

Tuesday - August 31, 1993 - 4:00 p.m.

Regular Meeting

Present: Mayor Kenneth M. Michalove, Presiding; Vice-Mayor Eugene W. Ellison; Councilwoman Barbara Field; Councilmen 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: Councilman William G. Moore

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF THE B*E*S*T QUARTERLY WINNERS FOR THE 1ST AND 2ND QUARTERS IN 1993

City Manager Bean said that on July 8, 1993, the B*E*S*T Committee met to choose the 1st and 2nd Quarterly B*E*S*T winners for 1993. Out of several nominations, Ronnie Davis (Police Department) was chosen as the 1st Quarterly winner and Melinda Ingle (Police Department) was chosen as the 2nd Quarterly winner.

Ronnie Davis was nominated for volunteering his time to help raise funds for the NC Special Olympics for the past two years. Ronnie spent many days sitting on top of the billboard on Patton Avenue in pouring rain, hot sun and cold weather. His dedication to this special cause has certainly not gone unnoticed by the community or his fellow co-workers.

Melinda Ingle was nominated for the care and attention she gave while investigating a child sexual assault case. She found two small children who would not have anything in the way of gifts for Christmas. Melinda began searching for a way to create a Christmas dream for these two children. With her strong will and efforts, she was able to gather toys, clothing, shoes, coats and other assorted goodies and personally deliver them to this family so these children could continue their belief that Santa Claus is real. She showed compassion and demonstrated the true meaning of the Christmas season. We are all thankful for the extra compassion she exhibits for children.

City Manager Bean then presented Ronnie and Melinda with B*E*S*T Awards.

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B. PRESENTATION OF BOOK ENTITLED LOCAL GOVERNMENT IN NORTH CAROLINA BY GORDON P. WHITAKER

City Manager Bean stated that over four years ago the North Carolina City and County Management Association realized the need for education of young people relative to local government. As a result of that realization, the book entitled Local Government in North Carolina by Gordon P. Whitaker has finally been published. He passed out copies of the book to Council members and J. Frank Yeager, Superintendent of Buncombe County Schools, and Wayne Trogdon, Superintendent of Asheville City Schools. Both Superintendents expressed their appreciation for this wonderful addition to their curriculum.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE PROPERTY AT 401 OLD COUNTY HOME ROAD FROM R-3 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT

Mayor Michalove opened the public hearing at 4:11 p.m.

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

Ms. Carol Pennell, Urban Planner II, said that the Planning and Zoning Commission denied the request after lengthy public comment by adjoining property owners in opposition. The two lots (PIN Nos. 9629-10-26-5131 and 9629-10-26-7219) are just one lot east of the intersection of Old County Home Road and Leicester Highway. Currently used as residential, the two lots support three individual structures. The subject lots are located in the City's extraterritorial jurisdiction and share a property line with the recently built Food Lion shopping center.

Due to this development, a severe steep wall of rock is located along the western property line.

The Planning staff recommendation was denial because of nonconformance with the 2010 Plan (shown as medium-density residential) and narrowness of Old County Home Road. The Planning and Zoning denial vote was unanimous.

On July 30, 1993, the City Clerk's office received a request from Ms. Nettie Briggs, owner of the property, appealing the Planning and Zoning Commission's decision to the City Council.

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Mayor Michalove explained the public hearing procedure and asked if there was a spokesman for the petitioner. At that time Mr. Kent Williamson, Good Neighbors Realty, identified himself. He then asked if there was a spokesman for the community and was told that there were several people who wanted to speak. He explained that the Council would give the petitioner an opportunity to speak and then take comments from the opposing side.

Mr. Kent Williamson, agent from Good Neighbors Realty representing the property owner, passed out copies of pictures showing the dense accumulation of commercial businesses around 401 Old County Home Road. He said, among other things, that Mrs. Briggs' property line is next to a large boulder-covered high bank and she experiences loud noises, particularly at night. He said that because of the commercial development next to her, it has forced her to ask for this rezoning and sell her property.

A resident from 2040 Old County Home Road spoke in opposition of the rezoning. She spoke about the need to keep the area zoned residential.

At this time (4:28 p.m.), Vice-Mayor Ellison entered the meeting.

Ms. Marjorie Bransletter, property owner in area, spoke in opposition of any action to rezone the subject property commercially. She read a letter from her daughter, Christina Bransletter, which opposed the rezoning and also she read a statement from her brother, Steve Bransletter, who opposed the rezoning.

Ms. Vivian Kyte, owner of property adjacent to Mrs. Briggs, spoke in opposition of the proposed rezoning.

Mr. David Barbour, neighbor of Mrs. Briggs, spoke in opposition of the proposed rezoning and felt that Old County Home Road was too narrow for commercial

traffic.

Mr. Dennis Wynne, neighbor of Mrs. Briggs, spoke in opposition of the rezoning and urged Council to keep Old County Home Road residentially zoned.

A letter was read from Richard B. Wynne urging Council not to rezone commercially into a residential area, therefore opposing the rezoning.

Mr. Rick Wynne urged Council not to rezone the property commercially.

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Mr. James Harwood, neighbor of Mrs. Briggs, opposed the rezoning.

Mr. Bron Spivey spoke in opposition of the proposed rezoning.

After asking for any other comments and receiving none, Mayor Michalove closed the public hearing at 4:35 p.m.

Councilwoman Field moved to deny the rezoning of 401 Old County Home Road from R-3 Residential District to CS Commercial Service District. This motion was seconded by Councilman Swicegood and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AMENDING RULE 17 OF THE RULES AND REGULATIONS OF THE CIVIL SERVICE BOARD OF THE CITY OF ASHEVILLE

RESOLUTION NO. 93-131 - RESOLUTION AMENDING RULE 17 OF THE RULES AND REGULATIONS OF THE CIVIL SERVICE BOARD OF THE CITY OF ASHEVILLE

Mayor Michalove opened the public hearing at 4:37 p.m.

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

City Manager Bean said that Rule 17 was initially adopted by City Council on May 7, 1991. The intent of the rule was that it only apply to full-time (02) City employees, not seasonal and part-time employees. However, its current wording "any employee" does not clearly reflect this intent. This amendment to Rule 17 will clarify it is only applicable to full-time (02) employees. He said that the Civil Service Board adopted this rule change on August 4, 1993, and then explained the following amendment:

A full-time (02) employee who sustains an injury which is compensable under the North Carolina's Workers' Compensation Act and who is no longer capable of performing the duties required in his/her regular job shall be permanently assigned, without competitive examination, to another position, with the approval of the Personnel Director, the City Attorney and the Civil Service Board. No such assignment shall be made, however, until the Civil Service Board has made a determination that the employee is vocationally and physically suited for the position to which he/she is to be assigned. Provided, however, that in the event -5-

that more than one job classification is available for which the employee is vocationally and physically suited, the employee shall be allowed to choose the position in which he/she is to be placed, if feasible. Provided, further, that where a position is available within the employee's existing department for which the employee is vocationally and physically suited, the employee shall be allowed to remain within that department if feasible. (amendment underlined)

Ms. Ronda Castlewitz read a statement relative to the City's treatment of

injured officers on worker's compensation. She felt that Rule 17 is the City's way to avoid paying benefits to injured employees.

Mayor Michalove closed the public hearing at 4:44 p.m.

Vice-Mayor Ellison asked that the City Manager investigate the issues Ms. Castlewitz raised and report back to the Council on September 14, 1993.

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

Councilwoman Field moved for the adoption of Resolution No. 93-131. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 108

C. PUBLIC HEARING TO PROVIDE FOR THE ZONING OF SECTION II OF BRAESIDE AT BILTMORE PARK LOCATED ON OVERLOOK ROAD

ORDINANCE NO. 2048 - ORDINANCE TO PROVIDE FOR THE ZONING OF SECTION II OF BRAESIDE AT BILTMORE PARK LOCATED ON OVERLOOK ROAD

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

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

Mr. Verl Emrick, Executive Assistant in the Planning Department said that the owners of the Braeside II subdivision petitioned the City of Asheville to annex the area located off Overlook Road. Annexation of the area was completed as of July 19, 1993, in accordance with the wishes of the owners.

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The City's ordinances require that zoning be assigned to all annexed areas. On August 4, 1993, the Planning and Zoning Commission met and recommended that the R-1 Residential District zoning classification be assigned to the area. The vote was unanimous and there was no opposition from the public. This property is also subject to the provisions of the Watershed Protection Overlay Ordinance.

Mayor Michalove closed the public hearing at 4:51 p.m.

Mayor Michalove said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2048. This motion was seconded by Councilwoman Field.

On a roll call vote of 6-0, Ordinance No. 2048 on its first and only required reading.

ORDINANCE BOOK NO. 14 - PAGE 21

III. UNFINISHED BUSINESS:

A. ORDINANCE AMENDING CHAPTER 30 TO SET FORTH CONDITIONS REQUIRED OF CHURCHES IN RESIDENTIAL DISTRICTS (CONDITIONAL USE PERMIT REQUIREMENTS)

Mayor Michalove stated that the public hearing on this matter was held on June

29, 1993. On August 17, 1993, this matter was heard again at which time more public comment was taken. On the 17th, this matter was tabled in order to give the City Attorney's Office and the Planning Department time to research the language suggested by City Attorney Slawter that an amendment be made to the zoning ordinance that would provide for a variable setback to be determined by the Board of Adjustment as part of the conditional use application process.

Two draft ordinances were presented, both allowing the Board of Adjustment discretion in establishing the amount of the setback at the time that the hearing is conducted regarding the granting of the conditional use permit. Draft #1 contains the language which Planning Director Julia Cogburn mentioned to Council at their August 17, 1993, meeting and is more limited in the guidance given to the Board of Adjustment. Draft #2 provides some additional guidance to the Board of Adjustment in determining whether to reduce the setback.

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Councilman Worley read Draft #2 allowing churches to build within "30 feet from any property line. Provided, however, the Board of Adjustment may allow a parking area to be within 15 feet of a property line" if certain conditions are met. He felt that the 30 foot maximum and 15 foot minimum figures are consistent with the setback figures in the Unified Development Ordinance which draft should be coming before the City Council in October, 1993.

Councilman Worley moved to adopt Draft #2. This motion was seconded by Councilwoman Field.

Councilman Peterson moved to table this matter until September 14, 1993, in order to give the Council time to review any suggestions made at this meeting. This motion was seconded by Councilman Swicegood and carried unanimously.

Mayor Michalove stated that comments would be heard which only relate to suggestions for additional guidance to the Board of Adjustment.

Ms. Betsy Murray urged Council not to let the Board of Adjustment make any exceptions.

Mr. Monty Wooten, 81 Euclid Boulevard, urged the Board of Adjustment not to destroy any trees.

Ms. Tracy Monk Durland, 59 Henrietta Street, read a statement asked that the City Council leave the Board of Adjustment out of this ordinance. She spoke in favor of more vegetation and making sure there is good public notice given in matters concerning the Board of Adjustment determinations.

Upon inquiry of Councilwoman Field about notifying neighborhood associations, City Attorney Slawter stated that there is no legal way of knowing if there is a neighborhood association.

Mr. Jim Skalski urged Council to have the setback requirement at 40 feet and if a majority of the affected property owners can agree to a different setback, then some provision could be made.

Mr. Paul Godfrey suggested a mediation process be implemented as the first step in any level of variance being requested.

Ms. Leni Sitnick, 90 Gertrude Place, asked for a copy of the buffering ordinance. Ms. Julia Cogburn said that she would furnish Ms. Sitnick with a copy.

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Mayor Michalove stated that all comments would be reviewed and the matter would be back before the City Council on September 14, 1993.

B. ORDINANCE NO. 2045 - SECOND READING OF AN ORDINANCE TO REZONE 720 REED STREET FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT

Mayor Michalove said that this public hearing was opened on August 3, 1993, and continued and closed on August 17, 1993, at which time the ordinance passed on its first reading.

On a roll call vote of 4-2 (with Councilwoman Field and Mayor Michalove voting "no") Ordinance No. 2045 passed on its second and final reading.

ORDINANCE BOOK NO. 14 - PAGE 15

IV. NEW BUSINESS:

A. RESOLUTION NO. 93-132 - RESOLUTION DIRECTING THE KITCHEN PLACE PROJECT BEGINNING AT ITS INTERSECTION WITH ANGLE STREET TO ITS INTERSECTION WITH BROOK STREET BE UNDERTAKEN AND SPECIAL ASSESSMENTS MADE AGAINST BENEFITED PROPERTIES

B. RESOLUTION NO. 93-133 - RESOLUTION DIRECTING THE BOSTON WAY PROJECT FROM ITS INTERSECTION WITH HENDERSONVILLE ROAD TO ITS INTERSECTION WITH ALL SOULS CRESCENT BE UNDERTAKEN AND SPECIAL ASSESSMENTS MADE AGAINST BENEFITED PROPERTIES

City Manager Bean said that the preliminary resolutions calling for public hearings to levy special assessments for the Kitchen Place Project and the Boston Way Project were adopted on December 8, 1992. The public hearings on these matters were held on January 19, 1993.

He said that the total alternate bid was approximately \$253,345. The basics of the alternate bid includes new brick sidewalks, granite curbing, conduits, street pole foundations, concrete tree liners, etc. Fifty percent of the total bid will be paid by the property owners over a 5 year period of time at an interest rate of 8%. He said that money was available for the City's 50% of the project, but due to the City having to front the entire cost of \$253,345, there may be a one year delay of 1 or 2 street projects.

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Upon inquiry of Councilman Peterson, the property owners will be paying the City back as part of their tax bill.

Councilman Peterson suggested a Council committee be formed. The committee would go out and look at various streets and then determine which streets need repair and how much should to be spent on each street.

Mr. David Harrison spoke in support of the special assessment process.

Mr. Robert Griffin spoke in support of this process and said that he would be the coordinator between this project and the City's Contract No. 10 as it relates to this area.

Mr. H. K. Edgerton, minority contractor in the alternate bid, spoke highly of the Biltmore Village merchants.

Mayor Michalove said that members of Council have been previously furnished

with copies of the resolutions and they would not be read.

Councilwoman Field moved for the adoption of Resolution No. 93-132. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 110

Councilwoman Field then moved for the adoption of Resolution No. 93-133. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 112

C. RESOLUTION NO. 93-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO COMPLETE AND FILE A CERTIFICATE OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIATE FINDING A LACK OF EFFECTIVE COMPLETION (FCC FORM 328)

City Manager Bean said that the Cable Television Consumer Protection and Competition Act of 1992 authorized franchising authorities, such as the City of Asheville, to regulate the basic service tier of its local franchisee for cable television service. Franchising authorities may begin to file on September 1, 1993, certifications with the Federal Communications Commission ("FCC") entitled "Certification of franchising Authority to Regulate Basic -10-

Cable Service Rates and Initial Finding of Lack of Effective Competition." The Asheville City Council needs to consider whether or not it wants to authorize the filing of the certification with the FCC in order to regulate basic cable service rates of its local franchisee (TCI Cablevision of Asheville).

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

Councilman Worley moved for the adoption of Resolution No. 93-134. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 114

V. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 17, 1993

B. RESOLUTION NO. 93-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE AN OWNER'S, LANDLORD'S AND MORTGAGEE'S SUBORDINATION WAIVER AGREEMENT FOR THE ASHEVILLE ART MUSEUM

Summary: The City owns the underlying fee and an undivided interest in the improvements to the property identified as the Pack Place Education Arts and Science Center, Inc., property. Asheville Mart Museum is located in Pack Place Education Arts and Science Center Inc. As part of its operations, the Asheville Art Museum has secured a line of credit from First-Citizens Bank & Trust Company. First-Citizens Bank & Trust Company has requested that the City, due to its ownership interest in the above-referenced property, execute an Owner's, Landlord's and Mortgagee's Subordination Waiver Agreement.

RESOLUTION BOOK NO. 21 - PAGE 115

C. RESOLUTION NO. 93-136- RESOLUTION APPOINTING A MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Summary: Due to the recent death of Chairman Helen Mitchell, a vacancy on the Board has occurred. This resolution will appoint (1) Osborne M. Hart, 148

Blanton Street, Asheville, North Carolina, 28801, as Chairman to fill out Ms. Mitchell's unexpired term, term to expire -11-

November 13, 1994, or until his successor has been duly appointed and qualified; and (2) appoint Jewell Wilson, 32 Lover's Loop, Asheville, North Carolina, 28803, as a member of the Alcoholic Beverage Control Board to fill out the term of Osborne M. Hart, term to expire November 13, 1993, at which time she is hereby reappointed to serve a three year term, term expiring November 13, 1996, or until her successor has been duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 116

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

VI. OTHER BUSINESS:

A. RESOLUTION NO. 93-137 - RESOLUTION OF THE COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, EXTENDING AN INVITATION TO THE CITY OF SAUMUR, FRANCE, TO BECOME A SISTER CITY AND INVITING THE PEOPLE OF SAUMUR, FRANCE, TO PARTICIPATE IN THE PROGRAM

Mayor Michalove explained that this resolution would extend an invitation to the government and the people of the City of Saumur, France, to participate with the City of Asheville as its Sister City for the purpose of creating greater mutual understanding between the peoples of our two great cities and nations.

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

Councilwoman Field moved for the adoption of Resolution No. 93-134. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 117

B. MOTION AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE FUNDING OF STATE AIRPORT AID PROJECT 9.9484930 (PHASE III - TERMINAL EXPANSION)

Councilman Swicegood moved to authorize the Mayor to sign a grant agreement with the North Carolina Department of Transportation in the amount of \$233,260 for the funding of -12-

State Airport Aid Project 9.9484930 (Phase III - Terminal Expansion). This motion was seconded by Councilman Peterson and carried unanimously.

C. CLAIMS

City Manager Bean said that the following claims were received by the City of Asheville during the week of August 9-13, 1993: Ethel Corbett (Parks) and Heinz J. Puff (Sanitation).

He said the following claims have been received during the week of August 23-27, 1993: Sandra Wallace (Streets), Harold Talbert Realty (Water), Mountain Valley Water (Parks) and June Moore (Water).

He said that these claims would be referred to the appropriate insurers for investigation.

VII. ADJOURNMENT:

Mayor Michalove adjourned the meeting at 5:55 p.m.

CITY CLERK MAYOR
