

Tuesday - December 21, 1993 - 4:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Chris Peterson; Councilwoman Barbara Field, Councilman Gary McClure, Councilwoman Leni Sitnick, Councilman Joseph Carr Swicegood and Councilman Herbert J. Watts; City Attorney William F. Slawter; City Manager Douglas O. Bean; and Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: None

INVOCATION

Councilman McClure gave the invocation.

I. PROCLAMATIONS: None

II. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE 840 EMMA ROAD FROM R-2 RESIDENTIAL DISTRICT TO NC NEIGHBORHOOD COMMERCIAL DISTRICT

ORDINANCE NO. 2067 - AN ORDINANCE TO REZONE 840 EMMA ROAD FROM R-2 RESIDENTIAL DISTRICT TO NC NEIGHBORHOOD COMMERCIAL DISTRICT

Mayor Martin opened the public hearing at 4:15 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 Asheville Planning and Zoning Commission on December 1, 1993, reviewed and recommended approval of rezoning 840 Emma Road from R-2 Residential District to NC Neighborhood Commercial District.

This .95 acre site is located at the intersection of Eliada Home, Dryman Mountain and Emma Roads. Currently a grandfathered nonconforming store occupies the site and is zoned R-2 Residential District. The 2010 Plan forecasts the land use for this area as low density residential. The requested zoning change from R-2 Residential District to NC Neighborhood Commercial was seen by both the planning staff and legal staff as not in conformance with the comprehensive plan and potentially illegal spot zoning.

The Planning and Zoning Commission voted 6-1 in favor of rezoning 840 Emma Road.

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Upon inquiry of Councilwoman Field relative to the consequences of this being challenged in court as an illegal spot zoning, City Attorney Slawter said that if the court did find it to be an illegal spot zoning, the zoning change would be held to be invalid and it would stay R-2 Residential District.

Mr. Ronald Morgan, owner, presented Council with pictures and a petition containing approximately 455 signatures which "support Mr. Mike Morgan of 'FAST BREAK' in his rezoning request from residential 2 (R2) to neighborhood commercial (NC) at 840 Emma Road." He said that there is an old store at this site which is very dilapidated and also a traffic hazard. He urged Council to

support his rezoning request so he can provide a nice neighborhood store which will benefit the entire community.

Ms. Elizabeth Graham, member on the Planning and Zoning Commission, gave reasons why she and the majority of the other Commission members supported the rezoning request.

Mayor Martin closed the public hearing at 4:26 p.m.

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

Councilman Swicegood moved for the adoption of Ordinance No. 2067. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 7-0, Ordinance No. 2067 passed on its first and final reading.

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B. PUBLIC HEARING RELATIVE TO A VARIANCE REQUEST FOR NORBURN PARK SUBDIVISION

Mayor Martin opened the public hearing at 4:27 p.m.

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

Mr. Gerald Green, Senior Planner said that the Asheville Planning and Zoning Commission on December 1, 1993, reviewed and recommended approval of the preliminary plat upon the granting of a variance to permit a reduced street right-of-way.

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Norburn Park is proposed as a 68-lot subdivision combining single-family and multi-family residential units. The development will be located on Valley Springs Road south of and adjacent to the Blue Ridge Parkway. Approximately three acres of the 30 acre site will be preserved as open space. The developers have designed the project to encourage pedestrian activity and to enhance the feel of a neighborhood. As part of this design, the developers are proposing a street right-of-way width of 45 feet, instead of the 50 feet required by the subdivision ordinance, on Norburn Drive, Victoria Lane, Regents Drive and Kensington Crescent in Norburn Park Subdivision. The Planning and Zoning Commission reviewed the request and recommended approval of the variance.

Upon inquiry of Councilman Swicegood, Mr. Green explained the areas which were outside the City's jurisdiction.

Mr. Ken Jackson, project developer, stated that after they take title to the property sometime next spring or summer, they will ask for a voluntary annexation of the portion on the south end which encompasses 21 lots. He said the 25 foot strip in the Town of Biltmore Forest will be a buffer and only landscaped.

When questioned about how the City could guarantee them asking for a voluntary annexation, City Attorney Slawter said that since they are not the owners of the property now, the Council can only rely on Mr. Jackson's word.

Mr. Jackson explained that the project is being governed by four different

jurisdictions and it is their wish to have the project maintained by only one government agency. He stated that they would like to have the City take over the road and stressed that they wanted continuity in the project.

Councilwoman Field asked Mr. Jackson about the common space area and if it was usable. He explained that it was partially wetlands but could be used by the neighborhood as a park area.

Mr. Scott Melrose, master planner for the project, also answered Council's questions concerning the project.

City Attorney Slawter reminded the Council of the provision in the subdivision ordinance which only allows the granting of variances for certain reasons.

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When Councilwoman Field questioned why the developers needed the variance, Mr. Melrose responded that their request was partially for topographical reasons.

Upon inquiry of Councilwoman Sitnick, Mr. Melrose stated that they are making efforts to preserve existing trees and are trying to maintain existing drainage patterns.

Mayor Martin closed the public hearing at 4:47 p.m.

Councilman Swicegood moved to approve the variance request for Norburn Park Subdivision due of topographical concerns and also noted that the variance is only applicable within that portion of the property in the City limits. This motion was seconded by Councilman Watts and carried unanimously.

C. PUBLIC HEARING RELATIVE TO PURCHASE OF OAKLEY BALLFIELD

RESOLUTION NO. 93-192 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INSTALLMENT CONTRACT FOR THE PURCHASE OF PUBLIC PARK PROPERTY ALONG SCHOOL ROAD

Mayor Martin 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.

City Attorney Slawter said that City Council previously agreed, on August 3, 1993, to authorize the City Manager to execute documents for the purchase of property now owned by the Buncombe County Board of Education and formerly designated as a new school site in the Oakley area. This property is to be used as a public park, including, but not limited to, baseball fields which will replace those lost when the Biltmore School property, on Hendersonville Road, was sold. In order to purchase this property, it is necessary to enter into an installment contract that creates in the property purchase a security interest to secure payment of the purchase price to the seller. N. C. Gen. Stat. sec. 160A-20 authorizes execution of such an installment contract and requires a public hearing when the installment contract involves real property.

The Buncombe County Board of Commissioners has agreed to furnish funds to the City of Asheville, over a three year time period, for the purchase of the property and the City of Asheville will furnish funds for the improvements to the -5-

site. The total purchase price is \$335,734, with \$100,000 paid upon closing before the end of this calendar year and the balance being paid as follows: \$100,000 in fiscal year 94/95 and \$135,734 in fiscal year 95/96.

City Manager Bean answered questions from Council relative to the property.

Mayor Martin closed the public hearing at 4:56 p.m.

Mayor Martin 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. 93-192. This motion was seconded by Councilman McClure and carried unanimously.

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III. UNFINISHED BUSINESS:

A. THIRD READING OF ORDINANCE NO. 1958, AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH 10 SUNSET SUMMIT

City Attorney Slawter said that this matter has been continued on several prior occasions in order to await determination of proceedings currently pending in court regarding the house. The current owner of the house, Kenneth Maultsby, has been issued a zoning permit and a building permit authorizing the construction of a house at the site. The neighbors appealed the issuance of those permits to the Board of Adjustment. The Board of Adjustment upheld the issuance of the permits. The neighbors then appealed to Superior Court. We had a hearing in Superior Court on December 13, 1993, but since we have not had the ruling yet from Superior Court, the final reading of the ordinance concerning demolition should be continued.

Vice-Mayor Peterson moved to continue the third and final reading of Ordinance No. 1958 until January 25, 1994, due to a pending decision relative to the lawsuit. This motion was seconded by Councilwoman Field and carried unanimously.

IV. NEW BUSINESS:

A. ORDINANCE NO. 2068 - BUDGET AMENDMENT TO SET UP APPROPRIATIONS FOR CLOSURE AND REMEDIATION OF UNDERGROUND STORAGE TANKS

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Director of Risk Management said that this budget amendment, in the amount of \$108,960, will set up an appropriation for removal and remediation of contaminated soil from leaking underground storage tanks. He explained that the City has secured an extension from the North Carolina Department of Health and Natural Resources until January 7, 1994, and they will not grant any further extensions relative to the removal of these tanks. He outlined the actions necessary for compliance by the State and explained the procedures involved if certain amounts exceed our \$20,000 deductible.

Mr. Miall answered questions from Vice-Mayor Peterson relative to this type work being done at the Transit Authority's garage bays.

City Manager Bean responded to questions about funding for this budget amendment.

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

Councilwoman moved for the adoption of Ordinance No. 2068. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2068 passed on its first and final reading.

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B. ORDINANCE NO. 2069 - BUDGET AMENDMENT TO APPROPRIATE FEDERAL FUNDS FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT THROUGH THE FAIR HOUSING ASSISTANCE PROGRAM

Planning Director Julia Cogburn said that the City has received funding approval from HUD of \$70,000 for the Fair Housing Assistance Program. This will be the 7th year of funding through this program. Grant funds received last year were \$65,000. The increase in funding has been designated for capacity building in administering the Fair Housing Program under the new Fair Housing Act. The program is administered under contract by the Asheville-Buncombe Community Relations Council which provides staff support to the Asheville-Buncombe Fair Housing Commission. The City's Community Development Division serves as Lead Entity and monitors the program.

Upon inquiry of Councilman McClure, Bob Smith, Executive Director of the Asheville-Buncombe Community -7-

Relations Council, explained that the \$55,000 for professional services is mostly for outreach, i.e., programs for the City and County to let them know what fair housing is all about and also some mandatory training is involved in professional services.

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

Councilman Watts moved for the adoption of Ordinance No. 2069. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2069 passed on its first and final reading.

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V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE ORGANIZATION MEETING AND THE REGULAR MEETING HELD ON DECEMBER 7, 1993; THE MINUTES OF THE SPECIAL MEETINGS HELD ON DECEMBER 13, 15 and 16, 1993; AND THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 14, 1993

B. RESOLUTION NO. 93-193 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO DISPOSE OF APPROXIMATELY 2400 POUNDS OF SPENT BRASS AMMUNITION CASES BY SEALED BID

Summary: Disposal of approximately 2400 pounds of spent brass ammunition cases for the Asheville Police Department. Estimated revenue of \$6,700.

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C. RESOLUTION NO. 93-194 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL FOR THE FAIR HOUSING ASSISTANCE PROGRAM

Summary: The City has received funding approval of \$70,000 for the Fair Housing Assistance Program. The program is administered by the Asheville-Buncombe

Community Relations Council under contract with the City. This will be the 7th year of funding under this program.

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D. RESOLUTION NO. 93-195 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND RMT, INC., FOR ENGINEERING SERVICES RELATIVE TO REMOVAL OF UNDERGROUND STORAGE TANKS

Summary: State environmental laws mandate that the City remove certain underground fuel storage tanks on or before July 1, 1994. The requested action will assure the City's minimum compliance by this date.

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

VI. OTHER BUSINESS:

A. BILTMORE DAIRY FARMS

Councilwoman Field moved that the Mayor be authorized to execute an agreement with Biltmore Dairy Farms Inc. providing for the contribution by the City of 1/3 of the cost of construction of a sewer outfall line in the area of a Biltmore development east of Interstate 26, west of Overlook Road and north of Long Shoals Road on the following conditions: (1) the City's share not to exceed \$185,000; and (2) Biltmore agree to the annexation of the property into the City of Asheville and the reimbursement to the City if annexation is not accomplished with the formula for reimbursement to be included in the agreement in form satisfactory to the City Attorney. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

B. APPOINTMENT OF INTERIM CITY MANAGER WILLIAM B. FARRIS EFFECTIVE JANUARY 1, 1994

Councilwoman Field moved to appoint Charles Penny as Interim City Manager effective January 1, 1994. This motion was seconded by Councilwoman Sitnick.

Councilwoman Sitnick read a statement stating that the Council agreed that they interviewed three fine candidates. She stated that Council listened and gave serious and substantive attention to the brief but intensive selection process and narrowed the candidates to two. She felt that Asheville would be served well by either. She felt that her decision to vote to support Charles Penny was multi-dimensional. She felt that if the other candidate was -9-

chosen, he would not only make an outstanding Interim City Manager but also an outstanding full-time Manager and Asheville would be lucky to have him. She said that the other candidate's resume and interview were impressive, noting his knowledge of budgets, communication skills, sustainable development and environmental sensitivity. However, Charles' resume and interview were also excellent. She felt Charles is well qualified and highly competent. He has received high marks all around and has been unanimously praised for his successful supervision. He has worked on budgets, has worked with personnel and has worked with citizens concerns. He has served Asheville loyally and effectively for seven years. She also stated that her support in Charles involves a cost component. In addition to wanting the most qualified, he would be more cost effective and why not vote for a local person since the City tries

to promote and hire from within. In addition, we could help close the gap on minority disparity in our City. Charles will provide our City that is in turmoil with some continuity and will signal this community that this Council is able to restore calm to a troubled and divided Asheville. She felt healing is just as important as the budget and appointing Charles will help greatly in healing process.

Councilman McClure also agreed that Council had two very good candidates. He felt the interview process was fair and thorough. Unfortunately, he felt Council could not afford on the job training. His biggest concern about Charles was that he has not had any budgeting experience and no City Manager experience. He also stated that Charles told him that he did not have an interest in the position of Interim City Manager and would not accept the position under the circumstances. He said that he would not support Mr. Penny as Interim City Manager.

Mayor Martin stated that Mr. Penny did put his name in voluntarily for the Interim City Manager position.

Councilwoman Field nominated Charles Penny because she has worked with him and he is the person people call when they have a problem and he gets the problem solved. She felt he is a fine young man and hiring him would also help with the minority disparity in the City. She felt he could provide the continuity during the next six months and felt he could deal with the budget process even though he has not been personally responsible for presenting the budget to Council. She strongly supported Charles as Interim City Manager.

On a voice vote of 3-4, the motion to appoint Charles Penny as Interim City Manager was defeated, with Mayor -10-

Martin, and Councilwomen Field and Sitnick voting "yes" and Vice-Mayor Peterson and Councilmen McClure, Swicegood and Watts voting "no".

Councilman McClure then moved to appoint William B. Farris as Interim City Manager effective January 1, 1993, for six months. This motion was seconded by Councilman Swicegood and carried on a voice vote of 4-3, with Vice-Mayor Peterson and Councilmen McClure, Swicegood and Watts voting "yes" and Mayor Martin and Councilwomen Field and Sitnick voting "no".

Councilwoman Sitnick moved to instruct Mr. Farris, when he takes the position as Interim City Manager, to retain Charles Penny as Assistant City Manager. City Attorney Slawter advised Councilwoman Sitnick that Council did not have the authority to so instruct the Interim City Manager.

Vice-Mayor Peterson personally encouraged Charles Penny to continue as Assistant City Manager.

Councilwoman Sitnick felt Mr. Farris would do a great job and looked forward to working with him. She felt that just saying Council wanted change was not enough. She felt that Council, as a whole, needs to begin to articulate and define what that change is. She said that we need to begin to understand that there are other things committed to making change and we need to begin to show leadership along those lines.

Mayor Martin also stated that he was impressed with Mr. Farris' credentials and interview and stated that Mr. Farris would certainly have Council's support.

C. RESOLUTION NO. 93-196 - RESOLUTION AUTHORIZING THE ASHEVILLE-BUNCOMBE WATER AUTHORITY TO ACQUIRE A FEE SIMPLE INTEREST IN REAL PROPERTY BY CONDEMNATION

City Manager Bean said that in an effort to ease the effects of the worst drought on record upon the City's water supply reservoirs at North Fork and Bee Tree, the City of Hendersonville was approached about selling the Water Authority finished water. Hendersonville's treatment capacity is 12 mgd; with current demand approximately 7.2 mgd. The agreement provides for up to 4 mgd for an initial six months period.

He said the two water systems are interconnected at the intersection of Christ School Road and Cane Creek Road. -11-

Asheville water pressure is 40 psi higher than that of Hendersonville. A pumping station is necessary to overcome this difference.

Mayor Martin read the resolution.

Councilwoman Field moved to adopt Resolution No. 93-196. This motion was seconded by Councilman Swicegood and carried unanimously.

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D. BROADWAY WIDENING PROJECT

Councilwoman Sitnick moved to set a public hearing on January 11, 1994, at 7:00 p.m. in the Asheville Civic Center Banquet Room, to discuss the City's position regarding the Broadway Widening Project. This motion was seconded by Vice-Mayor Peterson and carried on a 5-2 vote, with Councilwoman Field and Councilman Swicegood voting "no".

E. COUNCIL MEETING DATES AND TIMES

Councilwoman Sitnick moved to begin the process of looking into the possibility of changing City Council meeting days so that they do not conflict with Buncombe County Commissioner meeting days. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

F. COMMENTS BY MIKE PLEMMONS

Upon inquiry of Mr. Mike Plemmons, representing the Council of Independent Business Owners, Mayor Martin said that Mr. Farris' resume' would be made available to anyone who requested it.

G. COMMENTS BY WAYNE KINSER

Mr. Wayne Kinser asked Mayor Martin to repeat his statement from the close of the December 14, 1993, meeting and suggested that everyone try to work together as the Mayor suggested.

H. COMMENTS BY BETTY DONOHO

Ms. Betty Donoho, representative of the People for Accountability in Government, challenged the people behind the recall effort against Vice-Mayor Peterson and Councilmen McClure, Swicegood and Watts to cease their efforts and said that if they would do so, she would stop her efforts toward the recall of Mayor Martin and Councilwoman Field.

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I. COMMENTS BY TOM DONOHO

Mr. Tom Donoho suggested Council look at areas already annexed into the City

before they start spending money for sewer lines outside the City.

J. COMMENTS BY SHARON McDONALD

Ms. Sharon McDonald presented City Manager Bean with a scroll on behalf of the employees of the City of Asheville. The scroll is a token of our deep respect and appreciation for all he has done for us as City Manager and with it goes our best wishes and our sincere hope that he always remember the employees of the City of Asheville.

K. CLAIMS

City Manager Bean said that the following claims were received by the City of Asheville during the week of December 13-17, 1993: Rose Whitted (Purchasing), John E. Putnam (Water), Kathleen Wallen (Water) and Ann Riddle (Water).

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

L. LAWSUIT

City Manager Bean said that the City was served with the following lawsuit on December 20, 1993: Katherine Taylor and Baxter H. Taylor (Board of Adjustment appeal).

He said that this has been referred to the appropriate legal counsel for action.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 5:32 p.m.

CITY CLERK MAYOR
