

Tuesday - April 5, 1994 - 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; Assistant City Attorney Patsy Meldrum; Interim City Manager William B. Farris; and Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: City Attorney William F. Slawter

INVOCATION

Councilman Watts gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 1994 AS "CHILD ABUSE PREVENTION MONTH"

Mayor Martin proclaimed April 1994 as "Child Abuse Prevention Month" in the City of Asheville and presented it to Brett Craig, member of Partners for Prevention.

B. PROCLAMATION PROCLAIMING APRIL 10-16, 1994, AS "BUILDING SAFETY WEEK"

Mayor Martin proclaimed April 10-16, 1994 as "Building Safety Week" in the City of Asheville and presented it to Bob Hixson, Director of Inspections.

C. PROCLAMATION PROCLAIMING APRIL 17-23, 1994, AS "NATIONAL VOLUNTEER RECOGNITION WEEK"

Mayor Martin proclaimed April 17-23, 1994 as "National Volunteer Recognition Week" in the City of Asheville and presented it to Steve Kirkland, Director of Volunteers at St. Joseph's Hospital.

D. PROCLAMATION PROCLAIMING APRIL 10-16, 1994, AS "NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK"

Mayor Martin proclaimed April 10-16, 1994 as "National Public Safety Telecommunicators Week" in the City of Asheville and presented it to Police Chief Will Annarino.

II. PUBLIC HEARINGS:

Mayor Martin announced that due to an advertising error with the Citizen-Times newspaper, it will be necessary to reschedule some public hearings scheduled for today. Councilman Watts moved to reschedule the public hearing to rezone 144 Beaverdam Road and the public hearing to amend the zoning ordinance relative to boarding of animals at veterinary clinics to April 19, 1994. This motion was seconded by Vice-Mayor Peterson and carried unanimously. Mayor Martin noted that the public hearing to rezone a portion of 353 Leicester Highway will be rescheduled at a later date at the request of the petitioners. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

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A. PUBLIC HEARING TO CLOSE EDGEWOOD ROAD BETWEEN OLD TURNPIKE ROAD AND ROSSCRAGGON ROAD

RESOLUTION NO. 94-64 - RESOLUTION TO CLOSE EDGEWOOD ROAD BETWEEN OLD TURNPIKE ROAD AND ROSSCRAGGON ROAD IN THE CITY OF ASHEVILLE, NORTH CAROLINA

Assistant City Attorney Meldrum said that the closing of Edgewood Road only involved two property owners and in that the advertisement had been done once a week for three successive weeks (out of the four successive weeks required), the City gave the petitioners the option of rescheduling the public hearing, to allow the four notices, at no additional expense to them, or proceeding based upon a minimal amount of risk. As there is only a 30 day statute of limitations to challenge street closings, as only two property owners were involved, and as the advertisement was done three times, the petitioners elected to proceed with the public hearing.

Mayor Martin opened the public hearing at 4:16 p.m.

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

Mr. Robert D. Collier, representative of the Church of Jesus Christ of Latter Day Saints, said that the Church and Richard W. Woody have petitioned the City requesting that an unopened right-of-way known as Edgewood Road between Old Turnpike Road and Rosscraggon Road be closed as a public right-of-way. The right-of-way currently has a joint driveway utilized by Richard W. Woody and Church of Jesus Christ of Latter Day Saints and serves no other property owners with property fronting directly along the right-of-way.

Mayor Martin closed the public hearing at 4:19 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. 94-64. This motion was seconded by Councilman McClure and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 287

B. CONTINUATION OF PUBLIC HEARING TO REVIEW THE SCHEDULE OF RATES AND CHARGES OF TCI CABLEVISION OF ASHEVILLE FOR THE BASIC SERVICE TIER AND ALL EQUIPMENT, INSTALLATION AND OTHER SERVICES USED FOR THE BASIC SERVICE TIER

RESOLUTION NO. 94-65 - RESOLUTION CONTINUING PUBLIC HEARING ON ORDER FOR REFUND FROM TCI CABLEVISION OF ASHEVILLE TO ITS SUBSCRIBERS

Assistant City Attorney Meldrum said that the City Council has previously determined that TCI Cablevision was charging more than it is permitted under FCC regulations in its rate schedule for basic service tier and related equipment, installation and service charges. On March 1, 1994, the City Council considered whether or not to order TCI to provide refunds to subscribers. As the FCC adopted new rules on February 22, 1994, which affect the rate schedule for basic service tier and related equipment, installation and service charges, the City Council continued this matter to April 5, 1994.

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She briefed the Council on their three options available: 1) continue the public hearing until April 19, 1994, which would allow time for review of the new FCC rules by City staff; 2) go ahead and order the refunds to subscribers; or 3) do nothing - thereby not having any refunds ordered. It was City staff's recommendation to continue to public hearing until April 19, 1994.

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. 94-65, which continued this public hearing until April 19, 1994. This motion was seconded by Councilwoman Sitnick and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 289

C. PUBLIC HEARING RELATIVE TO REZONING 144 BEAVERDAM ROAD FROM R-1 RESIDENTIAL DISTRICT TO CG COMMERCIAL GENERAL DISTRICT

See statement made earlier at beginning of all public hearings.

D. PUBLIC HEARING RELATIVE TO A PARTIAL REZONING OF 353 LEICESTER HIGHWAY FROM R-3 RESIDENTIAL DISTRICT TO CS COMMERCIAL SERVICE DISTRICT

See statement made earlier at beginning of all public hearings.

E. PUBLIC HEARING TO AMEND THE ZONING ORDINANCE TO ALLOW BOARDING OF ANIMALS AT VETERINARY HOSPITALS AND CLINICS AS A CONDITIONAL USE IN CG COMMERCIAL GENERAL AND CH COMMERCIAL HIGHWAY DISTRICTS

See statement made earlier at beginning of all public hearings.

F. PUBLIC HEARING RELATIVE TO A VARIANCE REQUEST FOR HIGHLAND BOULEVARD SUBDIVISION

Assistant City Attorney Meldrum said that despite the fact that the second notice which we customarily publish was not done as there is no statutory requirement for notice for this type of action, Attorney John Powell, property owner in the Highland Boulevard subdivision matter, elected to proceed.

Mayor Martin opened the public hearing at 4:24 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 Planning and Zoning Commission on March 2, 1994, reviewed the preliminary plat of the subdivision and recommended approval, subject to four conditions. The Commission recommended denial of a variance from the standard that all lots abut a publicly maintained street.

The owner of a 5.76 acre tract of land located on Highland Boulevard, off Smoky Park Highway, divided it into two parcels approximately 1 1/2 years ago. The subdivision was not presented to the City for approval, although it was in the City's area of jurisdiction. Upon applying for a zoning permit for a proposed development on one of the parcels, it was discovered that the subdivision had not been approved by the City.

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The applicant is now requesting approval of the subdivision of the property, which is zoned LI Light Industrial. Two lots are proposed, with one lot to be 2.14 acres in size and the other to be 3.62 acres in size. No utility extensions are required to provide service to the lots. Access to the site is provided by Highland Boulevard, a private street. Highland Boulevard is paved and has a 60 foot right-of-way.

The applicant is requesting a variance from the requirement that lots in a subdivision abut a publicly maintained street. The applicant feels that he should not be required to bear the burden of upgrading the street. Denial of the variance request is recommended by the Planning and Zoning Commission, which feels the requirement is valid and that the upgrading of the street would benefit the applicant, adjacent property owners, and the community as a whole. Owners of other property served by Highland Boulevard have indicated a willingness to assist in the upgrading of Highland Boulevard.

Following the review of the preliminary plat, the Planning and Zoning Commission voted unanimously to approve the preliminary plat, without the requested variance, subject to the following four conditions:

1. Outline the boundary of lot one in heavy dark ink;
2. Indicate the easement for the sewer line located on lot one;
3. Receipt of letters confirming availability of utilities and fire protection; and
4. Upgrade Highland Boulevard, by private effort, to NCDOT standards and dedicate it to the public.

Vice-Mayor Peterson as if the City could grant the variance conditioned upon a statement that if the City annexes the property in the future, the City will not upgrade the road. Assistant City Attorney Meldrum felt that this present Council cannot bind future Councils in discretionary matters such as this.

Mayor Martin questioned whether we can grant the variance indicating that the people who own the property would not ask the City to upgrade the street. Assistant City Attorney Meldrum did not think this approach would work either.

Councilwoman Sitnick stated that for the record that Mr. John Powell is her attorney. She then asked that since the City can't bind another council by requesting that the petitioner not ask the City to upgrade the road, can the petitioner file some kind of legal agreement that says he will not ask this or any future council to upgrade. Assistant City Attorney Meldrum stated that she has not researched that particular question but felt that there may be problems with that approach.

Ms. Elizabeth Graham, member of the Planning & Zoning Commission, briefed the Council on their meeting as it related to this issue. She felt the Commission voted with misinformation about whether or not the petitioner does own the road. She then read a letter from Jim Torpey (member of the Commission who made the motion) which stated ... upon further review and additional viewing of the site, I would like you to accept the petitioner's request for the variance on the issue of the upgrading Highland Boulevard and its subsequent dedication to the City. ... unclear as to ownership of the road and this one owner should not be burdened with financial responsibility ... -5-

City Manager Farris suggested that Council continue the public hearing until April 19, giving the Planning and Zoning Commission another opportunity to look at all the issues (Planning and Zoning Commission would be meeting the next day).

Councilman Swicegood felt that if the area is annexed, it will certainly bring in more tax base for the City.

Councilwoman Field asked Mr. Powell if he would be willing to take the lead and possibly find out who in fact owns the road. Perhaps if the people who are

on the road and the owners all pitch in to upgrade the road, there might not be a problem at all.

Mr. John Powell, developer and property owner, responded to Councilwoman Field's suggestion by saying that he wouldn't mind researching that issue, but he did not want that to affect his ability to go on with his development. He said that he, personally, would be willing to sign a document that says he won't ask the City to do what is necessary to bring the road up to public standards if the property is annexed. He said that he will pave the portion in front of his property and possibly in the future the entire road might be able to meet state standards.

Mr. Green asked who would have the authority to construct the road since the tax maps show the roadway is a dedicated public right-of-way.

Councilwoman Sitnick said she made a site visit and, in light of the new information discovered, felt that it was unfair to burden one property owner with this financial responsibility.

Mayor Martin closed the public hearing at 4:54 p.m.

Councilman Swicegood moved to approve a modification for this subdivision to the subdivision regulation which requires that every lot in a subdivision abut a public street. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

At the recommendation of City Manager Farris, it was the consensus of Council that a notation on the final plat show that the property owner does not intend to request the City of Asheville to take over and maintain the private street shown as "Highland Boulevard."

III. UNFINISHED BUSINESS:

IV. NEW BUSINESS:

A. RESOLUTION NO. 94-66 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT FOR STATE BUILDING CODE ENFORCEMENT IN CITY AND COUNTY BUILDINGS

City Manager Farris said that this resolution authorizes a joint agreement that allows Buncombe County code enforcement officers to enforce the State Building Code in County-owned buildings inside the City, and authorizes Asheville code enforcement officers to enforce the State Building Code in city-owned buildings in Buncombe County.

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State building code/inspection laws define who is authorized to enforce the State Building Code within the corporate limits of a municipality. Informally, Asheville and Buncombe County inspections staff have each allowed the other to enforce the State Building Code in buildings owned by the City or County, regardless of legal jurisdiction.

The City and County attorneys agree that, given statutory restrictions on the conditions which a code enforcement officer can act outside his or her own jurisdiction, it is in the best interests of Asheville and Buncombe County to formalize this practice by mutual agreement.

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. 94-66. This motion was seconded by Councilman McClure and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 291

B. RESOLUTION NO. 94-67 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDER NO. 1 TO CONSTRUCTION CONTRACT 10 WITH APAC-CAROLINA ASHEVILLE DIVISION CONSTRUCTION SERVICES FOR STREET AND SIDEWALK REHABILITATION PROJECTS

City Manager Farris said that this resolution allows him to execute Change Order No. 1 to Contract 10 (increase of approximately \$65,000) to allow for additional work by the Water Department to rehabilitate water lines in Boston Way and Kitchen Place while the streets are under construction. Funding for this change order will be totally reimbursed by the Asheville-Buncombe Water Authority.

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. 94-67. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

RESOLUTION BOOK NO. 21 - PAGE 295

C. ORDINANCE NO. 2094 - BUDGET AMENDMENT RELATIVE TO MECHANICAL INSPECTION FEES TO BUILDING SAFETY DIVISION

City Manager Farris said that this budget amendment, in the amount of 102,600, appropriates funds received in the form of mechanical inspection fees to appropriate line items in the budget of the Division of Building Safety.

On July 1, 1993, the City assumed responsibility for mechanical inspections within Asheville's corporate limits. At the time, no provision was made within the budget to transfer fee income to Building Safety budget to recover the costs of delivering mechanical inspection services. This budget amendment makes that change. The City currently recovers 100% of the cost of delivering mechanical inspection services, which is consistent with City Council's inspections cost recovery policy.

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

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Councilwoman Field moved for the adoption of Ordinance No. 2094. This motion was seconded by Councilman Watts.

On a roll call vote of 7-0, Ordinance No. 2094 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 172

D. ORDINANCE NO. 2095 - BUDGET AMENDMENT RELATIVE COMPLETING THE REHABILITATION OF 58 BROADWAY

City Manager Farris said that this budget amendment will transfer \$10,000 of Community Development grant funds from the Downtown Affordable Housing Project to Mountain Housing Opportunities (MHO) Downtown Housing Project. The original intent of the funding was a loan to 58 Broadway Corporation. The new intent of the funding is a grant to MHO for completion of the rehabilitation of the

building located at 58 Broadway. The project will create five units of affordable rental housing and one space for commercial use.

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

Councilman McClure moved for the adoption of Ordinance No. 2095. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2095 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 174

V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 22, 1994, AND THE MINUTES OF THE COMMUNITY MEETING HELD ON MARCH 29, 1994

Councilwoman Sitnick asked that the approval of the minutes be withdrawn from the consent agenda for discussion. She asked that certain topics be added to the minutes from the meeting of March 29, 1994. Those topics are as follows: tax lots, stormwater runoff, concern about poor turnout to the meeting and also concern that there was only one member of the media present.

She also asked that an additional paragraph be added after the sentence relative to balancing the budget, as follows: Councilwoman Sitnick stated that her original budget vote was based on the fact that her instructions were clear that the Council was not going to balance the budget on the back of the taxpayer or the City's loyal employees. She requested that we look at every nickel and dime as to where we could save and cut waste before anyone's job was jeopardized. She had a list of several cost-cutting ideas and asked that all members of Council prepare a similar list in order that layoffs could be avoided.

Mr. Ralph Bishop asked if any member of Council wanted to change their mind as it related to their March 22, 1994, motion not requiring the City Clerk to take verbatim minutes of the City Council meetings. He felt that they were trying to abolish State law. He requested a certified copy of that motion. City Manager Farris said that he would be happy to furnish Mr. Bishop with a certified copy of that motion as soon as the minutes were approved.

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Councilman Swicegood moved to adopt the minutes as amended by Councilwoman Sitnick. This motion was seconded by Councilwoman Field and carried unanimously.

B. MOTION SETTING A PUBLIC HEARING FOR APRIL 19, 1994, DESIGNATING PROPERTY KNOWN AS THE J.M. WESTALL HOUSE AND LOCATED AT 62 EDGEWOOD ROAD AS A LOCAL HISTORIC LANDMARK

C. RESOLUTION NO. 94-68 - RESOLUTION CALLING FOR A PUBLIC HEARING ON MAY 3, 1994, FOR THE ADOPTION OF AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY TO DEMOLISH THE DWELLING LOCATED AT 17 KENDALL STREET

RESOLUTION BOOK NO. 21 - PAGE 296

D. MOTION SETTING A PUBLIC HEARING FOR APRIL 19, 1994, RELATIVE TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM'S PROPOSED STATEMENT OF OBJECTIVES

AND PROJECTED USE OF FUNDS FOR FISCAL YEAR 1994-95

Councilman Swicegood moved to adopt the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

VI. OTHER BUSINESS:

A. DISABILITY REVIEW BOARD

At the request of Vice-Mayor Peterson, Councilman Swicegood moved to appoint Councilwoman Sitnick as the Council designee on the Disability Review Board. This motion was seconded by Councilwoman Field and carried unanimously.

B. COMMENTS BY MARTHA CALLOWAY

Ms. Martha Calloway, resident of 19 McCarthy Lane, stated that her neighbor blocks the road to her house. She asked how she could find out if the road is a public road and what can the City do to prohibit this man from blocking the road.

Mayor Martin instructed City Manager Farris investigate the concerns raised and follow-up with Ms. Calloway.

C. COMMENTS BY H. K. EDGERTON

Mr. H. K. Edgerton spoke in support of the empowerment zones and felt that \$3,000,000 is not enough for Asheville.

D. COMMENTS BY DANIEL BREEN

Mr. Daniel Breen spoke about the importance of the solid waste program and the need for community meetings and public hearings.

City Manager Farris said that recycling is an issue for the Council on their April 26, 1994, community meeting at East Asheville Community Center at 7:00 p.m.

E. SOUTHERN OAKS SUBDIVISION

Mr. David Matney, attorney representing M. Realty Limited Partnership, requested Council to review the plat proposed for the subdivision on Hendersonville Road which has been known as "Southern -9-

Oaks Subdivision." The Planning and Zoning Commission had voted to deny approval of the preliminary plat. He felt that, in looking at the ordinance, they could appeal the Planning & Zoning Commission's denial to the City Council.

Assistant City Attorney Meldrum said that, after consulting with the City Attorney and Planning Director, it was their determination that the appropriate forum would be to go back to the Planning & Zoning Commission with a revised plat which would comply with the subdivision regulations.

Ms. Elizabeth Graham, member of the Planning & Zoning Commission, explained why the Planning & Zoning Commission unanimously denied approval of the preliminary plat.

The City Council agreed that they should resubmit the plat to the Planning & Zoning Commission.

Since the notice requirements for them to resubmit a revised plat to the April 6 meeting of the Planning & Zoning Commission could not be met, the next regular meeting would be May 4, 1994. Mr. Matney said that the project could not wait until that date. Assistant City Attorney Meldrum suggested a special meeting of the Planning & Zoning Commission and Mr. Matney said that he would request that.

Councilwoman Field asked that the subdivision ordinance be straightened out to allow City Council to review preliminary plats when approval has been denied by the Planning & Zoning Commission.

F. COMMENTS BY RALPH BISHOP

Mr. Ralph Bishop questioned why Council rules say they will meet every Tuesday at 4:00 p.m., when they in fact do not. Mayor Martin instructed City Manager Farris to look into Mr. Bishop's comment.

He again requested the City Clerk provide him with verbatim minutes.

G. CLAIMS

City Manager Farris said that the following claims were received by the City of Asheville during the week of March 21-25, 1994: Diane Jennings (Sanitation), Ed Pearce (Sanitation), Wilfred Curtis (Streets), Jan Hunnicutt (Water), Harold K. Bennett (Streets), Gayle Brown (Sanitation), W.N. Wayne Erwin (Police), Wind in the Oaks (Fire), Margaret Lyon (Water), and Randy and Melba Queen (Police & Fire).

He also said that the following claims were received by the City during the week of March 28-April 1, 1994: J. C. Oxendine (Sanitation), Ron Brondyke (Water), Cindy Brockwell (Streets), John M. Young Ext. Co. (Streets), Jay Fine (Water) and Kathryn Gelder (Parks).

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

VII. ADJOURNMENT:

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

City Clerk Mayor
