

Tuesday - February 26, 1985 - 4:00 p.m.

Regular Meeting

Present: Mayor Larry McDevitt, Presiding; Vice-Mayor Wilhelmina Bratton; Councilmen Mary Lloyd Frank, Norma T. Price, Gordon Myers, Walter R. Boland, and Louis Bisette; Corporation Counsel William F. Slawter; City Manager Neal Creighton; and Associate City Manager/City Clerk William F. Wolcott, Jr.

Absent: None

## **INVOCATION**

The invocation was given by Councilman Louis Bisette.

## **APPROVAL OF THE MINUTES - FEBRUARY 19, 1985 MEETING**

1. Approval of the minutes of the February 19, 1985 meeting.

Mayor McDevitt announced that since Councilmembers have not had an opportunity to review the minutes, approval of the minutes of the February 19, 1985 meeting would be held over until the February 26, 1985 meeting.

## **PROCLAMATION - MARCH 3-9, 1985 - "ASHEVILLE AND BUNCOMBE COUNTY DRUG AWARENESS WEEK"**

Mayor McDevitt read a joint proclamation proclaiming March 3-9, 1985 as "Asheville and Buncombe County Drug Awareness Week."

Mayor McDevitt presented the proclamation to Pete Banyai and Cleve Tidwell with Asheville "Pride."

## **PUBLIC HEARING - ORDINANCE AMENDING THE CHARTER OF THE CITY OF ASHEVILLE REGARDING THE SELECTION OF MAYOR**

2. A public hearing was held relative to the adoption of an ordinance amending the Charter of the City of Asheville regarding the selection of Mayor.

Mayor McDevitt said Resolution No. 83-209 relative to the process for election of the Mayor was unanimously adopted by the City Council of the City of Asheville on December 6, 1983, and said Resolution provided that the City Council go on record endorsing the concept of examining the feasibility of the Mayor being elected by the citizens rather than by the present process of being elected by the seven (7) members of the City Council. The City Council has continued to examine the feasibility of the direct election of the Mayor by all of the qualified voters of the City. This public hearing will afford the people of the City of Asheville the opportunity to voice their opinion on the Direct Election of Mayor.

Mayor McDevitt said Council would take no action on the ordinance at today's meeting, but the ordinance would be placed on the agenda for February 26, 1985 for action. He said this particular ordinance does not contain a provision to hold a referendum relative to the direct election of the Mayor. He said Council members could decide by the third reading of the ordinance

whether or not to hold a referendum on the issue.

Mayor McDevitt opened the public hearing at 4:12 p.m.

Mayor McDevitt summarized the proposed ordinance.

Corporation Counsel Slawter said the adoption of this ordinance would simply change the method of election of the Mayor. He said it would in no way change the authority of the Mayor. He said after the adoption of the ordinance, Council may request the North Carolina General Assembly to change the City of Asheville Charter, particularly with reference to the requirement of the Mayor to vote. He said this action would be requested in order to clarify this requirement.

The following individuals spoke in opposition to the adoption of an ordinance for the direct election of the Mayor, stating that the present method has worked for a number of years, and the proposed method may lose good qualified candidates for Council seats that would run for Mayor. It was suggested that the Mayorship be given to the individual receiving the highest number of votes:

George White - West Asheville

Pauline Tennant - Tennant Lane

Mrs. Algary - 172 Wembly Road

Carol Smith - Beverly Hills

Florence Ryan - 74 Wembly Road

Bill Tennant - Tennant Lane

The following individuals spoke in support of adoption of an ordinance, for the direct election of the Mayor, stating that the citizens of Asheville had the right to elect their own Mayor, and there is divisiveness in electing the Mayor under the present method:

F. D. Fitzgerald Horn

Rev. Wendall Christerpher

Dr. Otis Michael - former Councilman

Mrs. Jones - 72 Jefferies Avenue

Ralph Bishop

Steve Wilborn

The City Clerk presented the notice to the public setting the time and date for the public hearing and the affidavit of publication.

Mayor McDevitt closed the public hearing at 4:43 p.m.

### **ORDINANCE NO. 1498 - AN ORDINANCE IMPOSING A 90 DAY MORATORIUM LIMITING DEVELOPMENT IN THE HAW CREEK AREA**

3. Consideration was given to the second reading of Ordinance No. 1498, an Ordinance imposing a 90 day moratorium limiting development in the Haw Creek Area.

Mayor McDevitt said at its meeting on January 9, 1985, the Asheville Planning and Zoning Commission after hearing presentations by the Haw Creek Community Association, Inc. voted to recommend to the Asheville City Council that a 90 day moratorium be imposed on all development in the Haw Creek area.

The stated purpose for said moratorium is as follows: To allow a study of existing conditions in the neighborhood to determine the ability of utility, roads and streets systems to accommodate additional growth. In addition the

Commission recommended that staff study the zoning patterns of the neighborhood along with the ability of the school system to absorb any additional influx of students. This ordinance was read on first reading on February 19, 1985.

Verl Emrick, Director of Planning, said during the past week five (5) permits have been requested for five (5) separate buildings containing 4 units each on Melton Drive. He said Mr. Summey presented plans for five (5) different permits on separately owned parcels. He said under these conditions, the developers are not required to meet the requirements of the subdivision or group development section of the Zoning Ordinance.

Several Council members suggested that the subdivision ordinance be amended to prevent future problems of developers building a multi-unit apartment complex after his original plans were denied.

Gary Rowe, Attorney for the Haw Creek Homeowners Association and residents of Melton Drive, said he felt the action by Mr. Summey was an attempt to avoid compliance with the proposed moratorium. He said he felt, even though Mr. Summey is proposing to build on 5 separate lots, that his project should come under the Group Development section of the Zoning Ordinance. He cited several sections of the subdivision ordinance and Zoning Ordinance. He said, in his opinion, Mr. Summey may be complying with the letter of the law; but is not complying with the spirit of the law, and certainly not the spirit of the moratorium. He cited a portion of the subdivision ordinance that required "all lots have to abut on public right-of-way." He said all of Mr. Summey's lots do not abut on public right-of-way. He said the Haw Creek Homeowners Association and the residents of Melton Drive opposed the action of Mr. Summey. He suggested that Council amend the moratorium ordinance to include all zoning permits since last reading, and further requested that the second and third reading of the moratorium be held at today's meeting.

The following individuals spoke in opposition to the action taken by Mr. Summey, and further requested that the ordinance relative to the moratorium be passed on second and third readings today:

Pauline Tennant - Board Member of the Haw Creek Homeowners

Association

Mr. Nichols - Haw Creek

Bill Tennant - Tennant Lane

Mr. Manley - Haw Creek

Councilman Frank said she had asked at the meeting of February 19, 1985, whether or not any permits had been issued or planned to be issued that would be affected by the moratorium, and she received a response that there were not any permits pending. She said the moratorium on developments will not solve the problems in Haw Creek, but would be a beginning.

Upon inquiry of Council, Corporation Counsel Slawter said he felt Council would have a legal problem if they decided to make the moratorium retroactive. He said Council could pass the ordinance on second and third readings today. He said in researching Mr. Summey's plans, it is his opinion that Mr. Summey is meeting all requirements of the letter of the law. He said he did not feel Council has authority over Mr. Summey's proposed plans.

Mayor McDevitt said he would request to be excused from voting on the second and third readings of the moratorium ordinance, since he felt the issue indirectly involves Mr. Mike Summey, the Developer, and his law firm represents Mr. Summey. He said he felt there would be a conflict of interest.

Mr. Rowe said the issues brought to the attention of Council relative to the requirement of the subdivision ordinance that all lots abut on public right-of-way should be addressed by Council.

Mayor McDevitt renewed his request to be excused from voting on the second and third reading of Ordinance No. 1498, since his law firm represents Mr. Mike Summey, Developer, who is indirectly involved in the moratorium ordinance.

Councilman Boland moved to excuse Mayor McDevitt from voting on Ordinance No. 1498. This motion was seconded by Councilman Bissette and carried unanimously.

Mayor McDevitt said this ordinance was previously read on first reading and would not be re-read in its entirety unless there was a specific request to do so.

On a roll call vote of 6-0, Ordinance No. 1498 passed on second reading.

Councilman Boland moved to suspend the rules and proceed to the third reading of Ordinance No. 1498. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 6-0, Ordinance No. 1498 passed on third and final reading.

Complete text of Ordinance No. 1498 will be found in Ordinance Book No. **10** at Page **240**.

**ORDINANCE NO. 1499 - BUDGET ORDINANCE AMENDMENT TO PROVIDE FUNDING FOR THE ON-GOING INCENTIVE HOUSING (DOLLAR A LOT) PROJECT**

4. Consideration was given to a Budget Ordinance Amendment to provide funding in the amount of \$7,086 for on-going Incentive Housing (Dollar-A-Lot) project.

Mayor McDevitt said the Incentive Housing (Dollar-A-Lot) project was established in 1977 with Community Development funds as a residential, home ownership incentive program for low and moderate income families in the East Riverside Urban Renewal area. Families qualifying for this Community Development-Asheville Housing Authority program purchased these urban renewal residential lots for one dollar, enabling low and/or moderate income families to build homes in the neighborhood. This program is still available in the East Riverside area supported by "property disposition funds" from the East Riverside Urban Renewal Project and has been extended to the East End/Valley Street Redevelopment area. Funds to continue support for this project are available from Community Development property disposition income in the East Riverside and East End/Valley Street area.

Barry Master, with the Pisgah Legal Services, requested a meeting with the City Council to discuss housing issues on behalf of his clients. He said

the session would be relative to housing and community development City-wide, and particularly in the Montford area.

Mayor McDevitt said members of Council were furnished copies of the ordinance and it would not be read in its entirety.

Councilman Frank moved for the adoption of Ordinance No. 1499. This motion was seconded by Councilman Boland.

On a roll call vote of 7-0, Ordinance No. 1499 passed on first and final reading.

Complete text of Ordinance No. 1499 will be found in Ordinance Book No. **10** at page **244**.

**ORDINANCE NO. 1500 - BUDGET ORDINANCE AMENDMENT TO PROVIDE FUNDING FOR A SEWER LINE TO SERVE PROPOSED DEVELOPMENT IN THE SOUTH BUNCOMBE ANNEXATION AREA**

5. Consideration was given to a budget ordinance amendment to provide funding for a sewer line to serve proposed development in the South Buncombe Annexation Area.

Mayor McDevitt said this ordinance will provide funding for a sewer line to serve a proposed development in the South Buncombe Annexation Area. The total cost of the project is estimated to be \$400,000, of which the City will fund \$120,000. The proposed development will generate additional ad valorem taxes in the estimated amount of \$32,450 per year, which will result in a 3.7 year payback for the City's cost. Funding will be provided by use of uncommitted funds in the amount of approximately \$500,000 designated for sewer line improvements to annexed

areas. This will leave an uncommitted balance of approximately \$280,000 in the sewer annexation reserve.

Mayor McDevitt indicated that the Town of Biltmore Forest, the County of Buncombe, and private enterprise will be contributing to the cost of the sewer line in the South Buncombe annexation area.

Mayor McDevitt said members of Council were furnished copies of the ordinance and it would not be read in its entirety.

Councilman Bissette moved for the adoption of Ordinance No. 1500. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1500 passed on first and final reading.

Complete text of Ordinance No. 1500 will be found in Ordinance Book No. **10** at page **245**.

**RESOLUTION NO. 85-10 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDERS WITHIN THE BUDGETED AMOUNT WITH HICKORY CONSTRUCTION COMPANY FOR THE PROJECT KNOWN AS GASHES CREEK ROAD BRIDGE REPLACEMENT PROJECT**

6. Consideration was given to a resolution authorizing the Mayor to execute on behalf of the City of Asheville a contract with Hickory Construction Company for the project known as Gashes Creek Road Replacement Project.

Mayor McDevitt said Gashes Creek Road is in need of replacement due to its age and present condition. Gashes Creek Road Bridge is included in the Federal Aid Off-System Bridge Replacement Program. Bids were opened on the Gashes Creek Road Bridge Replacement Project on February 20, 1985. This resolution will authorize the Mayor to execute a contract and any change orders within the budgeted amount with Hickory Construction Company, low bidder on the Gashes Creek Road Bridge Replacement Project in the amount of \$780,705.48. Sufficient funds are available in the Federal Aid Off-System Bridge Replacement Program.

Clark Brown, Director of Public Works, said the bidders on the project were Crowder Construction Company in the amount of \$835,560.40; Taylor and Murphy Construction Company-\$917,892.90; and Hickory Construction Company in the amount of \$780,705.48.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Frank, seconded by Councilman Price, Resolution No. 85-10 was unanimously adopted.

Complete text of Resolution No. 85-10 will be found in Resolution Book No. **15** at page **139**.

**BIDS - THREE (3) REFUSE COLLECTION VEHICLES**

7. Consideration was given to bids received for three (3) refuse collection vehicles.

Mayor McDevitt said eight (8) bidders submitted proposals for three (3) refuse collection vehicles. Recommendations to accept bid from Western Carolina Truck Center for two (2) 1985 White Xpeditor WX64 Cab and Chassis in the total amount of \$156,929.40, and to accept Sanco Corporation for one (1) 1985 Ford F8000 Cab and Chassis in the amount of \$46,500.00. Sufficient funds are provided for these purchases in the Revenue Sharing Fund, Sanitation Division Account Code 50-428-074.

Clark Brown, Director of Public Works, reviewed the following

memorandum:

"Pursuant to North Carolina General Statute 143-129, sealed bids were received to furnish three (3) refuse collection vehicles to the Sanitation Division. Eight (8) bidders submitted proposals as shown on the attached bid summary.

T. Clark Brown, Director of Public Works, has reviewed these bids for technical compliance to specifications. A copy of his recommendation is enclosed.

Please submit these bids to City Council with the recommendation to award as follows:

**BID ITEM NO. A:** Two (2) each 25 Cubic Yard Capacity Refuse Collection Vehicles with Packer body.

Mr. Brown recommends rejecting the three (3) low bids on

the following basis:

**Low Bid (#1):** Western Carolina Truck Center for two (2) 1985 White Xpeditor Cab and Chassis with a Royal packer body, and Wayne dumping unit at \$75,214.70 each, totaling \$150,429.40. This bid is not recommended because Wayne Manufacturing Company, manufacturer of the packer body dumping unit is involved in Chapter Eleven.

**Low Bid (#2):** Public Works Equipment and Supply for two (2) 1985 Mack Cab and Chassis with a Leach 2R Packer body and Barker dumping unit at \$76,930.00 each, totaling \$153,860.00. This bid is not recommended because deficiencies were found in the Leach 2R ejection panel piston and the loading hopper.

**Low Bid (#3):** Western Carolina Truck Center for two (2) 1985 White Xpeditor Cab and Chassis with a Load Master pack body model LM-125 and CWDD dumping unit at \$77,104.70 each, totaling \$154,209.40. This bid is not recommended because the Load Master body Model LM-125 has not been approved or evaluated by the Public Works

Division.

Mr. Brown recommends acceptance of the bid from Western Carolina Truck Center for two (2) 1985 White Xpeditor WX64 Cab and Chassis with a Heil Formula 5000 packer body and Barker dumping unit at \$78,464.70 each, totaling \$156,929.40.

**Bid Item No. B:** One (1) each 13-Cubic Yard capacity refuse collectino vehicle with Packer body.

Mr. Brown recommends rejecting the low bid from Apple Tree Chevrolet for a 1985 Chevrolet Cab and Chassis with a Royal packer body and a Wayne dumping unit at \$46,449.00 due to Wayne Manufacturing Company, manufacturer of the packer body dumping unit being involved in Chapter Eleven.

Mr. Brown recommends acceptance of the next low bid from Sanco Corporation for one (1) 1985 Ford F8000 Cab and Chassis with a Heil

Formula 5000 packer body and a Barker dumping unit at \$46,500.00."

**Note:** A copy of the bid summary sheet is on file in the City Clerk's office.

Councilman Frank moved to accept the recommendation to award the bid to Western Carolina Truck Center for two (2) 1985 White Xpeditor WX64 Cab and Chassis in the total amount of \$156,929.40 and to Sanco Corporation for one (1) 1985 Ford F8000 Cab and Chassis in the amount of \$46,500.00. This motion was seconded by Councilman Price and carried unanimously.

## **APPROVAL OF THE CONSENT AGENDA**

8. Mayor McDevitt said the following items are of a routine nature and they have been previously reviewed by the members of the City Council. Therefore, by unanimous vote to approve these items, the City Council may, pursuant to the procedures established in Ordinance No. 1008, adopt all of the items

with one motion without the full reading and/or separate motion adopting each individual item. Upon the request of a citizen, a member of the City Council, and/or a member of the City staff, any single item scheduled for approval on the

consent agenda may be considered separately.

**A. A motion scheduling a public hearing relative to rezoning property**

located

at 1530 Hendersonville Road, requested by Oxford Development Enterprises, Inc. for Harry Clarke, Owner, from R-2 Residential District to R-3 Residential District for March 19, 1985.

**HIGHLIGHTS:**

The Asheville Planning and Zoning Commission at a meeting held February 6, 1985, considered the request of Oxford Development Enterprises, Inc. for Mr. Harry Clarke, Owner, that Ward 7, Sheet 60, Lots 1, 2, and 3 be rezoned from R-2 Residential District to CH Commercial Highway District. The property is located on Hendersonville Road. After review and discussion, the Commission voted to recommend to City Council that Ward 7, Sheet 60, Lots 1, 2, and 3, be rezoned from R-2 Residential District to

R-3 Residential District.

**B. Resolution No. 85-11 - Resolution authorizing the Mayor to sign an appli**

cation to participate in the National Main Street Center - Urban Demonstration Program sponsored by the National Trust for Historic Preservation.

**HIGHLIGHTS:**

The City of Asheville has been invited to submit an application for participation in the Main Street Urban Demonstration Program. This program will afford additional opportunities for the continued revitalization of Asheville's downtown. The City Council feels that participation in this program is in the best interest of the community-at-large. There is an estimated cost of \$85,000 over a three-year period; however, this

resolution will not commit the City to funding at this time.

Complete text of Resolution No. 85-11 will be found in Resolution Book No.

**15 at page 140.**

**C. Resolution No. 85-12 - Resolution establishing a Deferred Compensation**

Plan for employees of the City of Asheville.

**HIGHLIGHTS:**

This fringe benefit will offer employees of the City of Asheville an additional retirement option. No direct cost associated with this fringe benefit.

Complete text of Resolution No. 85-12 will be found in Resolution Book No.

**15 at page 141.**

**D. Resolution No. 85-13 - Resolution authorizing free parking at metered**

park

ing spaces March 1, 2, and 3, 1985 for the Southern Conference Basketball Tournament.

**HIGHLIGHTS:**

The Southern Conference Basketball Tournament will be held March 1, 2, and 3 in the Asheville Civic Center. The City wishes to encourage attendance

at the tournament and to waive metered parking charges on these dates. There will be a negative effect upon revenues of approximately \$350.00 which is not included in the current budget, but revenues are higher than expected so there would be no drastic effect.

Complete text of Resolution No. 85-13 will be found in Resolution Book No.

**15** at page **142**.

**E. Resolution No. 85-14** - Resolution authorizing the City Manager to sign a service agreement with Motorola Communications and Electronics, Inc.

**HIGHLIGHTS:**

The current agreement with Motorola Communications and Electronics, Inc., will expire on February 28, 1985. Motorola Communications and Electronics, Inc., has submitted a proposal to the City to continue providing maintenance service to the radio system for three (3) years under the same terms as the existing Agreement with no increase in per-unit cost and with additional services to be provided at no cost. This agreement will extend current contract costs for an additional three years, without any increase in cost. This will keep radio maintenance costs frozen at current budgeted amounts.

Complete text of Resolution No. 85-14 will be found in Resolution Book No.

**15** at page **143**.

**F. Resolution No. 85-15** - Resolution appointing Osborne M. Hart as Chairman of the Board of Alcoholic Control.

**HIGHLIGHTS:**

The term of office of Osborne M. Hart as Chairman of the City of Asheville Board of Alcoholic Control expired on November 13, 1984. It is provided by Chapter 1083 of the 1947 Session Laws of the State of North Carolina that the City Council shall designate the Chairman of the Board.

Complete text of Resolution No. 85-15 will be found in Resolution Book No.

**15** at page **144**.

Upon motion of Councilman Frank, seconded by Councilman Price, the Consent Agenda was unanimously adopted.

**MOTION RELATIVE TO AMENDING CONTRACT BETWEEN CITY OF ASHEVILLE AND JOHN A. BROADBROOKS**

At the request of the Corporation Counsel, Councilman Boland moved to amend the contract between the City of Asheville and John A. Broadbrooks, dated December 18, 1984, to delete the responsibility of John A. Broadbrooks to retain professional liability insurance, since the City of Asheville currently carries insurance to cover this liability. This motion was seconded by Councilman Bissette and carried unanimously.

**CLAIMS - GERALDINE SERVERSON (WATER) - BARBARA SPAIN (SANITATION) - CHRISTINE LONGORIA (STREETS) - RAYMOND WATKINS (WATER)**



The City Manager presented claims received from Geraldine Serverson, Barbara Spain, Christine Longoria, and Raymond Watkins.

Mayor McDevitt referred the claims to the Corporation Counsel for investigation and recommendation.

**LAWSUITS - HARRY ADAMS VS CITY OF ASHEVILLE (RETIREMENT SYSTEM) - ASHEVILLE HOUSING AUTHORITY VS CONDEMNATION OF ANNA BUXTON JACOBS' PROPERTY (EAST END/VALLEY STREET) - ASHEVILLE HOUSING AUTHORITY VS CONDEMNATION OF RACHEL ESTHER DICKSON PROPERTY (EAST END/VALLEY STREET)**

The City Manager said the City was served with summonses in connection with lawsuits involving Harry Adams VS City of Asheville - alleged negligence in providing information for participation in the Local Government Retirement System; Asheville Housing Authority involving condemnation of Anna Buxton Jacobs' property in the East End/Valley Street area; and Asheville Housing Authority involving condemnation of Rachel Esther Dickson property in the East End/Valley Street area.

Mayor McDevitt referred the summonses to the Corporation Counsel for investigation and recommendation.

**RALPH BISHOP - LOTTERY SALES IN THE CITY OF ASHEVILLE**

Ralph Bishop again spoke to members of Council relative to the lottery sales in the City of Asheville and the problems with the Asheville Police Department.

**ADJOURNMENT TO EXECUTIVE SESSION**

Councilman Price moved to adjourn to Executive Session to discuss legal and real estate matters. This motion was seconded by Councilman Frank and carried unanimously.

MAYOR CITY CLERK

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