

Tuesday - September 28, 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 Worley gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 26 - OCTOBER 2, 1993, AS "GREEK HERITAGE WEEK"

Mayor Michalove proclaimed the week of September 26-October 2, 1993, as "Greek Heritage Week" in the City of Asheville and presented the proclamation to Councilman Peterson.

B. PROCLAMATION PROCLAIMING OCTOBER 3-9, 1993, AS "FIRE PREVENTION WEEK"

Mayor Michalove proclaimed the week of October 3-9, 1993, as "Fire Prevention Week" in the City of Asheville and presented it to Fire Chief John Rukavina. Chief of Fire Prevention Wayne Hamilton thanked the Council for the recognition of this very important week.

C. PROCLAMATION PROCLAIMING OCTOBER 10, 1993, AS "FIREFIGHTER MEMORIAL SUNDAY"

Mayor Michalove proclaimed of October 10, 1993, as "Firefighter Memorial Sunday" in the City of Asheville and presented it to Fire Chief John Rukavina. Chief Rukavina invited everyone to the 1993 Firefighter Memorial Sunday Ceremony on October 10, 1993, at 2:00 p.m. at the City/County Plaza to honor the memory of firefighters who have given their lives in the service of their communities.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING REGULATING SMOKING

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ORDINANCE NO. 2050 - ORDINANCE REGULATING SMOKING

Mayor Michalove opened the public hearing at 4:08 p.m.

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

City Attorney Slawter stated that this ordinance will prohibit smoking in all City buildings, the Airport Terminal Building, the Asheville Transit Authority building, the Civic Center Commission, Pack Place Education, Arts and Science Center Inc. and the Asheville City Board of Education, subject to the right of the City Manager, Airport Authority, Civic Center Commission, Transit Authority, Pack Place Board of Directors, and the Asheville City Board of

Education to designate smoking areas within those buildings. It also will regulate all businesses, including restaurants and other eating establishments, and other public buildings within the City of Asheville. The ordinance will also prohibit smoking in all City vehicles.

He also advised the Council that the County Health Department may enact rules regulating smoking. Those rules would be applicable in the City as well as within the County. As drafted, those rules would be more restrictive than the City's ordinance. He said that the Health Department would be considering the proposed rules later this evening.

Vice-Mayor Ellison questioned the City Attorney about the possibility of using the monies collected for education of the public about smoking. City Attorney Slawter said that because the penalty is a criminal violation, any monies collected have to go to the courts and the school system. He said there might be a possibility of the school system using their portion of the money for educating the public.

Vice-Mayor Ellison moved to set the penalty for violation not to exceed \$200 per violation. He said that this was consistent with Buncombe County's ordinance. This motion was seconded by Councilwoman Field and carried unanimously.

Upon inquiry of Councilwoman Field about lesser penalties for one-time offenders, City Attorney Slawter said that those judgments are totally left up to the judge.

Mr. John Hartley spoke in opposition to the no smoking ordinance. He passed out some information and news articles to support his opposition.

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Dr. John E. Van Wye, Regional Allergy & Asthma Consultants, P.A., spoke about the adverse health effects of secondhand tobacco smoke exposure and urged the Council to adopt a strong no smoking ordinance. He handed out to Council a letter dated August 23, 1993, and a chapter excerpted from Pediatric Respiratory Disease: Diagnosis and Treatment by Bettina C. Hilman, M.D.

Mr. Bob Tinkler, Co-Coordinator of WNC GASP, a local chapter of the Group Against Smokers' Pollution, read a prepared statement to adopt strong no smoking regulations. He read, among other things, that if smoking areas are to be designated, a separate and adequate heating, ventilating and air-conditioning system be installed for a smoking area. In addition to passing out his prepared statement, he passed out a brochure relative to the dangers of tobacco smoke.

Mr. Pat Osterman urged the Council to adopt an ordinance for clean, smoke-free air. He felt that it was very important to educate the public, especially children, about the dangers of smoking.

A resident of Asheville urged the Council to have as many nonsmoking places as possible. Many people, including herself, are allergic to smoke.

Ms. Teresa Kitchen spoke about the dangers of secondhand smoke and urged Council to pass a strong no smoking ordinance.

Ms. Cathy M. Warn read a prepared statement and urged the Council to impose the strictest non-smoking ordinance possible to protect all its citizens.

Ms. Peggy Carey, resident at Aston Park Towers, asked the Council to extend the

ordinance to include all buildings owned by the Housing Authority. She asked Council to urge the Housing Authority to impose no smoking restrictions in all common areas.

Vice-Mayor Ellison moved to amend the ordinance to add the Housing Authority facilities to the City's regulations concerning smoking. The amendment will prohibit smoking in all Housing Authority facilities, except where smoking may be authorized by the Authority. This motion was seconded by Councilman Worley and carried unanimously.

Dr. James Tenny, Director of the Health Department, stated that he was attending the public hearing to listen to comments.

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Ms. Leni Sitnick asked Council to seriously consider a no smoking ordinance.

Ms. Hazel Fobes spoke in favor of the no smoking ordinance but asked Council to tighten it up.

Upon inquiry of Councilwoman Field, City Attorney Slawter summarized the Health Department's rules regulating smoking. He stated that their rules are more restrictive than the City's ordinance and the strictest ordinance would apply throughout Buncombe County.

Councilwoman Field was strong opposed to smoking and supported a separate and adequate heating, ventilating and air-conditioning system be installed for a smoking area, especially in the Civic Center. She was concerned, however, with the expense involved.

Mayor Michalove closed the public hearing at 5:05 p.m.

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

Councilman Worley moved to adopt Ordinance No. 2050, as amended. This motion was seconded by Councilman Swicegood.

Vice-Mayor Ellison hoped that the City, the County and the Health Department would all work together to educate the public on this very important matter.

On a roll call vote of 6-0, Ordinance No. 2020 passed on its first and only reading.

ORDINANCE BOOK NO. 14 - PAGE 27

B. PUBLIC HEARING RELATIVE TO REZONING A LOT ON HAZEL MILL ROAD FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT.

Mayor Michalove 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.

Ms. Carol Pennell, Urban Planner II, said that the subject lot was denied for a rezoning change in both 1974 and 1985 by the past Planning and Zoning Commission due to poor access and narrow conditions on Hazel Mill Road. Staff recommendation in 1993 was denial based on nonconformance -5-

with the 2010 Land Use Plan (shown as low density residential) and access

conditions.

The Asheville Planning and Zoning Commission, at its meeting held on September 1, 1993, reviewed and recommended approval to rezone one lot on Hazel Mill Road (PIN No. 9638-06-48-0406) from R-3 Residential District to CH Commercial Highway District on a 3-2 vote.

Upon inquiry of Councilwoman Field, Ms. Pennell mentioned that improvements to Hazel Mill Road were postponed because of budget considerations with the long range sidewalk and street plan.

There was some discussion relative to the 2010 Plan's designation of the area as low density residential.

Councilman Swicegood asked where the access to the property would be and Ms. Pennell responded that the only access to the property was off of Hazel Mill Road.

Mr. Jerry Crow passed out pictures of the lot in question and the surrounding area. He stated that the neighborhood is in a state of change and properties in the area are deteriorating. He felt that the highest and best use of the lot certainly was not residential. He spoke in support of the rezoning in order so that the lot could possibly be developed as a parking lot.

Mr. Conrad Jungberg, 365 Hazel Mill Road, presented Council with a petition containing 53 signatures which reads: "We, the undersigned as residents of Hazel Mill Road express our strong opposition to the suggested change of property designation along Hazel Mill Road from R-3 to CH. Designation CH means that not only the properties in question change but that Hazel Mill Road will forever be Commercial Highway. However, a change to a non-interfering (only automobile traffic) designation (sic) as O.I. (Office/Institutional) would be acceptable from traffic point of view." Mr. Jungberg used a map to illustrate the concerns the neighborhood had while speaking in opposition to the commercial highway designation.

A letter from Mr. Daniel P. McIntyre (264 Hazel Mill Road) was presented to the Council which gave several reasons why Mr. McIntyre supported the rezoning to commercial highway.

A representative from the Buncombe Baptist Association (227 Hazel Mill Road) urged Council not to rezone the property from residential to commercial highway. He mentioned traffic and access concerns.

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Ms. Pennell mentioned professional offices as conditional uses were also allowed on this subject lot.

Pursuant to request made by Council, Ms. Pennell read an excerpt of the Planning and Zoning Commission's minutes as it related to this issue.

Vice-Mayor Ellison felt that perhaps the Council should take a tour of the lot concerned before a decision is made.

Mayor Michalove closed the public hearing at 5:47 p.m.

Councilwoman Field moved to table this matter until October 12, 1993, without further advertisement, in order to give the Council an opportunity to tour the lot in question. This motion was seconded by Vice-Mayor Ellison and carried unanimously.

C. PUBLIC HEARING RELATIVE TO AMENDING THE ZONING ORDINANCE TO PROHIBIT PARKING OF LARGE MOTOR VEHICLES, SUCH AS, BUT NOT LIMITED TO, TRUCK TRAILERS, TRUCKS, SEMITRAILERS AND BUSES, ON PROPERTY LOCATED IN A RESIDENTIAL DISTRICT

Mayor Michalove opened the public hearing at 5:50 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 complaints from residential neighborhoods have generated the need for an amendment to the off-street parking and loading section of the zoning ordinance.

Specifically, large motor vehicles having a gross weight in excess of 10,000 pounds or length in excess of 270 inches or width in excess of 96 inches shall not be permitted to be parked or left on any property, subject to exceptions (including RV vehicles).

The Asheville Planning and Zoning Commission, at its September 1, 1993, meeting, reviewed and voted unanimously to amend said section to prohibit the parking of large motor vehicles in residential zoning districts.

Vice-Mayor Ellison felt that the large trucks probably are parked at their homes for security reasons and having to park a loaded truck away from the home would not allow truckers to protect their cargo.

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Ms. Pennell stated that the zoning office would do the enforcement of this ordinance, unlike the police department which enforces the no parking of these large trucks on City streets in residentially zoned areas.

Mr. Gordon Lucks, 174 Montford Avenue and owner of a large truck, spoke in opposition of this ordinance stating that he feels it is an infringement of his rights as a property owner to be told that he cannot park his large truck on his own property. He felt that recreational vehicles are also large and they are allowed to be parked on private property in residentially zoned areas.

Mr. Bill Baber, 170 Montford Avenue, gave a brief history of the events leading up to this proposed ordinance, including two lawsuits. He stated that he is the neighbor to Mr. Lucks. Mr. Lucks parks his large truck in the back of his home and when the large truck is started up and left running for any period of time, Mr. Baber's house fills with diesel fumes. There have been several times that he has had to leave his house because of the fumes, not to mention the noise.

Mr. Baber presented Council with a copy of a petition containing 54 signatures which supported the ordinance amendment.

Mayor Michalove closed the public hearing at 6:09 p.m.

Since the problem presented today is the only one of this type received by the City, Mayor Michalove did not feel inclined to adopt a city-wide ordinance.

Councilwoman Field moved to adopt the ordinance. This motion was seconded by Councilman Worley.

Councilman Swicegood stated concerns of recreation vehicles being allowed and not large trucks.

Councilman Peterson suggested renting a space for the parking of the large vehicles. Mr. Lucks explained that he parks at his house for security reasons and the convenience of his own back yard.

When Councilman Swicegood inquired about the outcome of the court actions, it was stated that both actions were dismissed without prejudice.

Vice-Mayor Ellison felt uncomfortable in adopting an ordinance telling people what they can or cannot do on their own property.

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Vice-Mayor Ellison introduced a substitution motion to table the ordinance for further discussion. This motion was seconded by Councilman Swicegood and carried unanimously.

Council asked the City Manager give them a report on (1) why large recreational vehicles are allowed in residentially zoned areas and (2) how do other cities in North Carolina deal with this issue.

Ms. Leni Sitnick suggested that other applicable laws which might prove useful would be the noise ordinance and anti-pollution laws.

D. PUBLIC HEARING RELATIVE TO THE PRELIMINARY ASSESSMENT ROLL ON THE WOODLAND ROAD SPECIAL ASSESSMENT PROJECT

RESOLUTION NO. 93-142 - RESOLUTION CONFIRMING THE PRELIMINARY ASSESSMENTS MADE IN 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

Mayor Michalove opened the public hearing at 6:23 p.m.

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

Mr. Jim Ewing, Public Works Director, said that this resolution would confirm the preliminary assessments made in the Woodland Road Project. The total cost of the project, including labor, materials, equipment and the cost of publication of notice is \$13,994.32. The amount assessed is \$5,377.79.

Mayor Michalove closed the public hearing at 6:25 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. 93-142 on September 28, 1993, at 6:25 p.m. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 21 AT PAGE 124

III. UNFINISHED BUSINESS:

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IV. NEW BUSINESS:

A. RESOLUTION NO. 93-143 - RESOLUTION SUPPORTING THE PROPOSED STATE BOND ISSUES FOR WATER AND SEWER, UNIVERSITIES, COMMUNITY COLLEGES AND STATE PARKS

Mayor Michalove explained that this resolution expresses the Asheville City Council's strong support the proposed state bond issues for water and sewer, universities, community colleges and state parks and urges the citizens of Asheville to vote in favor of it.

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. 93-143. This motion was seconded by Vice-Mayor Ellison and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 130

B. RESOLUTION NO. 93-144 - RESOLUTION IN SUPPORT OF THE PROPOSED CONSTITUTIONAL AMENDMENT TO AUTHORIZE ECONOMIC DEVELOPMENT BOND FINANCING BY LOCAL GOVERNMENTS

City Attorney Slawter said that one of the questions on the ballot in the November 2 election is the question of whether or not to approve an amendment to the North Carolina Constitution that would enable cities and counties to finance the construction of public improvements and facilities that would make private industrial and other economic development projects possible. This resolution expresses the Asheville City Council's strong support for this amendment and urges the citizens of Asheville to vote in favor of it.

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. 93-144. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 131

C. RESOLUTION NO. 93-145 - RESOLUTION ESTABLISHING POLICY REGARDING SETTLEMENT OF CLAIMS FILED AGAINST THE CITY OF ASHEVILLE

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City Attorney Slawter said that by Resolution No. 93-120 adopted on August 17, 1993, the City Council authorized the execution of a claims administration contract with the Asheville Claims Corporation providing for administration of our new self insurance program effective September 1, 1993. That program requires authorization for settlement of claims filed against the City. This resolution will establish a policy for settlement of those claims.

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. 93-145. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 132

V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 14, 1993

B. MOTION SETTING A PUBLIC HEARING ON OCTOBER 26, 1993, AT 6:00 P.M. RELATIVE TO THE DISPARITY STUDY

C. MOTION AUTHORIZING THE HOUSING AUTHORITY TO SELL ONE DISPOSAL PARCEL IN THE

EAST END/VALLEY STREET COMMUNITY IMPROVEMENT AREA AND ONE DISPOSAL PARCEL IN THE HILL STREET/CHERRY STREET REDEVELOPMENT PROJECT

Summary: Disposal Parcel 73 in the East End/Valley Street Community Improvement Area has an established price of \$1,500 and the designated reuse is residential. The amount of the bid from Leonia Hawthorne is \$1,500 and the proposed reuse is for assemblage with adjacent residential property owned by the bidder. Parcel 73 is substandard for use as an independent building lot.

Disposal Parcel 18 in the Hill Street/Cherry Street Redevelopment Project has an established price of \$1,500 and the designated reuse is residential. The amount of the bid from B&B Associates is \$1,500 and the proposed reuse is residential. There is a dilapidated structure on Parcel 18 which will be partially demolished and rebuilt and rehabilitated to code standards in accordance with historic guidelines.

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D. RESOLUTION NO. 93-146 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: Due to the resignation of Mitty Owens, there exists a vacancy on the Historic Resources Commission. This resolution will appoint William O. Moore, 8 College Street, Asheville, N.C., to serve the unexpired term of Mitty Owens, term to expire July 1, 1995, or until his successor has been duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 135

E. RESOLUTION NO. 93-147 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING AND ZONING COMMISSION

Summary: The terms of Albert Anderson, Harriette Winner and Michael Freeman, as members on the Planning and Zoning Commission, expired August 14, 1993. This resolution will 1) reappoint Harriette Winner, 1201 Merrimon Avenue, Asheville, N.C., to serve a three year term, term expiring August 14, 1996; and 2) appoint Jane Mathews, Manzanita Cottage, 12 The Circle, Asheville, N.C., and James Torpey, 7 Gardenwood Drive, Asheville, N.C., to serve three year terms respectively, terms expiring August 14, 1996. All appointments are subject to their successors being duly appointed and qualified.

RESOLUTION BOOK NO. 21 - PAGE 136

F. RESOLUTION NO. 93-148 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A FEDERAL AVIATION GRANT AGREEMENT, 3-37-0005-16

Summary: The Federal Aviation Administration ("FAA") has offered a grant agreement to the Asheville Regional Airport Authority with a maximum obligation of the United States in the amount of \$1,168,251. The project will consist of (1) construct extended safety area, runway 34 (Phase II); (2) expand ARFF building; (3) install signage; and (4) acquire land (tracts 8 & 9) 35.693 acres fee.

RESOLUTION BOOK NO. 21 - PAGE 137

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

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VI. OTHER BUSINESS:

A. RESOLUTION NO. 93-149 - RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE A PETITION RECEIVED UNDER N. C. GEN. STAT. SEC. 160A-58.1 TO ANNEX A CONTIGUOUS AREA LOCATED ON OVERLOOK ROAD AND KNOWN AS SECTION 4 OF BRAESIDE AT BILTMORE PARK

City Manager Bean said that a petition requesting annexation of Section 4 of Braeside at Biltmore Park was received on September 27, 1993, by the City of Asheville. This resolution will direct the City Clerk to investigate the sufficiency of the petition and to certify as soon as possible to the City Council the result of his investigation.

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. 93-149. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 138

B. TONY PONDER - CAMPAIGNING FOR PUBLIC OFFICE

Mr. Tony Ponder read a prepared statement stating his concerns about the direction campaigning for public office at all levels is taking.

C. LENI SITNICK - COUNCIL MEETING TIME AND DATES

Ms. Leni Sitnick urged Council to work with the Buncombe County Commissioners so that City Council meetings and County Commission meetings do not fall on the same days at the same times.

D. CLAIMS

City Manager Bean said that the following claims were received by the City of Asheville during the week of September 6-10, 1993: Michael Breedlove (Water), Mrs. Eugene Farmer (Water) and Gregory B. Jackson (Police).

He said the following were received during the week of September 20-24, 1993: Ben E. Shade (Police), General Services Corporation (Sanitation) and Gay Israel (Streets).

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

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VII. ADJOURNMENT:

Mayor Michalove adjourned the meeting at 6:50 p.m.

CITY CLERK MAYOR
