

Tuesday - April 23, 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; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Skalski gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 96-59 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE HAROLD BALL, LABORER SENIOR IN THE PUBLIC WORKS DEPARTMENT

City Manager Westbrook read the resolution stating that Harold Ball has been an employee for over 27 years and has requested retirement from his position as Laborer Senior in the Sanitation Division in the Public Works Department. He expressed City Council's appreciation to Harold for his service to the City of Asheville and its citizens.

Resolution No. 96-59 was adopted by acclamation.

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B. PROCLAMATION RECOGNIZING APRIL 25, 1996, AS "PARKS AND RECREATION VOLUNTEER DAY"

Mayor Martin read the proclamation recognizing April 25, 1996, as "Parks and Recreation Volunteer Recognition Day" in the City of Asheville and presented the proclamation to Ms. Debbie Ivester, Superintendent of Administration for the Parks & Recreation Department. Ms. Ivester thanked the Council for this recognition and briefed them on some activities that will be taking place during the day.

C. PROCLAMATION RECOGNIZING MAY 2, 1996, AS "NATIONAL DAY OF PRAYER"

Mayor Martin read the proclamation recognizing May 2, 1996, as "National Day of Prayer" in the City of Asheville. He presented the proclamation to Ms. Carol Collins and Mr. Steve Cooper who briefed the Council on some activities that would be taking place during that day.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING TO ANNEX PROPERTY LOCATED AT 150 WESTSIDE DRIVE IN THE WESTSIDE INDUSTRIAL PARK (CARE FREE WINDOWS/KINCO DIVISION)

ORDINANCE NO. 2276 - AN ORDINANCE TO ANNEX PROPERTY LOCATED AT 150 WESTSIDE DRIVE IN THE WESTSIDE INDUSTRIAL PARK (CARE FREE WINDOWS/KINCO DIVISION)

Mayor Martin opened the public hearing at 5:17 p.m.

City Clerk Burleson presented the notice to the public setting the time and

date of the public hearing.

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Mr. Carl Ownbey, Urban Planner, said that the Planning Department has received a petition under G.S. 160A-58.1 to annex a non-contiguous property on 150 Westside Drive known as Care Free Windows.

On September 29, 1995, the City of Asheville received a signed petition from Care Free Windows requesting annexation of their property. The annexation is in accordance with the agreement between Care Free Windows and the City of Asheville for extension of sewer services. The property is not more than three miles from the primary corporate limits and is not closer to the primary limits of another city than it is to the City of Asheville. The effective date of the annexation will be April 23, 1996.

City Attorney Slawter responded to an inquiry from Mr. Ralph Bishop about the rights given to areas when they are annexed, in particular "the right to sell whiskey".

Mayor Martin closed the public hearing at 5:22 p.m.

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

Councilman Worley moved for the adoption of Ordinance No. 2276. This motion was seconded by Vice Mayor Field.

On a roll call vote of 7-0, Ordinance No. 2276 passed on its first and final reading.

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### III. UNFINISHED BUSINESS:

### IV. NEW BUSINESS:

#### A. RESOLUTION NO. 96-60 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE WEST BUNCOMBE FIRE DEPARTMENT FOR PROVISION OF FIRE PROTECTION SERVICES TO THE CARE-FREE WINDOWS PROPERTY ANNEXATION AREA

Mr. Carl Ownbey, Urban Planner, said that as Asheville annexes the Care-Free Windows property, state law requires provision of fire protection services. West Buncombe Volunteer Fire Department presently provides those services to the property. The City has developed a standard fire protection contract for this purpose. Execution of this contract would provide for replacement of lost property tax revenue in the amount of \$1,386.63. This contract is a year-to-year agreement, revocable by either the City or West Buncombe on 30 days' notice.

Upon execution of this agreement, the Asheville Fire Department and the West Buncombe Volunteer Fire Department would simultaneously respond to fires, fire-related emergencies, and medical emergencies.

Fire Chief John Rukavina answered various questions from Councilman Hay regarding the level of service.

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

Councilman Hay moved for the adoption of Resolution No. 96-60. This motion was seconded by Councilman Worley and carried unanimously.

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B. RESOLUTION NO. 96-61 - RESOLUTION ACCEPTING SHADY CIRCLE AS A CITY SYSTEM STREET

Mr. Mark Combs, Public Works Director, said that the developer of the Laurel Bridge housing development is requesting the City to accept maintenance responsibility for Shady Circle by adding it to the city street system.

When this matter was discussed at Council's worksession on April 2, 1996, staff recommended denial of this request due to Shady Circle only serving a single property developed for rental housing; private parking in the cul-de-sac for apartment residents; and the precedence being set for streets in a similar situations that don't meet the City policy. They felt that if the apartments, in the future, did turn into condominiums, then acceptance might be acceptable to the City.

Worksession discussion on April 2, 1996, surrounded Public Works staff requesting removal of a tree located in the curb line near the entrance of Shady Circle as one condition for acceptance of the street.

On April 3, four administrative staff visited the site. It is important to note that the tree is located in the curb line and not behind it. Consensus problems noted were:

- Potential water intrusion under pavement.
- Potential for tree roots to "buckle" pavement as tree grows.
- Site distance for motorists entering Whitson Street. The Traffic Engineer emphasized that this was not a severe hazard, however, due to extremely low traffic volume on both streets.
- Potential pedestrian or bicycle hazard due to sharp drop-off from edge of pavement.
- Potential liability to City as "roadway obstruction" due to physical location of tree and potential for vehicle damage by hitting tree or driving over the missing curb section.

The aid of an arborist was enlisted to examine the tree for its potential long-term survival. The examination revealed that the tree was healthy.

In a telephone conversation with Scott Dedman, Executive Director of Mountain Housing Opportunities Inc., on April 19th, Mr. Dedman agreed to correct the following deficiencies prior to acceptance as a City street:

- Replace section of cracked curb.
- Backfill around two poplar trees.
- Grout pipes in stormwater inlet.
- Seal expansion joints in curb and gutters.

· Remove tree and replace missing curb section, if necessary, and per City Council directive.

Mr. Combs distributed six photographs showing the subject tree and reiterated that the Public Works staff recommends the tree be removed as one of the conditions for street acceptance. Staff felt that if the

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tree remained, it would cause potential maintenance problems, like buckling the pavement. He once again stated the problems associated with the tree location.

Councilman Worley moved to accept a 179 foot section of Shady Circle as a City system street subject to Mountain Housing Opportunities Inc. (1) replacing section of cracked curb; (2) backfilling around two poplar trees; (3) grouting pipes in stormwater inlet; (4) sealing

expansion joints in curb and gutters; and (4) removal of tree and replacing missing curb section. This motion was seconded by Councilman Sellers.

Vice-Mayor Field and Councilman Hay understood the reasoning why the recommendation was to remove the tree, but basically were in favor of letting the tree remain, if at all possible.

Mr. Dedman understood Council's concern regarding whether the tree should be left or removed and said that "as far as future damage to the road, I would be happy to offer if that tree causes buckling of the pavement or where it starts washing out and damaging the pavement, I could go on record now - we'll pay to have the tree removed at that time and put the pavement back as it should be, put the road back as it should be and replace the curb at that time that it causes a problem."

City Attorney Slawter advised Council that if they desired to accept that portion of Shady Circle as a City system street today, the resolution could be adopted conditioned upon execution of an agreement with Mountain Housing Opportunities Inc. for them to (1) replace section of cracked curb; (2) backfill around two poplar trees; (3) grout pipes in stormwater inlet; (4) seal expansion joints in curb and gutters; and (5) should the tree start damaging the pavement, at Mountain Housing Opportunity Inc.'s expense, the tree be removed, the pavement and road be repaired and the curb be replaced, at the City's request.

Councilman Worley then amended his motion to accept a 179 foot section of Shady Circle as a City system street subject to the conditions outlined above by City Attorney Slawter. This amendment to the motion was accepted by Councilman Sellers, and said amended motion carried unanimously.

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

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#### V. CONSENT:

At the request of Mr. Ralph Bishop, Item A. was removed from the Resolutions & Motions Consent Agenda to be discussed separately.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 9, 1996, AND

THE WORKSESSION HELD ON APRIL 16, 1996

This item was removed from the Resolutions & Motions Consent Agenda to be discussed individually.

B. RESOLUTION NO. 96-62 - RESOLUTION ACCEPTING THE DONATION OF A HORSE BY THE NAME OF SONNY BYBAR AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT TO REFLECT THAT ACCEPTANCE

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Summary: Accept the donation of a quarter horse by the name of Sonny Bybar for use by the Asheville Police Department Mounted Horse Patrol Program.

The Mounted Horse Patrol has utilized the services of Sonny Bybar since June, 1995, on a trial basis. This period has proven very successful.

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C. RESOLUTION NO. 96-63 - RESOLUTION AUTHORIZING AND ENDORSING THE USE OF A LIKENESS OF THE CITY BUILDING BY THE LEWIS RATHBUN WELLNESS CENTER

SUMMARY: The Lewis Rathbun Wellness Center has a collector series of ornaments. The City has received a request to grant permission for them to use City Hall as a subject matter for the fourth in the collector series of ornaments. As part of the request, Ms. Bonnie Brannon, Administrative and Development Director for the Lewis Rathbun Wellness Center, asks for an endorsement by the City Council. She also indicated that the 1995 ornament was endorsed by the Chamber of Commerce and she also plans to seek their continued support.

Staff has reviewed this request with the City Attorney. It is the recommendation of the City Attorney that City Council consider adopting a resolution authorizing the Center to use the City Hall building as a subject matter for a collector ornament, and to also consider in the resolution an endorsement of the collector series program by the Lewis Rathbun Wellness Center. To staff's knowledge, a similar request has not been received by the City for such permission or an endorsement. Therefore, by proceeding in this manner the City Council may address any future requests on an individual case by case basis.

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D. RESOLUTION NO. 96-64 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING DISPOSAL PARCEL 4A OF THE EAST RIVERSIDE REDEVELOPMENT PROJECT

Summary: Disposal Parcel 4A is a CS Commercial Service lot near the corner of Hilliard and South French Broad Avenues, comprising 16,852 square feet. The bid from Hilliard Avenue Partnership for Disposal Parcel 4A includes the proposal to incorporate the lot into the property currently owned by Hilliard Avenue Partnership where the offices of Waddell Sluder Adams & Co. and Maryland Casualty Co. are located. The development proposal consists of landscaping and maintaining the lot

consistent with the currently owned property. Hilliard Avenue Partnership consists of Robert B. Gelder Jr. and Julia Adams Slipher.

The bid of Hilliard Avenue Partnership in the amount of \$67,400 for the purchase of Disposal Parcel 4A in the East Riverside Redevelopment Project is not less than the established minimum price of \$67,400.

This resolution will initiate the sale of the property through the upset bid process as provided in G.S. 160A-269.

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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 Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

Ordinances:

ORDINANCE NO. 2277 - ORDINANCE AMENDING HORSE DRAWN CARRIAGE REGULATIONS

At the request from a member in the audience, this item was pulled from the Ordinance Consent Agenda and discussed separately.

The summary of this action is as follows: City Council has established various locations to which horse drawn carriages are confined, and it would be beneficial to remove that specified confinement, allowing carriage routes to be approved or disapproved, in advance of their use, by the carriage inspector and the Chief of Police.

Mr. Stewart Davis, representative of the North Carolina Network for Animals, spoke in opposition of this proposed amendment. He passed out a flyer prepared by the Buncombe County Friends for Animals that was distributed in 1990 when horse drawn carriage regulations were first being developed, which outlined why the regulations are unenforceable. Said flyer noted that the following national groups opposed carriage horses: (1) Humane Society of the United States, (2) National Organization of Friends of the Animals, (3) American Society of Prevention of Cruelty to Animals, (4) Association of Veterinarians for Animal Rights, (5) People for the Ethical Treatment of Animals, and (66) Carriage Horse Coalition. The flyer also noted that the following local groups "joined together to ban carriage horses in Asheville": (1) Friends of Animals, (2) Humane Society, (3) Society for Prevention of Cruelty to Animals, and (4) Western North Carolina Animal Rights Coalition. He then read a prepared statement which, among other things, described accidents that have occurred with horse drawn carriages and car traffic, inhumane treatment of horses, etc. He said that the horse carriage inspector needed to be someone with horse experience - not the City's shop supervisor in the Fleet Maintenance Division. He also said that the ordinance calls for a Carriage Permit Advisory Board which is not in place. He urged Council not to expand the routes because the current regulations in place are not being met. He felt that if the area is expanded, more people will want to get into the business and, once again, since the regulations are not in place, the area should not be expanded.

Ms. Virginia Schmidt felt that the City should not limit the Carriage Permit Advisory Board members to only be City residents since most horse owners live in the County. She felt the City should not expand the routes since the City is negotiating an agreement with the Buncombe County Friends for Animals for animal control. She urged Council not to adopt this proposed ordinance amendment.

Mr. Richard Nantell suggested that not only the carriage inspector and the Chief of Police be allowed to approve or disapprove a route, but that the City's Traffic Engineer be involved in the process as well.

City Manager Westbrook said that the Police Department will have the ultimate responsibility, but will draw on the resources from other City departments in making their decision.

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Councilman Hay felt that the issues raised were very important and asked that if we have such an ordinance in effect, that the regulations be enforced.

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

Vice-Mayor Field moved for the adoption of Ordinance No. 2277. This motion was seconded by Councilman Skalski.

On a roll call vote of 7-0, Ordinance No. 2277 passed on its first and final reading.

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ITEM REMOVED FROM THE RESOLUTIONS & MOTIONS CONSENT AGENDA

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 9, 1996, AND THE WORKSESSION HELD ON APRIL 16, 1996

Mr. Ralph Bishop contended that State law requires full and accurate minutes to be verbatim.

Councilman Worley moved to approve the minutes from the regular meeting held on April 9, 1996, and the worksession held on April 16, 1996. This motion was seconded by Councilman Hay and carried unanimously.

VI. OTHER BUSINESS:

A. HOUSING CODE APPEAL FROM LARRY LINNEY

City Attorney Slawter stated that on April 23, 1996, the City Clerk received a facsimile copy of a motion to continue from Mr. Linney, said Motion reads "NOW COMES Respondent, Larry R. Linney, to request a continuance in the 'Unsafe Building' Appeal scheduled for Tuesday, April 23, 1996. Due to my unavailability on said date, Respondent respectfully request this matter be heard on Tuesday, April 30th; or Monday, April 29th or possibly Friday, May 3rd. This the 22nd day of April, 1996."

After discussion on a date and time suitable for all concerned, Councilman Worley moved to continue the hearing until Tuesday, April 30, 1996, at 4:30 p.m. in the Council Chamber on the Second Floor of the City Hall Building, with the goal to be finished by 6:30 p.m. This motion was seconded by Vice-Mayor Field and carried unanimously.

B. DRUG FREE WORKPLACE

At the request of Mayor Martin, and upon consensus of City Council, City Attorney Slawter was instructed to prepare a resolution establishing a policy that would require vendors who do business with the City certify that they are a drug free workplace.

C. BICENTENNIAL COMMITTEE

Mr. Richard Nantelle, representing the Asheville Bicentennial Committee,

briefed Council on the status of the bicentennial logo. On behalf of the Committee, he asked that the artist of the logo receive special recognition at their next community meeting on April 29, 1996, at 7:00 p.m. in the Pack Place Forum Room. He also asked that a resolution be adopted by Council that would authorize and endorse the

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logo and it's use in representing the City of Asheville in our bicentennial celebration.

Mayor Martin said that at least three Council members would be out of town on April 29 and asked that he express their regrets to the Committee for not being at their community meeting.

Vice-Mayor Field noted that Council should see the logo prior to endorsing it.

#### D. COMMENT BY RALPH BISHOP

Mr. Ralph Bishop again commented about the lack of action regarding the outstanding felony of someone putting sugar in his gas tank.

Mayor Martin noted that the officer that was involved in this incident retired from service over 18 years ago.

#### E. CLAIMS

The following claims were received by the City of Asheville during the week of April 4-11, 1996: Tonya Aranha (Police), JoAnn Williams (Streets), Katie Winchell (Water), Buncombe County Sheriff's Department (Water) and Bill Petz (Water).

The following claims were received during the week of April 12-18, 1996: Allan and Joyce Scott (Police), Sharyn Baird (Water), Charlie McAdams (Water) and Bell South (Water).

These claims will be referred to Asheville Claims Corporation for investigation.

#### VII. CONTINUANCE:

Councilman Worley moved to continue the meeting until Tuesday, April 30, 1996, at 4:30 p.m. in the Council Chamber on the Second Floor of the City Hall Building. This motion was seconded by Councilman Sellers and carried unanimously.

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Tuesday - April 30, 1996 - 4:30 p.m.

Continuance of Regular Meeting held on Tuesday, April 23, 1996

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

Absent: None

UNSAFE BUILDING STATUTE APPEAL FROM LARRY R. LINNEY REGARDING 44 SOUTH MARKET STREET

Pursuant to N.C. Gen. Stat. sec. 160A-430, Larry R. Linney, owner of a building located at 44 South Market Street has appealed to the City Council the entry of an Order by Fire Marshall Wayne Hamilton on March 8, 1996, requiring that said building be vacated and closed. That Order

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requires that the building be vacated immediately and that it be secured within 30 days from the owner's receipt of the Order. In addition, Mr. Hamilton's Order requires an inspection by a licensed North Carolina engineer to evaluate the structural safety of the bearing walls and roof system within 30 days in order to determine if further action is required to insure public safety.

On March 15, 1996, the City Clerk received from Mr. Linney a Notice of Appeal from the Order of Mr. Hamilton to the City Council pursuant to N.C. Gen. Stat. sec. 160A-430.

A hearing was held and a complete copy of the transcript can be found in the Office of the City Clerk.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 10:54 p.m.

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CITY CLERK MAYOR

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