

Tuesday - August 13, 1991

City Council Work Session

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; Assistant City Attorney Patsy Brison; City Manager Douglas O. Bean; and Associate City Manager/City Clerk William F. Wolcott Jr.

Ordinance No. 1935 - Ordinance amending zoning of property located on W. T. Weaver Boulevard and Nantahala Street (Petition of Carroll Hughes, Agent for Owners)

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. 1935 passed on second reading.

Councilman Estes moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1935. This motion was seconded by Councilman Ellison which motion was defeated on a vote of 3-4, with Mayor Michalove, Councilmen Bratton, Frank and Price voting no.

Mayor Michalove stated that the third and final reading of this ordinance would be held at next week's Council meeting.

Ordinance No. 1936 - Ordinance amending zoning of property located at 6 Clairmont Avenue and identified as PIN # 9740-18-41-4861 on the Buncombe County tax maps

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 6-1, Ordinance No. 1936 passed on second reading, with Vice-Mayor Moore voting no.

Mayor Michalove stated that the third and final reading of this ordinance would be held at next week's Council meeting.

#### Pinecliff Condominiums

Gerald Green, Senior Planner, read the following memorandum dated August 12, 1991, to the members of Council:

"I am providing in this memo information regarding the issuance of building permits for construction related to the Pinecliff Condominiums project. Approximately twenty-four (24) permits were issued for the project prior to Planning Department staff becoming aware of the street grade problem in late June, 1990. These permits were for the construction and interior finishing of fifteen (15) buildings.

"One building permit has been issued since Larry Traber was directed by the Planning and Zoning Commission and the City Council to replace the section of road with a grade in excess of 25% with a road with a maximum grade of 15%. In September, 1990, Mr. Traber requested a permit for the construction of Building N. The following arguments were used by Mr. Traber to justify the request.

1. The road meeting the requirements of the Planning and Zoning Commission and the City Council was under construction. This demonstrated the developer's good intention in complying with the City's requirements;
2. The building for which the permit was requested was shown on the original plans approved in 1987; and
3. Denying the permit would place a severe financial hardship on the project and the developer, possibly causing the project to declare bankruptcy.

"After reviewing the request and hearing Mr. Traber's arguments, it was the decision of the Planning Department staff to approve the issuance of the building permits. This decision was based on what appeared to be the good faith effort of the developer to comply with the City's requirements. Additionally, the goal of the City was to assure that the project was build (sic) in accordance with approved plans, not to place a financial hardship on the developer.

"No additional permits were requested or granted for the project until July, 1991, when Mr. Traber requested a permit for another four unit building. He was requested to provide information regarding the location and grade of the road constructed to meet the requirements established by the Planning and Zoning Commission and City Council. The information provided by Mr. Traber showed the road to have a grade in excess of the mandated 15%. At this time, the matter was presented to the Planning and Zoning Commission for their consideration.

"I trust that this information will be useful to you. Should you have any questions or require additional information, please let me know."

Mr. Green stated that the Planning and Zoning Commission reaffirmed their prior action of keeping the street grade at a maximum of 15%.

Upon inquiry of Councilman Price, Mr. Green stated that the road grade varies from 15.75% up to 24%, depending on the point in the road you measure from.

Councilman Ellison was interested in working out some type of compromise on the street grade issue with the developer.

Patsy Brison clarified the appropriate procedure for revisions to a site plan. She said the action of the Planning and Zoning Commission which reaffirmed their prior action would be final unless the Council determined to set a public hearing. She said that as there was no specific statutory requirement for advertisement of the public hearing on revisions to site plans, the City should advertise as is the practice of the City Clerk's Office for these type of matters. City Clerk Wolcott reported that those matters were usually advertised only once prior to the public hearing. As a result, Ms. Brison stated that the public hearing could be scheduled for August 20, with one advertisement before that date.

When asked by Council, Jim Ewing, Director of Public Works, and John Rukavina, Fire Chief, stated that they would accept (1) the lowering of a certain intersection (which grade is now 24%) to a maximum of 18%, and (2) a turnaround area be furnished at the top of the development so that the service vehicles did not have to come back down the even steeper slope on the north side of the project. They felt with those guarantees they would be able to provide services in a safe manner.

Councilman Ellison suggested that some language be inserted in an ordinance stated exactly how the City will measure the street grades, by points or by 50 foot increments, so that future developers will not be confused about how to

measure the street grade.

Vice-Mayor Moore felt that the City Council should support Planning and Zoning Commission rules made regarding the proper process to be followed relative to site plans.

Mr. Green gave the Council their options at today's meeting which were either to take no action, which would make the Planning and Zoning Commission's action final, or to schedule a public hearing on this matter.

Upon inquiry of Councilman Bratton, Ms. Brison explained how the Board of Adjustment comes into play in the whole street grade process.

Jerry Crow, attorney for the developer, urged the Council to set a public hearing on the matter, assuring the Council that the developer would be willing to work with the City on the conditions required by the Public Works Department and Fire Department. Mr. Crow gave copies of a survey map to Council showing the various street grades in various roads. He stated that the steepest road is merely an access road from the living area to the swimming pool and not a main traffic road which service vehicles would be using.

Vice-Mayor Moore stated that the Planning and Zoning Commission voted against the process the developer followed, not the increasing of street grades. In connection with this, Mr. Crow stated that it was not the intention of the developer to ignore the guidelines established by the Planning and Zoning Commission.

Councilman Estes moved to set a public hearing on this matter for August 20, 1991, and asked that City staff meet with the developer to determine what compromise would be acceptable. This motion was seconded by Councilman Ellison and carried on a 5-2 vote, with Vice-Mayor Moore and Councilman Frank voting no.

#### Storm Water Utility Study - CH2M Hill Contract

The City Manager reported that CH2M Hill had prepared a proposed Amendment No. 4 to their existing contract to incorporate a storm water utility rate study. As there had been a previous question about the authority of cities in North Carolina to establish fees for a storm water utility, the North Carolina General Assembly adopted an act that authority during the 1991 Session. The fee proposed for the services is \$94,500. The 1990 proposal for the same rate study was \$89,777. CH2M Hill felt that their costs had increased by about 5% over the 1990 proposal and was therefore requesting a fee of \$94,500.

Councilman Ellison moved to authorize the City Manager to offer payment in the amount of the 1990 proposal to CH2M Hill for the services. That motion was seconded by Councilman Estes and unanimously adopted.

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MAYOR CITY CLERK

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