

Tuesday - November 17, 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

Councilman Moore gave the invocation.

APPROVAL OF THE MINUTES

Mayor Michalove announced the approval of the November 3, 1992, City Council minutes as submitted.

I. PROCLAMATION:

A. PROCLAMATION PROCLAIMING NOVEMBER 17, 1992, AS "WOMEN IN THE MILITARY DAY - PAST AND PRESENT"

Mayor Michalove proclaimed November 17, 1992, as "Women in the Military Day - Past and Present" in the City of Asheville.

B. PROCLAMATION PROCLAIMING DECEMBER 1, 1992, AS "WORLD AIDS DAY"

Mayor Michalove proclaimed December 1, 1992, as "World Aids Day" in the City of Asheville and presented the proclamation to Ms. Barb McElroy.

II. PUBLIC HEARING:

E. PUBLIC HEARING RELATIVE TO THE PRELIMINARY ASSESSMENT ROLL ON THE AZALEA AVENUE SPECIAL ASSESSMENT PETITION

RESOLUTION NO. 92-161 - RESOLUTION CONFIRMING THE PRELIMINARY ASSESSMENTS MADE IN THE AZALEA AVENUE PROJECT BEGINNING AT THE END OF THE EXISTING PAVEMENT ON AZALEA AVENUE AND ENDING AT THE END OF THE ROADWAY

Mayor Michalove opened the public hearing at 4:05 p.m.

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

City Manager Bean said that this resolution would confirm the preliminary assessments made in the Azalea Avenue Project. The total cost of the project, including labor, materials, equipment and the cost of publication of notice is \$6,484.76. The amount assessed is \$3,242.38.

Mayor Michalove closed the public hearing at 4:06 p.m.

Mayor Michalove said members of Council had been furnished with a copy of the resolution and it would not be read.

Vice-Mayor Ellison moved for the adoption of Resolution No. 92-161 on November 17, 1992, at 4:06 p.m. This motion was seconded by Councilman Moore and carried unanimously.

RESOLUTION BOOK NO. 19 AT PAGE 332

III. OLD BUSINESS:

A. SECOND READING OF ORDINANCE NO. 1997 - ORDINANCE AMENDING ZONING OF FOUR LOTS LOCATED ON CROWELL ROAD FROM R-3 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT

Mayor Michalove said that a public hearing was held on this ordinance on November 3, 1992, at which time it passed on its first reading.

Mayor Michalove said members of Council had been furnished with a copy of the ordinance and it would not be read.

On a roll call vote of 7-0, Ordinance No. 1997 passed on its second reading.

Councilman Moore moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1997. This motion was seconded by Councilman Worley and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1997 passed on its third and final reading.

ORDINANCE BOOK NO. 13 AT PAGE 156

B. THIRD READING OF ORDINANCE NO. 1998 - ORDINANCE CREATING NEW ZONING FOR 2323 HENDERSONVILLE ROAD TO CH COMMERCIAL HIGHWAY DISTRICT

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Mayor Michalove said that a public hearing was held on this ordinance on November 3, 1992, at which time it passed on its first and second readings.

Mayor Michalove said members of Council had been furnished with a copy of the ordinance and it would not be read.

On a roll call vote of 7-0, Ordinance No. 1998 passed on its third and final reading.

ORDINANCE BOOK NO. 13 AT PAGE 158

IV. NEW BUSINESS:

A. ORDINANCE AMENDING CHAPTER 18, SECTION 18-5 OF THE CODE OF ORDINANCES PROHIBITING BEGGING

City Attorney Slawter stated that the proposed ordinance is patterned after the ordinances in Charlotte and Shelby, North Carolina, and Atlanta, Georgia, and to date none of these ordinances have been challenged constitutionally. He said that the ordinance does not prohibit begging, but prohibits "aggressive" begging. He said that accosting another or forcing oneself upon the company of another, as the terms are defined in the ordinance, would be unlawful.

Police Chief Gerald Beavers stated that during the past two years, there has been an outcry from the public regarding begging (mostly in the downtown area). The ordinance on the books now is very outdated and he feels this ordinance

will a tool to deter aggressive and sometimes hostile begging.

Upon inquiry of Councilman Moore, Police Chief Beavers said that this ordinance has no effect upon the type of solicitation done by organizations at traffic lights. He said those organizations to have to obtain a permit and are monitored by the Police Department.

Vice-Mayor Ellison stated his concerns about the maximum amount of fine, which is \$500 or 30 days in jail. He felt that some type of education program needed to be conducted on what is and is not acceptable conduct. He felt that the poor and homeless should not be penalized so severely for begging. He suggested a warning system be implemented which would document how many times a warning was given, and, if, two or more warnings were issued, then a -4-

citation could be given. He suggested the maximum amount of the fine be reduced to \$50 and five days in jail for the first conviction and then perhaps \$500 and 30 days in jail for any subsequent conviction.

Police Chief Beavers stated that an in-house education program would be held to educate his officers on this matter and he had no problem at all in reducing the fine provisions. He offered to write the warning system relative to begging into a departmental policy. He felt that since there was mainly the same people begging over and over again, it would not be hard to let them know of the warnings and subsequent violation penalties.

Mayor Michalove suggested that a copy of the ordinance, if and when it was adopted, could be posted in homeless shelters.

It was the consensus of Council to have the City Attorney draft some language that would reduce the penalty provisions as suggested by Vice-Mayor Ellison and incorporate into the ordinance a warning system.

B. FINAL PLAT APPROVAL FOR DEVONSHIRE SUBDIVISION

Ms. Mary Weber, Urban Planner, stated that the Devonshire Subdivision is located off of Hendersonville

Road just south of the Blue Ridge Parkway. The project will be constructed in seven phases. The request is to subdivide a 13 acre tract into 89 lots. This final plat is the first phase and includes 10 lots. The site lies within the R-3 Residential Zoning District. Adjacent zoning includes R-2 and R-3 to the north, and CH to the south.

She said the site will be accessed by a new road off of Hendersonville Road.

She stated that the proposed subdivision meets the requirements of the Asheville Zoning Ordinance and the Subdivision Regulations. On July 20, 1992, the developer obtained a variance from the Board of Adjustment from the front setback requirement in order to preserve a wetland. In addition, all utilities and the Fire Department have approved availability of services to the site. The owner has submitted a performance bond to guarantee the completion of the public improvements, such as water and sewer, curb and gutter, storm drainage and paving, after approval of the final plat. At their March 4, 1992, meeting, the Asheville Planning and Zoning Commission voted to recommend approval of the Devonshire Subdivision.

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Councilman Swicegood moved for the approval of the final plat of Devonshire Subdivision. This motion was seconded by Vice-Mayor Ellison and carried

unanimously.

C. FINAL PLAT APPROVAL FOR CAROLINA TRACTOR AND EQUIPMENT SUBDIVISION

Ms. Mary Weber said that the Carolina Tractor and Equipment Subdivision is located on Oakview Road in the extraterritorial jurisdiction near the I-40/I-240 interchange. The request is to subdivide a 23 acre tract into three lots (1 at 7.2 acres, 1 at 7.3 acres, and 1 at 8.5 acres).

She said the site is contained within the LI Light Industrial District and is bordered by property which is zoned LI Light Industrial District and CH Commercial Highway District. The lots will be accessed by Oakview Road and Interstate Boulevard.

She said the proposed subdivision meets the requirements of the Zoning Ordinance and Subdivision Regulations. In addition, the Water and Sewer Engineering Department and the Enka Volunteer Fire Department have approved availability of services to the site. At their November 4, 1992, meeting, the Planning and Zoning Commission voted to recommend approval of the subdivision with one contingency - that the developer must obtain a letter of sewer allocation from the Metropolitan Sewerage District. She said that the letter is forthcoming but just has not yet arrived.

Councilman Moore moved for the approval of the final plat of Carolina Tractor and Equipment Subdivision. This motion was seconded by Councilman Worley and carried unanimously.

V. CONSENT AGENDA:

A. RESOLUTION NO. 92-162 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE BROADWAY MUNICIPAL AGREEMENT (BROADWAY IMPROVEMENTS)

Summary: This is a joint agreement to acquire right-of-way needed for a proposed greenway to be constructed adjacent to the project. The Department of Transportation (DOT) will make every attempt to acquire certain excess right-of-way or residue properties located along the -6-

project. Upon completion of the project, DOT shall convey the excess right-of-way that they were able to acquire. The City agrees to pay for the residue parcels based upon cost estimates to be adjusted when actual cost figures are attainable. The City has 3 years to make the payments with no interest if all payments are made within the 3 year period. The Council has identified up to \$300,000 (over 6 years) in the Capital Improvements Program for the acquisition of the excess parcels. Current estimates for these parcels are \$545,000.

RESOLUTION BOOK NO. 19 AT PAGE 334

B. RESOLUTION NO. 92-163 - RESOLUTION REQUESTING THE NATIONAL WEATHER SERVICE RETAIN AN OFFICE IN ASHEVILLE, NORTH CAROLINA

Summary: The present National Weather Service plan calls for the closure of weather stations in Charlotte, Greer, Asheville, Athens and Augusta. All weather coverage would come from Columbia. Because of Asheville's terrain, the weather here is quite different from the weather in the flat lands and only with a weather station in Asheville would the weather reports be accurate for this area. Fog and light rain, both of which are indigenous to this area, are not seen on radar and would therefore not be reported from weather stations remote from this area. Having the highest terrain in the southeast, it is the opinion of most aviators and the Asheville Airport Authority that a weather

station is helpful and needed here.

Councilman Moore moved to have Mayor Michalove write a letter to Congressman Taylor stressing the importance of leaving the National Weather Service Office in Asheville open and send a copy of the resolution to him as well. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 19 AT PAGE 335

C. RESOLUTION NO. 92-164 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE TREE/GREENWAY COMMISSION

Summary: Robert Fabrey resigned from this Commission due to a prior appointment on a different board. This resolution will appoint Dennis Wilson to serve a 3 year term, term expiring August 1, 1995, or until his successor has been duly appointed and qualified.

RESOLUTION BOOK NO. 19 AT PAGE 336

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D. RESOLUTION NO. 92-165 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING AND ZONING COMMISSION

Summary: The terms of Barbara Melton and Pat Hutchison expired on August 14, 1992. This resolution will reappoint Barbara Melton for an additional two year term, expiring August 14, 1994; and will appoint Roderick Hudgins to serve a two year term, expiring August 14, 1994.

RESOLUTION BOOK NO. 19 AT PAGE 337

E. RESOLUTION NO. 92-166 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED PORTION OF CLOYES STREET AND CALLING A PUBLIC HEARING ON THE QUESTION FOR DECEMBER 15, 1992

RESOLUTION BOOK NO. 19 AT PAGE 338

F. MOTION SCHEDULING A PUBLIC HEARING FOR DECEMBER 8, 1992, RELATIVE TO A VARIANCE ON THE RIGHT-OF-WAY WIDTH FOR THE TACO BELL SUBDIVISION

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

VI. OTHER BUSINESS:

A. GROUP DEVELOPMENTS

Ms. Mary Weber, 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. She 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. She said the following actions were taken by the Planning and Zoning Commission on November 4, 1992:

21 HAYWOOD STREET

Ms. Weber said the group development request is for the adaptive reuse of the old Revco building on 21 Haywood Street. The proposal is to construct 8

residential units, a retail space, and an office in the 19,000 square foot space. Part of the project was reviewed and approved earlier as a small project. The group development review is for 6 of the residential units. The project is located in the Central Business Zoning District and required Downtown Design Review.

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Parking will be accommodated by building a pedestrian bridge to the Rankin Garage where twelve spaces will be rented. The owner has worked with the City's Legal staff to obtain an easement for the bridge.

The site plan meets all of the requirements of the Asheville Zoning Ordinance.

On September 29, 1992, the City Council approved a variance from the standards for construction in the City's Fire District.

All utilities are available for the project and there will be adequate fire protection. The Asheville Planning and Zoning Commission recommended approval at their November 4, 1992 meeting.

Vice-Mayor Ellison felt that since this will be the first time a pedestrian bridge has been addressed by this Council, he felt a public hearing would be in order.

Vice-Mayor Ellison moved to schedule a public hearing on the group development of 21 Haywood Street for December 8, 1992, at 4:00 p.m. in the Council Chamber of the City Hall Building. This motion was seconded by Councilman Peterson and carried unanimously.

GERBER PRODUCTS WAREHOUSE EXPANSION

Ms. Weber said that this group development request is for a 180,000 square foot warehouse and office expansion on 1840 Hendersonville Road. The site is 40 acres in area and the disturbed area is 16 acres. The project is located in the Heavy Industrial Zoning District and is surrounded by Commercial Highway and Heavy Industrial zones.

Access to the site will be moved from Hendersonville Road to Gerber Road. The North Carolina Department of Transportation has agreed to install a traffic signal at the intersection of Hendersonville and Gerber Roads. In addition to the building expansion, additional parking will be constructed to accommodate trucks.

The site plan complies with all requirements of the Asheville Zoning Ordinance. All utilities are available for the project and there will be adequate fire protection. The Asheville Planning and Zoning Commission recommended approval of the project at their November 4, 1992 meeting.

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

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T.C. ROBERSON HIGH SCHOOL ADDITION

Ms. Weber said that the Buncombe County Board of Education is proposing additions to the T.C. Roberson High School located on Overlook Road. The project will consist of 35,000 square feet of additional and renovated classrooms and a new gymnasium for handicapped students. The site and all

adjacent properties are contained within the R-4 Residential Zoning District. With the exception of five new handicapped parking spaces, existing parking areas and driveways will be utilized by the proposed additions.

At the November 4, 1992, Planning and Zoning Commission meeting, John Schmidt, an adjacent property owner, expressed his opposition to a proposed classroom to be located near his property. However, the project meets the requirements of the Asheville Zoning Ordinance, including landscaping and buffering. In addition, the Water and Sewer Engineering and Fire Departments have approved availability of services to the site. At their November 4, 1992, meeting, the Planning and Zoning Commission voted to recommend approval of the group development with one contingency. The contingency is that the developer must obtain a letter of sewer allocation from the Metropolitan Sewerage District and that letter has been received.

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

B. MOTION TO SET PUBLIC HEARING ON DECEMBER 8, 1992, RELATIVE TO THE COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY FOR THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Councilwoman Field moved to schedule a public hearing on December 8, 1992, at 4:00 p.m. in the Council Chamber of the City Hall Building, relative to the Comprehensive Housing Affordability Strategy for the Asheville Regional Housing Consortium. This motion was seconded by Vice-Mayor Ellison and carried unanimously.

C. ANNOUNCEMENT OF PUBLIC MEETING ON MANUFACTURED HOUSING POLICY FOR THE UNIFIED DEVELOPMENT ORDINANCE ON MONDAY, NOVEMBER 23, 1992, AT 7:00 P.M. IN THE COUNCIL CHAMBER OF THE CITY HALL BUILDING

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D. NO MEETING OF THE ASHEVILLE CITY COUNCIL ON TUESDAY, NOVEMBER 24, 1992, BECAUSE OF THE THANKSGIVING HOLIDAY AND NO MEETING OF THE ASHEVILLE CITY COUNCIL ON TUESDAY, DECEMBER 1, 1992, BECAUSE THE CITY COUNCIL WILL BE ATTENDING THE NATIONAL LEAGUE OF CITIES MEETING

E. ANDREA AUSTIN

Ms. Andrea Austin expressed her support for the Council requesting that the National Weather Service retain an office in Asheville.

F. STATEMENT BY CELESTE HICKS, REPRESENTATIVE OF THE SPIRITUAL ASSEMBLY OF THE BAHA'I OF ASHEVILLE

Ms. Celeste Hicks, representative of The Spiritual Assembly of the Baha'i of Asheville, read a statement relative to racial harmony in the community. She encouraged the Council to take positive steps and offered their resources to address this most important issue in our City.

G. MIKE SUMMEY REQUEST FOR SIGN ORDINANCE VARIANCE

Mr. Mike Summey explained a problem he has encountered with an interpretation in the sign ordinance.

After some discussion, it was suggested that Mr. Summey attend the upcoming Board of Adjustment meeting and request a variance. In the meantime, the Planning and Zoning staff, along with the legal staff, would be looking at the

specific sections in the sign ordinance in which he felt there were interpretation problems.

H. CLAIMS

City Manager Bean said that the following claims have been received by the City of Asheville during the week of November 2-6, 1992: Lavonda Blackwell (Water) and Elbert Williams (Police).

He said that the following claims have been received by the City during the week of November 9-13, 1992: Katherine Lyda (Sanitation); Betty Williams (Water); Vernon Yelton (Water); Bennie Lake (Streets); and Mike Angel (Streets).

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

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I. RALPH BISHOP

Mr. Ralph Bishop spoke about his right to address the Council for longer than three minutes. He questioned why gambling joints were allowed to run in the City.

VII. ADJOURNMENT.

Mayor Michalove adjourned the meeting at 5:43 p.m.

CITY CLERK MAYOR
