how to proceed with the plan as it relates to the widening of White Pine Drive.

A lengthy discussion was held relative to the intent of Councilman Price's motion relative to the approval of the site plan for the expansion of the Asheville Mall as it relates to the "T" intersection at Brackettown Road and White Pine Drive and the widening of White Pine Drive.

Councilman Price said the intent of her motion at the time of approval was to make it inconvenient for individuals to use Brackettown Road as an ingress or egress to the shopping center. She said she was aware at that time that White Pine Drive might have to be widened to some extent but not for a full lane of traffic. She said she felt more traffic would use Brackettown Road and White Pine Drive if a full lane is added to White Pine Drive.

A discussion was held between members of Council and the Director of Public Works, Jim Ewing, relative to the safe factors in this particular area.

Councilman Price moved that the Council request staff to develop a plan for a "T" intersection at Brackettown Road and White Pine Drive; that the plan be submitted to the Kenilworth Residents Association for review prior to the plan being submitted to Council; and that the plan not include the widening of White Pine Drive for a full lane of traffic. This motion was seconded by Vice-Mayor Moore.

Glen Kelly, Attorney representing the Asheville Mall, said Council should not "walk away" from their motion made in December, 1987 for the "T" intersection and the widening of White Pine Drive. He said workable solution needs to be addressed in the spirit of what was voted upon in December, 1987.

Rick Coleman, owner of Asheville Mall, also spoke relative to the need to come up with a workable solution for the "T" intersection and the traffic problem at Brackettown Road and White Pine Drive.

Pete Murphy, President of the Kenilworth Forest Association; Phil Noblett, 297 White Pine Drive; and Rendall Davis, spoke in opposition to the plan proposed by the Public Works Department. They said they did not want another lane of traffic on White Pine Drive. They supported Councilman Price's motion to direct the staff to come up with another proposal to be reviewed by the Kenilworth Forest Association and for the plan not to include another lane of traffic on White Pine Drive.

Councilman Ellison said he would like to know the cost for the City of Asheville to widen White Pine Drive.

Councilman Ellison made a substitute motion to table the issue for further discussion during a Pre-Council Work Session. This motion was seconded by Councilman Estes, which motion failed on a voice vote of 6-1, with Councilman Ellison voting "aye".

Councilman Price's motion passed on a 6-1 voice vote, with Councilman Ellison voting "no".

F. Resolution No. 91-132 - Resolution authorizing the Mayor to execute a supplemental agreement with Thompson Gordon Shook Engineers for Thompson Street, Chestnut Street, Hazel Mill Road and Murdock Avenue Bridge Projects.

The City Manager said the original Engineering Agreements for Thompson Street, Murdock Avenue and Hazel Mill Road Bridges were done in July of 1985. The agreement for Chestnut Street was done in April of 1983. Due to delays beyond

the control of the City and Thompson Gordon Shook, construction contracts for these projects were not executed until the Fall of 1990. During this 5 to 7-year period, the cost of providing the engineering services, as outlined in the original engineering agreements, have increased due to changes required in the scope of services and due to inflation factors.

The Supplemental Agreements will allow Thompson Gordon Shook Engineers to recover their actual expenditures for services outlined in the original engineering agreements.

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 Price, seconded by Vice-Mayor Moore, Resolution No. 91-132 was unanimously adopted.

### **Resolution Book No. 18 - Page No. 478**

G. Resolution No. 91-133 - Resolution approving the bids for the construction of the Fleet Management Service Station.

The City Manager said on June 6, 1991, separate bids were received for the prime work, general work, electrical and installation, and HVAC/plumbing for construction of the Fleet Management Service Station Project.

Three (3) bids were not received for each of the general, electrical, and HVAC/plumbing for the project.

The City therefore re-bid those components and those second bids were received on June 18, 1991; and

W. K. Dickson Engineers have reviewed the bids and has recommended that the bids be awarded for the combined projects to the lowest responsible bidders as follows:

Single-Prime Jones and Frank \$ 390,560.00  
Greenville, South Carolina

General Work  
T.P. Smith Construction Co. 360,400.00  
Forest City, North Carolina

HVAC/Plumbing  
Moser, Inc. 18,500.00 Asheville North Carolina

Electrical  
M.B. Haynes Corporation 19,195.00 Asheville, North Carolina

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 Vice-Mayor Moore, seconded by Councilman Frank, Resolution No. 91-133 was unanimously adopted.

### **Resolution Book No. 18 - Page No. 477**

H. Consideration of bids received for one (1) All-Wheel Drive Pumper for the Fire Department.

The City Manager said bids were opened on June 18, 1991 and recommendation is to the second low bidder meeting specifications, Central States Fire Apparatus, Lyons, South Dakota, for one (1) 1992 "International Navistar" Model 4800 4x4 cab and chassis with "Central States" Model AWDS 7575 body and assorted options for a total of \$124,426.97.

A complete copy of the bid summary is on file in the Office of the City Clerk.

Vice-Mayor Moore moved to accept the recommendation of the City Manager to award the bid to the second low bidder, Central States Fire Apparatus for the Drive Pumper. This motion was seconded by Councilman Price and carried unanimously.

I. Ordinance No. 1937 - Budget ordinance amendment to appropriate for one (1) All-Wheel Drive Pumper for the Fire Department.

The City Manager said the Beaverdam Annexation Plan for Services called for an all-terrain vehicle for the annexation. Bids for this vehicle have been evaluated by the Fire Department with consultation given by David Pruett, Fleet Management. This amendment will set up appropriation to purchase 4 X 4 fire pumper in the amount of \$125,251.

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

Councilman Price moved for the adoption of Ordinance No. 1937. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1937 passed on first and final reading.

### **Ordinance Book No. 12 - Page 473**

J. Ordinance No. 1938 - Budget ordinance amendment to appropriate funds for the construction of the Fleet Management Service Station.

This ordinance is to appropriate funds to proceed with replacement of the City's Service Station and tanks.

The project replaces the City's 30-year old service station building, the computer gas recorder, and the gas tanks and lines (as required by EPA). This amendment includes the cost for construction, \$390,560, 5% additional A&E fees, and a 10% contingency. This amount is critical to the project as we may find that the tanks have leaked and will require special clean-up efforts.

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

Councilman Price moved for the adoption of Ordinance No. 1938. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1938 passed on first and final reading.

### **Ordinance Book No. 12 - Page 474**

K. Ordinance No. 1939 - Budget ordinance amendment to appropriate funds for the Rental Rehabilitation Program.

The City Manager said the City has received funding approval of \$29,000 from HUD through the Rental Rehabilitation Program. This amendment will appropriate the funds into the City Budget. The Program is subcontracted with the Housing Authority for administration. All grant funds are used for deferred payment loans to investor/owners of substandard rental property. Loan proceeds must be

matched by private funding commitment to complete the rehabilitation. Administrative cost of the Housing Authority is paid with CDBG funds.

The borrower must agree to rent the units to low-moderate income persons for ten (10) years and advertise that rental will be on a non-discrimination basis. The loan amount cannot exceed 50 percent of the rehab cost per unit up to a maximum of \$8,500 per unit. The loan is forgiven at a rate of 10 percent per year provided the owner adheres to program requirements.

The Rental Rehab Program has provided \$461,315 for 44 loans to investor/owners since inception of the program in 1985 for rehabilitation of 82 rental units. Owner matching funds for these loans totalled \$676,192. Investment, therefore, for the 82 units has been \$1,137,507.

This budget amendment will appropriate the \$29,000 for the Rental Rehabilitation funds.

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

Councilman Price moved for the adoption of Ordinance No. 1939. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1939 passed on first and final reading.

#### **Ordinance Book No. 12 - Page 475**

L. Ordinance No. 1940 - Budget ordinance amendment to appropriate funds for exhaust system at Fire Station No. 1.

The City Manager said the Fire Department's 5-year, Fire Station Safety Improvement Plan, calls for installation of exhaust fume removal equipment in all fire stations. This appropriation would provide for installation of a diesel exhaust removal system at Station No. 1 (Headquarters Station), Asheville's largest station, where exhaust removal capability is most needed.

Installation of diesel exhaust removal systems will significantly reduce firefighter exposure to the carcinogenic components of diesel exhaust fumes identified by EPA and the National Institute of Occupational Safety and Health.

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

Councilman Price moved for the adoption of Ordinance No. 1940. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1940 passed on first and final reading.

#### **Ordinance Book No. 12 - Page 476**

##### V. CONSENT:

A. Schedule public hearing relative to application for Transit Operating Assistance Grant for the Asheville Transit Authority for Fiscal Year 1992 for September 10, 1991.

B. Resolution No. 91-134 - Resolution appointing member to the Planning and Zoning Commission.

SUMMARY: The term of Dr. Albert Anderson expires on August 14, 1991. This resolution will reappoint him to a 2-year term, term expiring August 14, 1991,

or until his successor is duly appointed and qualified.

Resolution Book No. 18 - Page 480

C. Resolution No. 91-135 - Resolution appointing member to the Tourism Development Commission.

SUMMARY: The term of John Winkenwerder expires on August 30, 1991. This resolution will reappoint him to a 3-year term, term expiring August 30, 1994, or until his successor is duly appointed and qualified.

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D. Resolution No. 91-136 - Resolution authorizing the Mayor to execute utility agreement with the N. C. Department of Transportation for the relocation of water lines in conjunction with the construction of a bridge over Southern Railway on US 25A - Project No. B-1063 (8.1840801).

Resolution Book No. 18 - Page 482

E. Resolution No. 91-137 - Resolution authorizing the Mayor to execute utility agreement with the N. C. Department of Transportation for the installation of a 24-inch water line on US 25 between the Blue Ridge Parkway and Rock Hill Road - Project No. U-0090B (8.1841603).

Resolution Book No. 18 - Page 483

F. Resolution No. 91-138 - Resolution authorizing the Mayor to execute on behalf of the City of Asheville Amendment No. 1 to Federal Aviation Grant Agreement, Project No. 3-37-0005-07.

Resolution Book No. 18 - Page 484

G. Resolution No. 91-139 - Resolution authorizing the City Manager or his designee to process and execute Local Government Commission Opinion Forms for applications for ABC permits.

Resolution Book No. 18 - Page 485

Upon motion of Vice-Mayor Moore, seconded by Councilman Bratton, the consent agenda was unanimously approved.

#### VI. OTHER BUSINESS:

A. Keith Goode - Student Government - UNC-A

Mayor Michalove introduced Keith Goode with the Student Government at UNC-A. Mr. Goode said he would be working with members of Council and attending Council meeting in order to inform students at UNC-A about actions taken by local governments.

B. Pinecliff Condominiums - Revised Site Plan

Jerry Crow, Attorney representing Pinecliff Condominiums, appeared before Council stating that his client had been denied a building permit to construct a building for Pinecliff Condominiums. He said this project was approved by Council and a revised site plan approved. He said one of the major reasons that a building permit was denied is that the new road had a grade in excess of the

required 15%. He said only a portion of the road is in excess of the required 15% approved grade and in his opinion a building permit should have been issued because the final roads have not been completed. He said to deny the building permit at this time is premature. He said when the project is completed if the project does not meet all the requirements then the Certificate for Occupancy could be withheld.

Upon inquiry of Council, the City Attorney said the Building Inspector makes the determination on the issuance of a building permit. He said if the developer has a zoning problem the matter could be appealed to the Board of Adjustment. He said if the road grades are steeper than approved the developer could appeal to the Planning and Zoning Commission; however, Council is the only body that can change the approved street grade of 15%.

After discussion, Councilman Ellison moved that this matter be discussed during Council's work session scheduled for August 13, 1991. This motion was seconded by Vice-Mayor Moore and carried unanimously.

C. Resolution No. 91-140 - Resolution authorizing the City Attorney to file a Complaint and Declaration of Taking and other related documents in the Buncombe County Superior Court for the condemnation of parcels of real property located in the South Asheville Annexed Area for the construction and installation of a sewer/wastewater line.

Resolution Book No. 18 - Page 485

**D. CLAIMS - David Lynn (Inspections)- Carolyn Ray (Fire) - Gary Brooks (Water) - Stephen Evans (Water) - Gail Gaillock (Sanitation) - Edna Goggans (Streets) - Perry Phillips (Water) - Mary Alice Fishburne (Water) - Michael Wyatt (Water) - James Green (Water)**

The City Manager said claims were received from David Lynn, Carolyn Ray, Gary Brooks, Stephen Evans, Gail Gaillock, Edna Goggans, Perry Phillips, Mary Alice Fishburne, Michael Wyatt, and James Green..

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

**E. LAWSUITS - Biltmore Square Associates, et al (Annexation) - Terry Moore and Jeanette Moore (Sewer Backup)**

The City Manager said the City was served with a lawsuit on July 5, 1991 and July 18, 1991, involving Biltmore Square Associates, et al (Challenge of annexation of Brevard Road area) and Terry Moore and Jeanette Moore (Property damage from alleged sewer backup).

Mayor Michalove said these lawsuits have been referred to the appropriate legal counsel for action.

#### VII. ADJOURNMENT:

Mayor Michalove adjourned the meeting at 8:50 p.m.

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**MAYOR CITY CLERK**

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