

Tuesday - March 12, 1996 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; and Councilman Charles R. Worley; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James J. Skalski

INVOCATION

Mayor Martin gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF MARCH 18-24, 1996, AS "VOLLEYBALL WEEK"

Mayor Martin proclaimed the week of March 18-24, 1996, as "Volleyball Week" in the City of Asheville. He presented the proclamation to Mr. Jeff Joyce, the City's Athletic Director, who briefed the Council on some activities that would be taking place during the week.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSING AN UNNAMED ALLEY RUNNING NORTHERLY OFF OF COLEMAN AVENUE

RESOLUTION NO. 96-42 - RESOLUTION TO CLOSE AN UNNAMED ALLEY RUNNING NORTHERLY OFF OF COLEMAN AVENUE

Mayor Martin opened the public hearing at 5:07 p.m.

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

Public Works Director Mark Combs said that a petition has been received from Victor K. Shealy, Patricia K. Shealy, George M. Hill and Gwendolyn T. Hill, property owners along an unnamed alley running off of Coleman Avenue, requesting that this alley be permanently closed to public use.

The petition received includes the signatures of all property owners adjoining the portion of the unnamed alley being petitioned for closing, with the exception of the City of Asheville. No property owner in the area would be deprived of reasonable means of ingress and egress from their property.

The City of Asheville does not need to retain any easement in connection with this closing.

The Public Works Department staff recommends the petition to close the portion of unnamed alley running northerly off of Coleman Avenue be approved.

Mayor Martin closed the public hearing at 5:09 p.m.

-2-

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

Councilman Worley moved for the adoption of Resolution No. 96-42. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 130

B. PUBLIC HEARING TO REZONE TEN LOTS AT THE CORNER OF STATE STREET AND HANOVER STREET FROM R-3 MEDIUM DENSITY RESIDENTIAL TO NC NEIGHBORHOOD COMMERCIAL

ORDINANCE NO. 2266 - ORDINANCE TO REZONE TEN LOTS AT THE CORNER OF STATE STREET AND HANOVER STREET FROM R-3 MEDIUM DENSITY RESIDENTIAL TO NC NEIGHBORHOOD COMMERCIAL

Mayor Martin opened the public hearing at 5:10 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that the subject properties are approximately five acres. The 14 lots are located at the intersection of State & Hanover Streets. The 14 lots contain 10 residential structures and one commercial structure. Four of the lots are currently vacant. The 2010 Plan recommends this area be low density residential along both sides of State Street near the intersection. The subject properties are surrounded on all sides by residential with the Pisgah View Apartments immediately to the south.

The Planning staff reviewed the rezoning request and recommended approval of just 10 of the lots and deny rezoning of the other four. The lots recommended for rezoning to NC are 9638-14-41-7807, 7915, 8748, 8853, 8918, 8965, 9864, 9913 and 9638-18-42-5090 and 6161. The four lots denied for rezoning are 9638-18-41-7665, 8654, 8742 and 9675. At the Commission's February 7, 1996, meeting, they voted 4-2 to recommend approval of the rezoning of the 10 lots.

Since the rezoning petition for the area at the intersection of State & Hanover Streets included 14 lots and the Commission recommended approval of the rezoning of 10 lots, requirements dictate that the City notify the owners of the four lots that their request for rezoning was denied and give them the opportunity to appeal to City Council. Mr. Hector Contreras (petitioner) was notified on February 14 and Mr. Contreras stated that Mr. Clay Jones (who spoke at the Commission hearing) and his family owned the lots and they did not have any preference as to which way their lots were zoned. They only signed the petition to assist Mr. Contreras in his request. Mr. Contreras assured City staff that the Jones' would not appeal the Commission's denial of their four lots.

Upon of Vice-Mayor Field, Mr. Ownbey responded that the rezoning of the 10 lots would not be considered illegal spot zoning.

Mr. Hector Contreras said that he is requesting this rezoning in order to expand his business so he can provide the service the community deserves and needs.

Upon inquiry of Vice-Mayor Field on why the other four lots were denied rezoning, Mr. Ownbey said that they didn't want any commercial intrusion into the prime residential neighborhood which contains Pisgah

-3-

View Apartments, and it was suggested that the four vacant lots not recommended for rezoning could serve as a buffer to the residential neighborhood.

When Councilman Hay inquired why the other side of the street was requesting to be rezoned, Ms. Bonnie Contreras speculated that the people owning the property across the street have had it up for sale, but considering where the location is, it wouldn't be desirable for people to buy an empty lot so close to Pisgah View Apartments. She then speculated if the other side was rezoned, it might be more desirable for someone to come in and perhaps build something that would complement their business.

Councilman Worley spoke in support of rezoning the ten lots stating that there is a decline of small neighborhood stores and this type of store is very desirable for a neighborhood.

Mr. Richard Nantelle supported the rezoning of the ten lots stating that the store proposed to be expanded is a focal point in that community and it is a benefit to the neighborhood as well as Pisgah View Apartments.

Ms. Johnice spoke in support of this rezoning and felt that the Contreras' store has served a valuable need in the community.

Mayor Martin closed the public hearing at 5:23 p.m.

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

Vice-Mayor Field moved for the adoption of Ordinance No. 2266. This motion was seconded by Councilman Worley.

On a roll call vote of 6-0, Ordinance No. 2266 passed on its first and final reading.

ORDINANCE BOOK NO. 15 - PAGE

C. PUBLIC HEARING TO REZONE TWO LOTS AT 619 GATEWOOD ROAD FROM R-5 RESIDENTIAL DISTRICT TO LI LIGHT INDUSTRIAL DISTRICT

Mayor Martin opened the public hearing at 5:24 p.m.

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

Mr. Carl Ownbey, Urban Planner, said that the subject property is two lots at the corner of Gatewood Road and Emma Road. The two lots contain one residential structure and one dilapidated barn. The 2010 Plan recommends that this area be low density residential along Emma Road. Even though the character of the area has changed to high density residential, this particular rezoning would allow industrial intrusion into this high density residential neighborhood. The subject property is surrounded on three sides by residential and there is industrial property to the immediate south.

The Planning staff reviewed the request and recommended denial of the rezoning to LI Light Industrial. At the Planning & Zoning Commission's meeting on February 7, 1996, the Commission voted unanimously to recommend denial of the rezoning request.

-4-

On February 20, 1996, the petitioner appealed the Commission's decision to the City Council.

Mr. James Woody, petitioner, urged Council to rezone his two lots to Light

Industrial. He said that when he bought the two lots over 15 years ago, they were not zoned. He is now retired and has recently paid the lots off. He now would like to build on them. He felt that anything he does to the lots will improve the neighborhood.

Councilman Sellers said that he has visited the property in question and feels there is a fair amount of industrial development in the area. He didn't think the rezoning would have that much affect on the property up Gatewood Road and therefore stated that he supported the requested rezoning to Light Industrial.

Mr. Tad Wright, resident of 599 Emma Road, passed out pictures of the industrial development on Emma Road, one which shows that his house is directly across the street from a junkyard. He stressed to Council to remember that there are many things that are allowed in the Light Industrial zone, not just what Mr. Woody plans. He urged Council to deny the requested rezoning.

Mayor Martin closed the public hearing at 5:31 p.m.

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

Councilman Sellers moved to rezone the two lots at 619 Gatewood Road from R-3 to LI. This motion failed due to a lack of a second.

Councilman Cloninger moved to deny rezoning the two lots at 619 Gatewood Road from R-3 to LI. This motion was seconded by Councilman Hay and carried on a voice vote of 5-1, with Councilman Sellers voting "no".

Vice-Mayor Field suggested Mr. Wright contact the Planning Department to see if the junkyard across the street from his residence is in violation of our zoning ordinance.

D. PUBLIC HEARING TO CONSIDER A STREET GRADE MODIFICATION REQUEST FOR BREAMAR SUBDIVISION

Mayor Martin announced that on February 29, 1996, Mr. Kenneth O. Pankow sent a letter to Ms. Patty Joyce stating that "the preliminary plans for Braemar Subdivision, Developer Dean Fender, has been temporarily withdrawn." Therefore, this public hearing is not required.

III. UNFINISHED BUSINESS:

IV. NEW BUSINESS:

V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 27, 1996, AND THE WORKSESSION HELD ON MARCH 5, 1996

B. RESOLUTION NO. 96-43 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 6A OF THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

-5-

Summary: The bid of Montford Partners in the amount of \$69,250 for the purchase of Disposal Parcel 6A in the Head of Montford Redevelopment Project is not less than the established minimum price of \$69,250. Disposal Parcel 6A is a CG Commercial General lot at the corner of Montford Avenue and Cherry Street comprising 12,595 square feet. The bid from Montford Partners for Disposal Parcel 6A includes the proposal to build a two story commercial building

containing a total gross building area of 4,610 square feet, for retail and office space at an anticipated cost of \$245,000. Montford Partners consists of Frank S. Smith, Canie B. Smith, and Dr. Charles T. Rowe. This bid has been properly advertised and no upset bid has been received.

RESOLUTION BOOK NO. 23 - PAGE 132

C. RESOLUTION NO. 96-44 - RESOLUTION RECOMMENDING AWARD OF BIDS TO PURCHASE ASHEVILLE-BUNCOMBE ARSON TASK FORCE VEHICLE

Summary: Sealed bids were received to furnish one 1-ton commercial 4-wheel drive cutaway van for the Fire Department, Arson Task Force. Two bids were received. Staff recommends that the award be made to the low bidder, Matthews Ford, Asheville, N.C., in the amount of \$39,702 for the purchase of one 1996 Ford E350 cab and chassis with a Reading FV74-148AP body. The following bids were received:

Vendor Net Cost

Matthews Ford, Asheville, N.C. \$39,702

Parkway Chevrolet, Asheville, N.C. \$41,894

Funds for this purchase are appropriated in Account Code 20-420-40-475-00-5741.

RESOLUTION BOOK NO. 23 - PAGE 133

D. RESOLUTION NO. 96-45 - RESOLUTION ESTABLISHING FAIR REUSE VALUE FOR CERTAIN DISPOSAL PARCELS IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT

Summary: Certain disposal parcels in East Riverside have been appraised, the appraisals reviewed and it is necessary to establish the Fair Reuse Value in order to market the property.

The disposal parcels are located in the area formerly known as the Clingman Avenue/Valley Street Connector right-of-way. Consisting of two tracts and comprising approximately 2.4 acres. The Connector right-of-way has been subdivided into seven commercial and two residential parcels.

Each disposal parcel was appraised by David Moore, MAI. The appraisals were reviewed by Francis Naeger, MAI, who concurred and recommended the appraised values as the Fair Reuse Values.

The disposal parcels and fair reuse values are as follows: 1A - \$79,400; 2A - \$16,850; 2B - \$117,400; 3A - \$3,600; 3B - \$4,665; 4A - \$16,852; 4B - \$12,730; 50A - \$6,181; and 52A - \$5,394.

RESOLUTION BOOK NO. 23 - PAGE 135

E. MOTION SETTING A PUBLIC HEARING ON MARCH 26, 1996, REGARDING CITY PARTICIPATION IN SEWER LINE UPGRADE PROJECT OF GERBER PRODUCTS OF ASHEVILLE

- 6 -

F. MOTION SETTING A PUBLIC HEARING ON MARCH 26, 1996, TO REZONE 25 LOTS IN THE VINEWOOD CIRCLE/KENWOOD STREET AREA FROM R-3 MEDIUM DENSITY RESIDENTIAL TO R-5 RESIDENTIAL

G. MOTION SETTING A PUBLIC HEARING ON MARCH 26, 1996, RELATIVE TO A VARIANCE REQUEST FOR WOLFE COVE ROAD SUBDIVISION

H. MOTION SETTING A PUBLIC HEARING ON MARCH 26, 1996, TO CONSIDER A WORDING AMENDMENT TO THE ZONING ORDINANCE IN THE OFFICE INSTITUTIONAL DISTRICT STANDARDS TO IDENTIFY OUTDOOR RECREATIONAL USES AS A PERMITTED USE

I. MOTION SETTING A PUBLIC HEARING ON MARCH 26, 1996, TO REZONE 105 LOTS IN THE MORNINGSIDE PARK AREA FROM R-3 MEDIUM DENSITY RESIDENTIAL TO R-1A, SINGLE FAMILY, MODERATE DENSITY RESIDENTIAL

J. MOTION SETTING A PUBLIC HEARING ON MARCH 26, 1996, TO REZONE ALL OR A PORTION OF THE PROPERTIES LOCATED IN THE HAW CREEK AREA WHICH ARE ZONED R-3 MEDIUM DENSITY RESIDENTIAL TO EITHER R-2 LOW DENSITY RESIDENTIAL, R-1A SINGLE FAMILY MODERATE DENSITY RESIDENTIAL OR R-1 SINGLE FAMILY RESIDENTIAL

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Vice-Mayor Field moved to approve the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

VI. OTHER BUSINESS:

A. GROUP DEVELOPMENT

City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission ("Commission") relative to group developments at the next scheduled regular meeting of the City Council. 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. The following actions were taken by the Planning and Zoning Commission on March 6, 1996:

Biltmore Town Centre' (Food Lion) at 1856 Hendersonville Road

Mr. Gerald Green, Senior Planner, said that the City has received a request to allow a Food Lion strip mall development on Hendersonville Road. Biltmore Town Center will consist of the aforementioned Food Lion (38,000 sq. ft.) and four other smaller retail shops, totaling 13,200 sq. ft., for a total of 51,200 sq. ft. of building - Phase One only. The property is zoned Heavy Industrial and access is provided by two entrances off Hendersonville Road and by one access point off Mills Gap Road. The site plan meets all development requirements for HI zoning. Adequate parking has been provided and the developer has met all landscape requirements. A sidewalk was requested by traffic engineering, but this request was denied.

At their March 7, 1996, meeting, the Commission unanimously recommended approval to City Council with no conditions. He noted that the Commission did pass a resolution which will be forwarded to City Council requesting that Council work with staff to develop a policy on

-7-

the provision of sidewalks for all developments in the City. He also said that there is a policy in the draft Unified Development Ordinance for sidewalks to be developed as part of new developments.

Mr. Green then responded to questions regarding the sidewalk request. He said the sidewalk request would be along Hendersonville Road in front of the development. All Hendersonville Road has been upgraded and the existing capacity of Hendersonville Road will more than accommodate this development.

When Vice-Mayor Field asked if there was a landscaping plan, Mr. Green responded that there is and that the developer is exceeding those requirements.

Vice-Mayor Field then wondered if there was space at that location if the City, in the future, decided to build a sidewalk. Mr. Clay Mooney, landscape architect for the project, explained that from the back of the curb to the right-of-way line, there is only 7-1/2 feet and if we put a 5 foot sidewalk in, that only leaves a 2 foot wide green strip between the sidewalk and Hendersonville Road. They felt this would basically be a sidewalk from nowhere to nowhere. There is nothing in either direction and the nearest residential area is 3/4's of a mile away. He noted that he has landscaping that actually goes into the N.C. Dept. of Transportation's right-of-way.

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

B. NC LEAGUE OF CITIES CONGRESSIONAL CONFERENCE

Vice-Mayor Field and Councilman Worley gave a report to City Council on their recent trip to Washington, D.C., to attend the NC League of Cities Congressional Conference. They noted that Councilman Skalski is still at the conference.

C. UNITY IN DIVERSITY DAY

At the request of Ms. Johnice, Mayor Martin proclaimed Wednesday, March 20, 1996, as "Unity in Diversity Day" in the City of Asheville. Ms. Johnice briefed the Council on activities that would be taking place that day and invited all Council to attend.

D. BICENTENNIAL COMMITTEE

Mayor Martin invited Council and the public to attend a community-wide meeting of the Mayor's Bicentennial Committee. The meeting will be held on Thursday, March 28, 1996, at 7:00 p.m. in the Banquet Room of the Asheville Civic Center.

E. COMMENTS BY MR. H.K. EDGERTON

Upon inquiry of Mr. H.K. Edgerton about the City's response to the YMI Cultural Center's financial request, Vice-Mayor Field said that staff has reviewed the information and the Committee will be meeting soon to consider the request.

Mr. Edgerton questioned if the City had an affirmative action report and does the City look at the affirmative action policies of organizations which the City purchases goods and services from. City Manager Westbrook said that the City has adopted an Affirmative Action Plan. He was, however, not aware of the City reviewing affirmative

-8-

action plans for businesses that the City does business with. There is a nondiscrimination clause in the contracts that the City signs.

F. COMMENTS BY MR. RALPH BISHOP

Mr. Ralph Bishop commented on, among other things, his right to speak longer than three minutes.

G. CLAIMS

The following claims were received by the City of Asheville during the week of February 23-29, 1996: Patrick Johnson (Streets), Rose Treadaway (Streets), Clay Management Properties (Water) and Katherine Daven (Sanitation).

The following claims have been received during the week of March 1-7, 1996: Yousef Benomran (Water), Effie Jones (Water), Dennis DeWeece (Fire) and Pam Livingston (Streets).

He said that these claims would be referred to Asheville Claims Corporation for investigation.

H. CLOSED SESSION

At 6:15 p.m., Vice-Mayor Field moved to go into closed session as authorized by G.S. 143-318.11 (a) (6) to consider the performance of an individual officer or employee. This motion was seconded by Councilman Worley and carried unanimously.

At 6:40 p.m., Vice-Mayor Field moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:40 p.m.

CITY CLERK MAYOR
