

Tuesday - September 14, 1993 - 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 Swicegood gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION RECOGNIZING BENJAMIN WESLEY TROTTER III

Mayor Michalove presented Benjamin Wesley Trotter III with a proclamation which recognized Wes' accomplishments, which included earning the rank of being first in his class of approximately 5,000 students at UNC-Chapel Hill. On behalf of the City Council, Mayor Michalove wished Wes continued success in all his future endeavors.

B. PROCLAMATION OF APPRECIATION TO THE WEST ASHEVILLE LITTLE LEAGUE

On behalf of the City Council, Mayor Michalove extended appreciation to the West Asheville Little League for the fine publicity they have brought our community in their efforts to promote Little League activities in our area. He presented the proclamation to Mr. Tommy Gassaway, District Administrator of the West Asheville Board of Directors.

C. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 19-25, 1993, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Michalove proclaimed the week of September 19-25, 1993, as "Minority Enterprise Development Week". He presented the proclamation to Mr. Jim Drummond, who briefed the Council on activities taking place during the week.

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D. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 17-23, 1993, AS "CONSTITUTION WEEK"

Mayor Michalove proclaimed the week of September 17-23, 1993, as "Constitution Week" in the City of Asheville and presented the proclamation to Ms. Ruth Parson and Mrs. Calvin Reemers.

E. RECOGNITION OF FRIENDSHIP FORCE FROM YAMAGUCHI, JAPAN

Mayor Michalove recognized the Friendship Force from Yamaguchi, Japan, and presented them with gifts. Mr. Doug Michaels introduced the individuals from Japan and a gift was presented to the City of Asheville.

II. PUBLIC HEARINGS: None

III. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2049 - ORDINANCE AMENDING ARTICLE 7 OF CHAPTER 30 SETTING FORTH CONDITIONS REQUIRED OF CHURCHES AS CONDITIONAL USES

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 and tabled for further research. On August 31, 1993, a motion and seconded to adopt 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 said that comments were heard on August 31, 1993, as they related to additional guidance to the Board of Adjustment in determining whether to reduce the setback. He said that also on August 31, a motion was made and seconded to table the matter until September 14, 1993, in order to give the Council time to review any suggestions made at this meeting.

City Attorney Slawter explained the ordinance marked Draft #2A presently before the Council which included suggestions from the August 31 meeting. The concerns were as follows:

1. Insure that adequate notice is given to neighboring property owners. The existing rules of procedure for the Board of Adjustment require that notice of any such hearing be published in -3-

the newspaper at least five days before the hearing and mailed to all other parties and adjoining property owners at least five days before the hearing.

2. Only allow the reduced buffer if the majority of the surrounding property owners agree. While considering the impact of a reduced buffer upon the surrounding property owners would be appropriate in connection with the Board of Adjustment finding "that surrounding properties will not be adversely affected . . .," we do not feel that actually conditioning approval upon the neighbor' concurrence would be appropriate. Such a provision would place final authority in the hands of the neighbors, rather than the Board of Adjustment.

3. A suggestion was made that mediation be required in connection with all such applications. This has not be addressed in the revised draft.

4. Protection of existing trees. This item has been addressed.

Councilman Worley moved to amend his prior motion for the adoption of Draft #2A as outlined by the City Attorney. This motion was seconded by Councilwoman Field and carried unanimously.

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

On a roll call vote of 7-0, Ordinance No. 2049 passed on its first and only reading.

ORDINANCE BOOK NO. 14 - PAGE 23

IV. NEW BUSINESS:

A. FINAL PLAT APPROVAL FOR DEVONSHIRE SUBDIVISION - PHASE II

Ms. Mary Weber, Urban Planner, said that the Devonshire Subdivision is located off of Hendersonville Road, just south of the Blue Ridge Parkway. The subdivision is a 13-acre tract which is being divided into 89 residential lots, and is being constructed in seven phases. On March 4, 1992, the Planning and Zoning Commission recommended approval of -4-

the preliminary plat. The City Council approved the final plat of Phase 1 of the subdivision on November 17, 1992. The request before Council is for approval of the Phase II final plat.

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 street after approval of the final plat.

Vice-Mayor Ellison moved to approve the final plat for Devonshire Subdivision - Phase II. This motion was seconded by Councilman Moore and carried unanimously.

B. FINAL PLAT APPROVAL FOR BEAVER CREEK SUBDIVISION

Ms. Mary Weber, Urban Planner, said that the proposed Beaver Creek Subdivision is located off of Beaverdam Road near Carter Cove Road. The 18 acre site will be divided into eight lots. The heavily wooded site slopes upward to form a knoll, and Beaverdam Creek flows through it.

On April 27, 1993, the City Council approved a variance to reduce the right-of-way width from 50 feet to 40 feet. All utilities have been approved for the project, and the developer has obtained a letter of credit guaranteeing that the infrastructure will be completed after final plat approval.

The Planning and Zoning Commission recommended approval of the preliminary plat at their April 7, 1993, meeting, with three conditions:

1. Obtain driveway permit from NC DOT.
2. Obtain permit from Army Corps of Engineers to widen bridge.
3. Obtain letter of water availability from the Water Department.

All conditions have been met.

Vice-Mayor Ellison moved to approve the final plat for Beaver Creek Subdivision. This motion was seconded by Councilwoman Field and carried unanimously.

C. RESOLUTION NO. 93-138 - RESOLUTION FINDING THE WOODLAND ROAD PROJECT BEGINNING AT THE INTERSECTION OF SCHOOL ROAD IN WEST ASHEVILLE WITH WOODLAND ROAD AND ENDING AT THE DEAD END OF THE ROADWAY COMPLETED, ASSESSING THE TOTAL COST AND CALLING FOR A PUBLIC HEARING ON SEPTEMBER 28, 1993, OF THE PRELIMINARY ASSESSMENT ROLL

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City Manager Bean said that on June 16, 1992, the City Council adopted Resolution No. 92-78 directing that the Woodland Road project be undertaken and special assessments be made against benefited properties. Consistent with the special assessment statutory requirements, this resolution will find the project completed, assess the total cost (\$13,994.32) and schedule a public hearing on September 28, 1993, regarding the preliminary assessment roll.

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

Vice-Mayor Ellison moved for the adoption of Resolution No. 93-138. This motion was seconded by Councilman Moore and carried unanimously.

D. DISCUSSION RELATIVE TO PROPOSED SIGN ORDINANCE AS IT RELATES TO POLITICAL SIGNS AND GRANDFATHERING OF PRE-EXISTING NONCONFORMING SIGNS

Mayor Michalove said that the Council will be considering a motion to request the Planning and Zoning Commission make a recommendation regarding amendment to regulations regarding political signs and the grandfathering of pre-existing nonconforming signs.

City Attorney Slawter said that the draft ordinance regarding political signs incorporates the following revisions which the Council requested: elimination of the limit of two signs per lot, extending the allowed time for the signs from 30 to 45 days before the general election, and clarifying that the time limitations do not apply to billboards.

The draft ordinance regarding pre-existing nonconforming signs provides for the "grandfathering" of signs which conformed to the requirements of the October 1, 1977, ordinance at the time of the adoption of the current ordinance on August 28, 1990.

Ms. Julia Cogburn answered questions relative to the number of signs which would be grandfathered by the draft ordinance. She said that there would be 733 on-premise signs and 94 off-premise signs.

Vice-Mayor Ellison moved to support the proposed changes relative to political signs and refer them to the -6-

Planning and Zoning Commission for consideration with recommendation back to the City Council on November 9, 1993. This motion was seconded by Councilman Moore and carried unanimously.

Councilman Swicegood moved to support the proposed changes regarding pre-existing nonconforming signs and refer them to the Planning and Zoning Commission for consideration with recommendation back to the City Council on November 9, 1993. This motion was seconded by Councilman Peterson.

Councilman Moore could not support the pre-existing nonconforming ordinance and felt that it was premature and the City should wait until a determination is made by the courts.

Councilwoman Field echoed Councilman Moore's comments.

Councilman Worley was concerned about on-premise signs that were nonconforming only because they exceeded the maximum allowable number of signs under the current ordinance. He suggested the possibility of excluding them from any grandfathering provision.

Vice-Mayor Ellison supported the draft as presented and felt it was fair for everyone involved.

Councilman Peterson supported the grandfathering of the pre-existing nonconforming signs.

Councilman Swicegood favored the grandfathering approach.

Mayor Michalove didn't favor going back to the grandfathering approach.

Mr. Jeff Dave, Chairman of the Board of Adjustment, stated that there were several matters coming before the Board of Adjustment in the near future and felt that the Board should table those matters until this issue was addressed

by the Council.

Mr. Frank Martin, representing the Coalition for Scenic Beauty, felt Council should not rush into any grandfathering. He presented three suggestions for the Council to consider if the grandfathering approach is taken.

Mr. Mike Summey responded to Mr. Martin's comments and passed out a chart showing the decline of retail sales per household from 1980 through 1992.

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Mr. Loyd Kirk, Forest Manor Inn, spoke in support of the grandfathering.

Mr. Darrell Merchant, General Manager of Fairway Outdoor Advertising, supporting the grandfathering of pre-existing nonconforming signs.

At this time (5:15 p.m.) Vice-Mayor Ellison left the meeting unexcused. Mayor Michalove said that Vice-Mayor Ellison reviewed the agenda items yet to be voted on and realized that his absence would be counted as an "yea" vote in all matters.

At this time, a voice vote was called on the prior motion made by Councilman Swicegood and seconded by Councilman Peterson to support the proposed changes regarding pre-existing nonconforming signs and refer them to the Planning and Zoning Commission for consideration with recommendation back to the City Council on November 9, 1993. This motion passed on a 4-3 vote, with Councilwoman Field, Councilman Moore and Mayor Michalove voting "no."

Mayor Michalove again stated that the action to be taken will be to refer the proposed changes to the Planning & Zoning Commission for consideration and recommendation to the Council. Public hearings will be required at a later date by both the Planning and Zoning Commission and the City Council before such amendments may be adopted.

E. DISCUSSION RELATIVE TO AN ORDINANCE REGULATING SMOKING AND SETTING A PUBLIC HEARING ON THE MATTER FOR SEPTEMBER 28, 1993

City Attorney Slawter stated that the draft ordinance will prohibit smoking in all City buildings, the Airport Terminal, the Transit Authority building, the Civic Center and Pack Place, subject to the right of the City Manager, Airport Authority, Civic Center Commission, Transit Authority and Pack Place Board of Directors to designate smoking areas within those buildings. We have had specific requests from the Airport Authority, the Transit Authority and Pack Place Board of Directors that they be included in the ordinance. The ordinance prohibits smoking in all City vehicles.

Council discussions appeared to favor allowing restaurants and retail establishments to determine whether they want to have the ordinance applied to them. He said that he has discussed the Black Mountain procedure (whereby businesses send a notice to the City of their intent to be -8-

covered by the ordinance) with the attorney for the Town of Black Mountain. In the case of Black Mountain, personal contact was made with every business establishment in town in order to provide the opportunity to come under their ordinance. It would be next to impossible to try a similar concept in Asheville due to the large number of businesses located within the City. Instead of requiring the private businesses notify the City of their intent to come under the ordinance, the draft ordinance provides that the ordinance will be applicable to all such businesses wherein the owner decides to have the ordinance apply and evidences that by the posting of appropriate signs. This

method will continue to allow private business owners to determine for themselves whether they wish to have smoking regulations within their business, and will lend the support of the City for enforcement if the business owners do decide to restrict smoking.

He said that private businesses may continue to do as they wish after October 15 and may have a totally smoke-free establishment if they wish. What is regulated after October 15 is the City's authority to regulate smoking. It is the opinion of the legal staff at the League of Municipalities that prior to October 15, the City has authority to totally prohibit smoking in municipal facilities and to provide for reasonable regulations in private establishments. It is further their opinion that after October 15, the City may only regulate smoking in municipal facilities if 20% of the space is set aside as a smoking area and that there is no authority to regulate private establishments if the ordinance is not adopted before October 15. This would not mean, however, that the private establishments could not prohibit smoking themselves.

Councilman Moore moved to set a public hearing on September 28, 1993, relative to an ordinance regulating smoking. This motion was seconded by Councilman Worley and carried unanimously.

F. RESOLUTION NO. 93-139 - RESOLUTION ESTABLISHING A POLICY REGARDING CITY CONTRACTS WITH DELINQUENT TAX PAYERS

Councilman Worley briefed the Council on this policy. He said that the tax collection rate of the City for ad valorem taxes bears a direct relationship to the financial well-being of the City and a low tax collection rate adversely impacts the City's bond rating, thereby causing the City additional unnecessary expense in the form of higher interest rates to be paid on outstanding bonded - 9-

indebtedness. He said the City Council desires to encourage to the fullest extent possible the full payment of all ad valorem taxes and it has determined that it can encourage the payment of ad valorem taxes by refusing to contract with persons and firms whose ad valorem taxes are delinquent.

He said this resolution will establish as a policy of the City of Asheville that the City will not contract with persons or firms who are delinquent in the payment of ad valorem taxes owed to the City of Asheville and that all solicitations for bids advertised by the City of Asheville shall include notice of this policy.

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. 93-139. This motion was seconded by Councilman Moore and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 120

V. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 31, 1993

B. AWARD OF BID FOR TWO FOUR-WHEEL DRIVE BACKHOES FOR THE PUBLIC WORKS DEPARTMENT, STREET DIVISION

Summary: Five bids were received and recommendation is to award to the low bidder, Farm Equipment Company, Inc., Asheville, North Carolina, in the amount of \$77,452 for the purchase of 2 1993 Ford, Model 575-D Backhoes. Funds are

budgeted in the Capital Improvement Plan. A complete copy of the bid summary is attached hereto as Exhibit "A".

C. RESOLUTION NO. 93-140 - RESOLUTION AUTHORIZING THE CITY MANAGER OF THE CITY OF ASHEVILLE TO ENTER INTO A CONTRACT WITH HAYNES ELECTRIC UTILITY CORPORATION FOR INSTALLATION OF BALLFIELD LIGHTS AT VALLEY SPRINGS PARK

Summary: In order to meet the recreation needs of the people in the recently annexed South Buncombe area, City Council has established funds for the complete renovation of the ballfields at Valley Springs School. Part of this renovation is the replacement and upgrading of the lights on -10-

two ballfields. The system was designed, bids were accepted, and this resolution will authorize the City Manager to enter into a contract with the low bidder for this work in the amount of \$73,836.

RESOLUTION BOOK NO. 21 - PAGE 121

D. MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 1993, RELATIVE TO REZONING 620 REED STREET FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT

E. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1993, RELATIVE TO REZONING A LOT ON HAZEL MILL ROAD FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT

F. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1993, TO AMEND THE ZONING ORDINANCE TO PROHIBIT PARKING OF LARGE TRUCKS (TRACTOR-TRAILERS, SEMIS, ETC.) IN RESIDENTIALLY ZONED AREAS

G. RESOLUTION NO. 93-141 - RESOLUTION OF INTENT TO CLOSE A PORTION OF BORDEAU PLACE AND CALLING FOR A PUBLIC HEARING ON OCTOBER 12, 1993

RESOLUTION BOOK NO. 21 - PAGE 122

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

Mr. Gerald Green, Senior 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 September 1, 1993:

CAROLINA APARTMENTS

Mr. Green said that the Carolina Apartments is an existing 3-story building which is located on 68 N. French -11-

Broad Avenue. The proposal is to restore the building which was damaged in a fire last year. There will be a total of 27 apartments, 9 more than were originally there. The additional units result from rearranging the interior walls to create smaller apartments, so the building size will remain the same.

The building is located in the Central Business District and will be accessed

from N. French Broad Avenue and Haywood Street. There are no parking requirements in the Central Business District and the only landscaping requirement is for street trees. The project is also in the Downtown Design Review District and has been reviewed and approved for compliance with the design guidelines.

The architect has received letters of commitment for water and sewer availability. The Fire Department has expressed concern about its ability to provide fire protection to the project because the fire flow required to protect a wood frame residential building exceeds the available flow at the site. The needed fire flow for the project is 3500 gallons per minute but only 2900 gallons per minute are available. The Fire Department recommends the installation of sprinklers to assure an adequate level of fire protection for the building.

There has been no opposition to the project from adjacent property owners. At their September 1993 meeting, the Asheville Planning and Zoning Commission voted to recommend approval of the project with the condition that the developer take steps to assure an adequate level of fire protection for the building.

Fire Chief John Rukavina answered Council's questions relative to fire protection.

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

ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE

Mr. Green said that Asheville-Buncombe Technical Community College originally submitted plans for the addition and renovation to the Learning Resource Center in 1989. At that time water flow was found to be inadequate to meet the Fire Department's standards for fire protection. The project was not constructed due to lack of funding.

The Asheville-Buncombe Water Authority completed water system improvements in mid-1990. These improvements did not

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increase water flow at A-B Tech and the flow continues to be less than that required by the Fire Department standards for fire protection. Flow tests indicate a flow of 620 gallons per minute and the Fire Department's fire protection standards require a flow of 1500 gallons per minute. According to the Fire Department, there may not be enough available water supply for a sprinkler system. Solutions to this problem would required construction of a water storage facility on the A-B Tech. campus or improvements to the water main serving the campus (only the section of the water main not upgraded in 1990 would require improvement).

After reviewing the site plan and related information, the Planning and Zoning Commission voted unanimously to approve the project with the following condition: Approval of all permits and plans, including a Fire Department statement that adequate water for fire protection can be provided to the proposed building.

Fire Chief Rukavina answered Council's questions and concerns as they related to adequate fire protection. He stated that the Fire Department does have correspondence dating back to 1990 to A-B Tech relative to fire protection.

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

B. NO ASHEVILLE CITY COUNCIL MEETING SEPTEMBER 21, 1993

Mayor Michalove announced there will be no meeting of the Asheville City Council on Tuesday, September 21, 1993.

C. COLLAPSE OF STORM SEWER ON GLENDALE AVENUE

City Manager Bean said that in accordance with Resolution No. 92-20, a request was made by the owner of M & R Enterprises on Glendale Avenue for the city to contribute \$7,000 (50% of the cost) towards the repair a collapsed storm sewer immediately adjacent to the foundation of his building.

After reviewing the City's options, it was the consensus of Council not to fund the \$7,000. The Council felt it would be best to wait until staff's recommendations relative to the worst drainage problem areas and development regulations.

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D. CLAIMS

City Manager Bean said that the following claims were received by the City of Asheville during the week of August 30 - September 3 , 1993: Roxie McKnight (Water) and Truman Rice (Water).

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

VII. ADJOURNMENT:

Mayor Michalove adjourned the meeting at 5:45 p.m.

CITY CLERK MAYOR
