

Tuesday - January 21, 1992 - 4:00 p.m.

Regular Meeting

Present: Mayor Kenneth M. Michalove, Presiding; Vice-Mayor Eugene W. Ellison; Councilwoman Barbara Field; Councilmen William G. Moore, Chris J. Peterson, Joseph Carr Swicegood and Charles R. Worley; City Attorney William F. Slawter; City Manager Douglas O. Bean; and Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: None

INVOCATION

Vice-Mayor Gene Ellison gave the invocation.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the January 7, 1992, meeting minutes.

I. PROCLAMATIONS:

A. RESOLUTION NO. 92-4 - RESOLUTION OF APPRECIATION TO RETIREE, NOEL CALLOWAY.

Mayor Michalove read the resolution of appreciation to Noel Calloway who served the City of Asheville and its citizens for over a period of 42 years. Mayor Michalove said Mr. Calloway was Superintendent of Parking Services and he will be sorely missed.

Vice-Mayor Ellison moved for the adoption of Resolution No. 92-4. This motion was seconded by Councilwoman Field and carried unanimously.

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B. PROCLAMATION - JANUARY 26 - FEBRUARY 1, 1992 - "CATHOLIC SCHOOLS WEEK"

Mayor Michalove read a proclamation proclaiming the week of January 26 - February 1, 1992, as "Catholic Schools Week" in the City of Asheville and presented it to Sister Patricia Ann Pepitone, Principal of Asheville Catholic School.

C. PRESENTATION OF THE 1991 FOURTH QUARTERLY B\*E\*S\*T AWARD

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City Manager Bean presented Ernie Hewitt of the Planning Department with the Fourth Quarterly B\*E\*S\*T Award. Mr. Hewitt saw a collision in which a pickup truck was overturned. Mr. Hewitt smelled gasoline, rushed to the overturned vehicle and pulled the occupant to safety. Mr. Bean stated that although this is a heroic act, Mr. Hewitt's award is based on this and his continued customer relations skills.

D. PRESENTATION BY THE ASHEVILLE FIRE DEPARTMENT ON RAPID ZAP

Fire Chief John Rukavina stated that in March, 1991, the Asheville Fire Department began delivery of automated-defibrillation ("RapidZAP") service from four fire stations. He said on January 21, 1992, the Fire Department will officially inaugurate "RapidZAP" service at all Asheville fire stations. He said this inauguration will place an automated defibrillator within an average

of four minutes of a cardiac-arrest situation, where automated defibrillation can mean the difference between life and death.

Chris Morgan, District Chief, Tim Hinman, Firefighter, and others demonstrated "RapidZAP."

Mayor Michalove stated that this was a good example of how the City does make the best use of its resources.

## II. OLD BUSINESS:

### A. SECOND READING OF ORDINANCE NO. 1958, AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH THE DWELLING KNOWN AS 10 SUNSET SUMMIT, ASHEVILLE, NORTH CAROLINA

Mayor Michalove said that a public hearing was held on December 17, 1991, and continued until January 7, 1992, at which time this ordinance passed on its first reading.

Roy Hurst, co-owner of Unicon, said that he talked with Mrs. Brummer's attorney, John Powell, and told him of his proposal to acquire title to the house at 10 Sunset Summit and demolish the house down to its first level. He feels that this would make the property more sellable. Through Mrs. Brummer's attorney, he was told that she was receptive to the idea.

Upon inquiry of Mayor Michalove, City Attorney Slawter said that the ordinance before the Council is not for a partial demolition, but for a total demolition and therefore the Council could not hire Mr. Hurst to only partially demolish the structure.

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Upon inquiry of Vice-Mayor Ellison relative to safety if only partial demolition was done, Bob Hixson, Director of Building Inspections, said that a fence or some type of railing would have to be put up on the first level of the foundation and, if that was done, he felt it would provide security for the house.

In response to Mayor Michalove relative to the trying to end the paper trail for someone who would like to acquire title to the house, City Attorney Slawter explained how the foreclosure process works and how the particular liens would be affected. He explained that he would have to research the specifics involved with foreclosure proceedings as it relates to this piece of property.

Mr. Hixson, in response to an inquiry of Councilman Swicegood, said that if the house was torn down to the first floor level (as proposed by Mr. Hurst), it would not be in compliance with the Housing Code because the Housing Code does not address partial demolition, only total demolition.

Vice-Mayor Ellison and Councilman Moore asked that Mr. Hurst should put together a written proposal to the Council on his idea of partial demolition, which should include, but not be limited to, financial aspects, time period involved, etc.

Mayor Michalove said that before the final reading of this ordinance, the Council would need (1) to know the legal ramifications of foreclosure proceedings, (2) a written proposal from Mr. Hurst, and (3) to have the City Attorney research the specifics of foreclosing on this piece of property. He said that the Council is very anxious to move forward on this matter but felt that the Council would be more informed after these items have been addressed.

He said that the third and final reading of this ordinance would be postponed until Council had this information and adequate notice would be given to the public when the final reading would be held.

In response to Vice-Mayor Ellison, Bob Hixson said that the City could secure the property while foreclosure proceedings are taking place. It was suggested that the property owners in the area meet with Mr. Hixson and Assistant City Manager Charles Penny to discuss how to best secure the property.

Vice-Mayor Ellison moved to authorize the City Attorney to work with the County Attorney in order to proceed with a -4-

tax foreclosure sale of property at 10 Sunset Summit for the collection of City and County taxes, subject to the City Attorney clarifying any legal concerns. This motion was seconded by Councilman Swicegood and carried unanimously.

On a roll call vote of 5-2 (with Councilmen Peterson and Swicegood voting "no"), Ordinance No. 1958 passed on its second reading.

Mr. Joe McGuire, attorney for the property owners, stated that he would meet with the City Attorney and discuss some problems he sees being encountered.

At the request of Mayor Michalove, a motion was made by Councilman Worley, seconded by Councilman Moore that he be excused from the meeting at 5:05 p.m. This motion was carried unanimously.

### III. PUBLIC HEARING:

#### A. PUBLIC HEARING RELATIVE TO A GROUP DEVELOPMENT PROJECT REGARDING THE NEW FEDERAL BUILDING TO BE LOCATED AT THE INTERSECTION OF PATTON AVENUE AND NORTH FRENCH BROAD AVENUE

Vice-Mayor Ellison opened the public hearing at 5:06 p.m.

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

Mr. Don Sherrill, Urban Planner, said this group development request is a proposal to construct a new Federal Building in downtown Asheville. The proposal has been submitted by the General Services Administration. The project involves the construction of a six-story, 264,000 square foot office building at the intersection of Patton Avenue and North French Broad Avenue. The proposed building would contain offices and storage space that are currently located in the Grove Arcade.

He said the site is 3.5 acres in area and lies within the City's Central Business District (CBD) and the City's Downtown Design Review area. City Council previously adopted a resolution for the closing of Post Street between North French Broad Avenue and Otis Street.

He said the development standards for the Central -5-

Business District do not require building setbacks. The CBD is exempt from the parking requirements contained in the City's Zoning Ordinance, however, the plans include a parking area containing 151 spaces. The parking area is elevated from North French Broad Avenue. Driveway entrances will be located off N. French Broad Avenue and Otis Street. The loading and service areas are to be located under the parking area and would be accessed from N. French Broad.

He said the landscaping plans submitted include 41 street trees along Patton

Avenue, North French Broad Avenue, and Otis Street. The parking area includes 23 parking lot trees to be located within an island directly behind the proposed building. Trees will also be planted within a plaza area to be located at the intersection of Patton Avenue and Otis Street. Trees will be used to screen the parking area from the back of the old post office building that is located along Otis Street.

He said the Metropolitan Sewerage District has approved the requested allocation for sanitary sewer services. An application for letter of commitment for water availability is in process. Adequate fire protection is available to the site. The proposed building will contain a sprinkler system. The proposed driveway entrances have been approved by the City Public Works Department.

He said that at their December 4, 1991, meeting the Planning and Zoning Commission voted to approve the Downtown Design Review request and the group development request subject to the future design of the two public spaces

located at the corner of North French Broad Avenue and Patton Avenue and also within the plaza area at the corner of Patton Avenue and Otis Street, to be reviewed by staff.

He also said that the Commission voted to recommend approval of the group development request subject to the following three contingencies:

1. GSA work out a right-of-way encroachment agreement with the City of Asheville for the placement of steps in the right-of-way along Patton Avenue;
2. Approval of letter of commitment for water availability by the Asheville Water Authority (which has at this time been received); and
3. GSA continue to work with the City staff as plans are finalized to achieve consistency with the City Streetscape Plans along with planned improvements scheduled for Patton Avenue.

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Mr. James Smith, Project Manager with the General Services Administration, said that the project will begin in June of 1992 and has a completion date of approximately 2 years.

Mr. David Plant from the architectural firm gave detailed information of the project building and the area surrounding the building.

Due to numerous questions by the Council relative to the streetscape plan, the City Manager said that the streetscape plan would be given to the Council.

Mr. Will Nevill felt that cascading water should be included in the landscaping plan because water is aesthetically comfortable.

Mr. Plant answered questions from Mr. Gary Rowe, partial owner of the building directly across from the proposed location.

Vice-Mayor Ellison closed the public hearing at 5:33 p.m.

Councilman Moore moved to accept the report of the Planning and Zoning Commission (including the contingencies of the Commission) approving the project. This motion was seconded by Councilwoman Field and carried unanimously.

At this time, the following two OTHER BUSINESS items were considered:

A. GROUP DEVELOPMENTS

Mr. Don Sherrill, Urban Planner, said the City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission relative to group developments at the next scheduled regular meeting of the City Council. He said in accordance with this procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. He said the following actions were taken by the Planning and Zoning Commission on January 8, 1992.

A. OVERMAN APARTMENTS - GROUP DEVELOPMENT REVIEW

Mr. Sherrill said that this group development request is a proposal to locate a four-unit apartment building on three contiguous lots along Chatham Road. The site is -7-

approximately one-half acre in size and the terrain is sloping. The proposed site lies within the City's R-3 Medium Density Residential District. The proposed building includes two stories and a total gross floor area of 2800 square feet. The plan meets all parking, landscaping and setback requirements. Buffers will be placed along two sides of the project and existing trees along the rear portion of the lot are to be preserved. Water and sewer services are available and water flow and pressure are adequate for fire protection. The driveway entrance has been approved by the Public Works Department.

Mr. Sherrill stated that a number of neighboring residents have expressed opposition to the location of the apartment building on Chatham Road and they have requested that the City Council schedule a public hearing on this matter. He said that issues that have been expressed include increased traffic on a narrow winding roadway (Chatham), the possibility of additional on-street parking, problems with the existing water line, crowded conditions, removal of existing trees, fencing, and possible Section 8 Housing.

Councilman Worley moved to schedule a public hearing on Overman Apartments for Tuesday, February 18, 1992, at 4:00 p.m. in the Asheville Civic Center Banquet Room. This motion was seconded by Councilman Moore and carried unanimously.

B. CARSON'S CREEK APARTMENTS - GROUP DEVELOPMENT

REVIEW

Mr. Sherrill said that the group development request for Carson's Creek Apartments is a proposal to construct 160 residential apartments. The proposed site is located off Hendersonville Road (adjacent to Turtle Creek Apartments). The site is 11.79 acres in area and was previously included in the Gibson Estate. The site lies within the Commercial Highway Zoning District. All of the adjacent properties are also within the Commercial Highway Zoning District. The land is presently vacant.

He said the site plan proposes eight, three-story buildings. The maximum density allowed within the Commercial Highway District is 16 units/acre. The density proposed is 15.3 units/acre (excluding a proposed right-of-way). The proposal meets all parking, landscaping and setback requirements. Eighteen mature oak trees will be preserved and incorporated into the landscape design. Water and sewer services are available to the site. Adequate -8-

water flow and pressure are available for fire protection. The proposal includes the installation of three new hydrants. The proposed driveway entrance is located off Hendersonville Road. The location of the entrance has been approved by the City Public Works Department and the N. C. Department of

Transportation.

He said the developer is proposing to construct a roadway into the site, meeting City specifications for publicly maintained roadways within the City of Asheville. The developers may dedicate the roadway to the City at a later date.

He said that at the Planning & Zoning Commission's January 8, 1992, meeting, they voted to recommend approval of the group development request for Carson Creek Apartments subject to the contingency of (1) If the developer locates the master water meter for Carson Creek Apartments near the cul-de-sac entrance to the apartments (instead of along Hendersonville Road), the proposed waterline must meet the conditions outlined in Michael Brookshire's (Acting City Engineer) January 8, 1992, letter. The conditions are as follows: (a) Waterline between US 25 and the master meter location shall be installed outside the paved limits of a City of Asheville maintained street and right-of-way; (b)

Plan of waterline extension to be prepared in accordance with the Asheville-Buncombe Water Authority standards by a N.C. registered professional engineer. Construction and inspection of said waterline and meter pit shall be performed in accordance with Asheville-Buncombe Water Authority standards; (c) Waterline between US 25 and meter pit shall be Class 50 ductile iron; and (d) Water system beyond the master meter pit location shall be reviewed and approved by the North Carolina Department of Environment Health and Natural Resources.

He said the developer has contacted the Planning Department since the recommendation of approval was granted by the Planning and Zoning Commission. The developer will locate the proposed water meter along Hendersonville Road instead of at the cul-de-sac.

Council accepted the report of the Planning and Zoning Commission, thereby approving the project by taking no action.

#### IV. NEW BUSINESS:

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A. RESOLUTION NO. 92-5 - RESOLUTION AUTHORIZING THE CITY CLERK TO EXECUTE AN AFFIDAVIT FOR A NOTICE OF LIMITATION OF USE FOR THE FRENCH BROAD RIVER PARK PROPERTY DONATED BY CAROLINA POWER & LIGHT COMPANY

City Manager Bean said that in consideration of the funding of a Land and Water Conservation Fund Grant by the State of North Carolina for the development of a park along the French Broad River, the City of Asheville is required to record an Affidavit for a Notice of Limitation of Use along with the deed for the property. This resolution will authorize the City Clerk to execute the Affidavit for a Notice of Limitation of Use on behalf of the City.

City Manager Bean advised the Council that, as a condition of receiving the grant, the City must agree that if the property ceases to be used for recreational purposes in the future, the City must provide replacement facilities of comparable scope.

Vice-Mayor Moore said that members of Council have been previously furnished with a copy of this resolution and it would not be read in its entirety.

Councilman Moore moved for the adoption of Resolution No. 92-5. This motion was seconded by Councilman Worley and carried unanimously.

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B. RESOLUTION TO ACCEPT CONTRACT NO. 9 STREET AND SIDEWALK BOND PROJECT (PATTON AVENUE REHABILITATION PROJECT)

City Manager Bean said that in 1987 the citizens of Asheville passed a \$20,000,000 Bond Program of which \$17,000,000 was earmarked for street and sidewalk improvements within the City of Asheville. The program called for the rehabilitation of certain streets in the downtown area, Patton Avenue being one of them. He said this project will result in a reconstruction of the area from Coxe Avenue to Otis because of some significant substructure defects and rehabilitation of the pavement from Clingman Avenue to Otis and from Coxe Avenue to Biltmore Avenue. In conjunction with the project, the sidewalks will be restored from Clingman Avenue to Biltmore Avenue utilizing the design criteria from the Streetscape Plan. He said \$1.3 Million has been budgeted for this project. He said that one lane of traffic would be open on Patton Avenue at all times, that the City has encouraged the contractor to work around the clock for the 8-week period of time (with an incentive of a \$500 bonus for every day before the deadline. -10-

and a \$1,000 penalty for every day after the deadline). He said that using granite curbing from Clingman to Biltmore would cost approximately \$166,000 over the standard curbing, and therefore, he recommended not using the granite

curbing which would allow the City would stay within its budgeted amount. He said that the sidewalks from Pritchard Park to Biltmore Avenue are not in too bad shape, but feels that within 3-5 years it will cost the City more money to repair these and therefore, they should be included in this project.

City Manager Bean recommended to the Council (because the City has just received these bids) that Council not award the bid at this meeting in order to give the Downtown Commission and the folks on the Streetscape Committee time to comment on this project plan. He suggested that Council hold this item over until their worksession on January 28, 1992.

Due to questions about the condition of sidewalks and streets in the project area, it was the consensus of Council to take a tour of the area on Monday, January 27, 1992, at 12:30 p.m.

Councilman Moore felt that the City should save all the money it can in relation to this project, because once the City starts going under the pavement on Patton Avenue, the project might end up costing a lot more money, just to fix on a minimum basis.

Councilwoman Field asked that the Streetscape Committee and the Downtown Commission be notified of these plans and that a report be given to the Council of their concerns at the worksession on January 28.

Councilman Worley moved to defer any action on this item until Council's worksession on Tuesday, January 28. This motion was seconded by Councilwoman Field and carried unanimously.

C. RESOLUTION TO ACCEPT CONTRACT NO. 5 STREET AND SIDEWALK BOND PROJECT (MONTFORD AVENUE REHABILITATION PROJECT)

City Manager Bean said that in 1987 the citizens of Asheville passed a \$20,000,000 Bond Program of which \$17,000,000 was earmarked for street and sidewalk improvements within the City of Asheville. The project will result in a reconstruction of brick sidewalks in the Montford Historic District. He said that the project was originally budgeted for \$1 Million, but the lowest bid is for \$643,792.

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There was some discussion relative to the cost of brick sidewalks versus concrete ones. Jim Ewing, Director of Public Works, stated that a square yard of brick was \$25.87 and a square yard of concrete was \$24.70. If the City chose to put in concrete sidewalks, a savings of approximately \$4-5,000 would be had, but the Historic Resources Commission asked that the sidewalks be replaced in the same manner that they are presently in, which is brick.

Councilman Peterson suggested delaying this action until Council has had an opportunity to look at this project area. He suggested that the Council tour this area at the same time they tour the Patton Avenue Project area.

Councilman Moore moved to award the bid to Paving Enterprises, Inc., in the amount of \$643,792 for the Montford Avenue Rehabilitation Project (Street and Sidewalk Improvements Contract No. 5). This motion was seconded by Councilwoman Field. Councilman Peterson moved to delay any action on this matter for one week to give interested Council members time to tour the area. This motion was seconded by Councilman Swicegood, and was defeated on a 3-3 vote, with Councilmen Peterson, Swicegood and Vice-Mayor Ellison voting "yea" and Councilwoman Field and Councilmen Moore and Worley voting "no". Councilman Moore's motion was then defeated on a 3-3 vote, with Councilwoman Field and Councilmen Moore and Worley voting "yea" and Councilmen Peterson and Swicegood and Vice-Mayor Ellison voting "no".

Councilman Moore then moved to delay any action on this matter until February 4, 1992. This motion was seconded by Councilman Swicegood and carried unanimously.

D. ORDINANCE NO. 1959 - BUDGET ORDINANCE AMENDMENT TO ADMINISTER A DEPARTMENT OF CULTURAL RESOURCES CLG GRANT PROJECT: ELIADA HOME NATIONAL REGISTER NOMINATION AND HISTORIC STRUCTURE REPORT

Mr. Kent Newell, Historic Resources Director, said that the purpose of this project is two fold: (1) To prepare a National Register Nomination for the proposed Eliada Home Historic District which contains approximately eight contributing properties; and (2) To develop a plan for the stabilization, rehabilitation and preservation of the Main Building. The Historic Structures Report will assess the interior and exterior of this 1915 building, will recommend stabilization needed and will explore how to rehabilitate this building to once again house families in need. The maximum cost of the City would be approximately \$250.00

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Vice-Mayor Ellison said that members of Council have been previously furnished with copies of this ordinance and it will not be read in its entirety.

Councilman Worley moved for the adoption of Ordinance No. 1959. This motion was seconded by Councilman Moore.

On a roll call vote of 6-0, Ordinance No. 1959 passed on its first and final reading.

ORDINANCE BOOK NO. 13 - PAGES 25-26

V. CONSENT AGENDA:

A. MOTION SCHEDULING A PUBLIC HEARING RELATIVE TO AMENDING RULE 3 OF THE RULES AND REGULATIONS OF THE CIVIL SERVICE COMMISSION OF THE CITY OF ASHEVILLE FOR

FEBRUARY 18, 1992, IN THE ASHEVILLE CIVIC CENTER BANQUET ROOM, AT 4:00 P.M.

B. MOTION SCHEDULING A PUBLIC HEARING RELATIVE TO REZONING OF 773 EMMA ROAD FROM R-5 RESIDENTIAL DISTRICT TO LI LIGHT INDUSTRIAL DISTRICT FOR FEBRUARY 18, 1992, IN THE ASHEVILLE CIVIC CENTER BANQUET ROOM, AT 4:00 P.M.

Councilwoman Field moved for the adoption of the consent agenda. This motion was seconded by Councilman Moore and carried unanimously.

VI. OTHER BUSINESS:

A. RALPH BISHOP

Mr. Ralph Bishop said that incidents such as happened after he addressed the Council at their last meeting (window broken out of his car) would not deter him from seeking redress from Council.

B. ANNUAL REPORT - 1991

City Manager Bean passed out the City of Asheville, North Carolina, Annual Report 1991.

C. UNIFIED DEVELOPMENT ORDINANCE MINUTES

Vice-Mayor Ellison appreciated the 1991 Unified Development Ordinance minutes that were included in the Council notebooks.

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D. COUNCILWOMAN FIELD COMMENT

Councilwoman Field asked if there was any way to determine the cost of staff time caused by the delay of Council voting on matters. City Manager Bean said that it would be very difficult but he would discuss the matter further with her.

E. CLAIMS

City Manager Bean said that the following claims were received by the City of Asheville during the week of January 6-10, 1992: Myrtle Reed (Water); Linda Moore (Water); Clara Mehaffey (Water); Tim Johnston (Water); Jean Buchanan (Streets); and Ton Neimkin (Water).

He said that these claims have been referred to the appropriate insurers for investigation.

F. LAWSUIT

City Manager Bean said that on January 9, 1992, a lawsuit was received from Power Flo Products, Inc., d/b/a Deal Isuzu. He said it was an appeal from the Board of Adjustment decision. This lawsuit has been referred to the appropriate legal counsel for action.

G. FEBRUARY 4 AND FEBRUARY 28 CITY COUNCIL MEETINGS

Vice-Mayor Ellison announced that the Asheville City Council will be holding their February 4, 1992, and their February 28, 1992, City Council meetings at the Asheville Civic Center Banquet Room, at 4:00 p.m.

VII. ADJOURNMENT

Vice-Mayor Ellison adjourned the meeting at 6:45 p.m.

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CITY CLERK MAYOR

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