

Tuesday - October 8, 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, and Louis Bisette; Corporation Counsel William F. Slawter; City Manager William F. Wolcott, Jr.; Deputy City Clerk Carol Hensley.

Absent: Councilman Walter R. Boland

INVOCATION

The invocation was given by Mayor Larry McDevitt.

APPROVAL OF THE MINUTES - OCTOBER 1, 1985 MEETING

1. Approval of the minutes of the October 1, 1985, meeting.

Mayor McDevitt announced the approval of the minutes as submitted.

PROCLAMATION - WEEK OF OCTOBER 6, 1985 - "FIRE PREVENTION WEEK"

2. Mayor McDevitt read a proclamation proclaiming the week of October 6, 1985, as "Fire Prevention Week".

Mayor McDevitt presented the proclamation to Chief Powell Ball of the Asheville Fire Department.

PROCLAMATION - OCTOBER 11 - 13, 1985 - "CROP WALK WEEKEND"

2a. Mayor McDevitt recognized Virginia Stevens, Coordinator of the Crop Walk Weekend.

Virginia Stevens said "Crop Walk Weekend" is held to help local hunger-fighting agencies receive local designated Crop Walk funds. She said 25% of the donations would go to Meals On Wheels and ABCCM, and 75% of the donations would go to the Hunger Abroad. She urged members of Council and the citizens of Asheville to walk or to sponsor a prisoner from Craggy Prison who will be walking on Saturday, October 12, 1985.

Mayor McDevitt proclaimed October 11 - 13, 1985, as "Hunger Fighting Weekend" (Crop Walk Weekend).

CONTINUATION OF PUBLIC HEARING - REZONING PROPERTY LOCATED ON HENDERSONVILLE ROAD - BILTMORE DAIRY FARMS, INC.

ORDINANCE NO. 1541 - AN ORDINANCE AMENDING ORDINANCE NO. 322, KNOWN AS "AN ORDINANCE PROVIDING FOR THE ZONING OF THE CITY OF ASHEVILLE", AS AMENDED - PROPERTY LOCATED ON HENDERSONVILLE ROAD (ATTORNEY CARSON FOR BILTMORE DAIRY FARMS, INC.)

3. A public hearing relative to the rezoning of property located on Hendersonville Road - Biltmore Dairy Farms, Inc. was continued.

Mayor McDevitt said the Asheville Planning and Zoning Commission at a meeting held August 7, 1985, considered the petition of Attorney Philip Carson for Biltmore Dairy Farms, Inc. that Ward 7, Sheet 52, Lot 169, 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 52, Lot 169, be rezoned from R-2 Residential District to CH Commercial Highway District. On October 1, 1985, at the request of

Attorney Philip Carson and the petitioner, Biltmore Dairy Farms, Inc., the public hearing was continued until October 8, 1985.

Verl Emrick, Director of Planning, said the Planning and Zoning Commission had recommended approval of the rezoning. He presented an Environmental Impact Statement from the North Carolina Department of Transportation stating that the Department has scheduled the widening of Hendersonville Road and would be making a right-of-way recommendation of 0'

to 40' from the existing right-of-way for the widening. He said at the present time there is no specific design for the widening of the roadway; however,

the project is scheduled for design in 1987 and acquisition in 1989.

Councilman Bisette expressed concern relative to right-of-way protection for the North Carolina Department of Transportation. He said since this property abuts Hendersonville Road, and the North Carolina Department of Transportation proposes to widen said road; he requested that Mr. Emrick seek input from the North Carolina Department of Transportation relative to this rezoning prior to the second reading of the ordinance.

Upon inquiry of Councilman Price, Mr. Emrick said there are no specific uses proposed for the property. He said the petitioners feel the property is unsuitable for residential purposes.

Attorney Phil Carson, representing Biltmore Dairy Farms, Inc., spoke in support of the rezoning stating that his client has no proposed use for the property at the present time. He said the proposed use would be contingent upon the rezoning.

After discussion, Mayor McDevitt closed the public hearing at 4:26 p.m.

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

Vice-Mayor Bratton moved for the adoption of Ordinance No. 1541. This motion was seconded by Councilman Bisette.

On a roll call vote of 6-0, Ordinance No. 1541 passed on first reading.

PUBLIC HEARING - ADOPTION OF REDEVELOPMENT PLAN - HAYWOOD/WALL STREET REDEVELOPMENT PROJECT

RESOLUTION NO. 85-182 - RESOLUTION APPROVING AND ADOPTING THE REDEVELOPMENT PLAN FOR THE HAYWOOD/WALL STREET REDEVELOPMENT PROJECT

4. A public hearing was held relative to the adoption of a redevelopment plan for the Haywood/Wall Street Redevelopment Project.

Mayor McDevitt said the City has entered into an agreement with several developers for redevelopment projects in the Haywood Street and Wall Street area. There are other proposed redevelopment projects for this area as well. Some of the developers will be using redevelopment bonds as partial financing for their projects. In order to secure redevelopment bonds and to carry out redevelopment projects in the area, it is necessary to consider the adoption and approval of a redevelopment plan for the project area, all pursuant to the North Carolina Urban Redevelopment law as found in the N. C. General Statutes Sections 160A-500 et. seq. Public funds for the Haywood/

Wall Street Redevelopment Plan total \$2,992,000 (\$272,000 of which is included as "Project Contingency"). Funds will come from CDBG, General Revenue Sharing, proceeds of a "2/3 Bond Issue", Buncombe County funding and Loan Repayments from UDAG's. \$2,200,000 will be used towards a proposed parking deck on Rankin Avenue between Walnut Street and College Street. The balance, excluding contingency funds, will be used for street, sidewalk

and other public improvements.

Mayor McDevitt opened the public hearing at 4:28 p.m.

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

Larry Holt, Deputy Executive Director of the Asheville Housing Authority, gave an in-depth, detailed presentation of the Haywood/Wall Street

Redevelopment Plan.

Note: A copy of the Redevelopment Plan for the Haywood/Wall Street Redevelopment Project is on file in the Office of the City Clerk.

Upon inquiry of Ralph Bishop, Mayor McDevitt explained the procedure for using redevelopment bonds in this project.

Barry Olen, merchant and property owner on Wall Street, spoke in support of the redevelopment plan for the Haywood/Wall Street Redevelopment Project. He said the Wall Street and Battery Park Merchants Association pledge their cooperation and support for the plan. He requested that City Council instruct the City staff to continue their efforts to alleviate any problems during the construction phase of the project. He said that problems he would foresee in the project would be parking during construction, renovation procedures, and construction during the daytime business hours.

Upon inquiry of Mr. Olen, Mayor McDevitt said no final decision had been made relative to the opening or closing of Wall Street. He said, upon inquiry of Mr. Olin, that the area would be a mixed use of residential and retail area.

Upon inquiry of Kathryn Grooms, resident of Asheville and merchant on Wall Street, Mayor McDevitt answered questions relative to the entire site plan being approved by Council and the existing parking lots on Wall Street.

Gary Brady, businessman on Wall Street, spoke in opposition of the plan stating that projects like these push prices up.

Chuck Tessier, with Stietler-Tessier Associates, spoke in support of the plan stating that his firm is very pleased that everyone is working together for the redevelopment of downtown.

Mayor McDevitt closed the public hearing at 5:27 p.m.

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

Vice-Mayor Bratton moved for the adoption of Resolution No. 85-182

approving and adopting the redevelopment plan for the Haywood/Wall Street Redevelopment Project as described by Larry Holt. This motion was seconded by Councilman Frank, and carried unanimously.

It was noted that the financing plan on pages 25 and 26 of the redevelopment plan would be as follows:

PROJECT COSTS

Public Acquisition and Relocation \$ 500,000

Public Improvements 524,000

Construction: Restoration & Parking 29,438,000

Total Costs \$30,462,000

The method of financing would be:

Public Funds (City and County) \$ 3,462,000

Redevelopment Bond Issue 20,750,000

Private Funds 6,250,000

Total Funding \$30,462,000

It was noted that "as the redevelopment bonds will be issued to finance the acquisition, restoration, rehabilitation and upgrading of existing property in the project area by private developers, said developers will pay all costs associated with the issuance and placement of the redevelopment bonds, including, but not limited to, the professional fees of bond counsel."

Complete text of Resolution No. 85-182 will be found in Resolution Book No. **15** at pages **327** and **328**.

ORDINANCE NO. 1542 - AN ORDINANCE AMENDING SECTION 19A-11 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE (GRIEVANCE PROCEDURE)

5. Consideration was given to an ordinance amending Section 19A-11 of the Code of Ordinances of the City of Asheville (Grievance Procedure).

Mayor McDevitt said a recent Supreme Court decision, Cleveland Board of Education vs. Loudermill, requires the City to institute pre-termination hearing procedures for any employees being terminated from City employment by the City. These procedures will also be used for employees being demoted or suspended without pay for more than five (5) days. In addition, a number of minor procedural changes are being made in City's grievance process including: intermediate supervisors in the process; specifying hand delivery or delivery by certified mail of all notices; permitting employees to go to the Civil Service Board if the grievance process isn't completed in 30 days; and removing a section making reinstatement actions retroactive to date a grievance is filed.

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

Upon inquiry of Councilman Price, Sam Graves, Director of Management Services, said the amendments to the grievance procedure would strengthen procedures used by supervisor for personnel actions. He said because of incorrect actions by supervisors, many have been overturned by the Civil Service Board and the court system. He said the proposed amendments have not been discussed with the employees; however, he felt the amendments would make the system more just and fair.

Upon inquiry of David Anders, with the Asheville Firefighters Association, Mr. Graves said reinstatement actions would be retroactive back to the date the actions occurred rather than the date grievance is filed on such actions.

Councilman Frank moved for the adoption of Ordinance No. 1542. This motion was seconded by Councilman Myers.

On a roll call vote of 6-0, Ordinance No. 1542 passed on first reading.

ORDINANCE NO. 1537 - AN ORDINANCE PROHIBITING SMOKING ON CITY PUBLIC TRANSPORTATION

6. Consideration was given to the third reading of Ordinance No. 1537, an ordinance prohibiting smoking on City public transportation.

Mayor McDevitt said this ordinance will prohibit smoking on Asheville Transit Authority buses for health and

cleanliness reasons. This ordinance passed on first reading on September 24, 1985, and on second reading on October 1, 1985.

Mayor McDevitt said this ordinance was previously read on first and second 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. 1537 passed on third and final reading.

Complete text of Ordinance No. 1537 will be found in Ordinance Book No. 10 at page 307.

ORDINANCE NO. 1538 - AN ORDINANCE AMENDING ORDINANCE NO. 322 KNOWN AS "AN ORDINANCE PROVIDING FOR THE ZONING OF THE CITY OF ASHEVILLE" AS AMENDED - PROPERTY LOCATED ON OLD CHUNNS COVE ROAD (LARRY BUCKNER PETITIONER)

7. Consideration was given to the second reading of Ordinance No. 1538, an ordinance amending Ordinance No. 322 known as "an ordinance providing for the zoning of the City of Asheville" as amended - property located on Old Chunns Cove Road (Larry Buckner petitioner).

Mayor McDevitt said the Asheville Planning and Zoning Commission at a meeting held August 7, 1985, considered the petition of Mr. Larry Buckner, Buckner Associates, that Ward 8, Sheet 25, Lot 26, be rezoned from R-1 Residential District to R-2 Residential District. The property is located on Old Chunns Cove Road. After review and discussion, the Commission voted to recommend to City Council that Ward 8, Sheet 25, Lot 26, be rezoned from R-1 Residential District to R-2 Residential District. This ordinance passed on first reading on October 1, 1985.

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. 1538 passed on second reading.

ORDINANCE NO. 1539 - AN ORDINANCE CREATING THE ASHEVILLE FAIR HOUSING COMMISSION

8. Consideration was given to the second reading of Ordinance No. 1539, an ordinance creating the Asheville Fair Housing Commission.

Mayor McDevitt said the City Council of the City of Asheville finds it in the public interest to promote fair housing practices in the City. The City Council desires to prevent discriminatory practices against any person in a real estate transaction. The U. S. Department of Housing and Urban Development has for many years encouraged and supported anti-discrimination initiatives through grant programs to the City designed to ensure equal opportunity for all citizens. The City Council of the City of Asheville does desire to create a Commission to be known as the Asheville Fair Housing Commission as authorized in Chapter 776, Sections 1, 2 and 3 of the General Statutes of North Carolina. This ordinance passed on first reading on October 1, 1985.

Councilman Frank moved to amend Ordinance No. 1539, Section 6, to read as follows: "The Chairman shall be appointed by City Council from among the members of the Commission and shall serve for a term of one (1) year. No member shall serve more than two (2) successive, one (1) year term as Chair-

man". This motion was seconded by Councilman Price, and carried unanimously.

Ralph Bishop spoke in opposition to the ordinance stating that this was an invasion of the Privacy Act.

On a roll call vote of 6-0, Ordinance No. 1539 passed on second reading as amended.

RESOLUTION NO. 85-183 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS WITH DESIGNATED AGENCIES TO CARRY OUT THE OPERATION OF THE CITY'S COMMUNITY

DEVELOPMENT BLOCK GRANT PROGRAM DURING 1985-86

9. Consideration was given to a resolution authorizing the Mayor to execute agreements with designated agencies to carry out the operation of the City's Community Development Block Grant Program during 1985-86.

Mayor McDevitt said this resolution will authorize the Mayor to execute contracts with City Departments, Housing Authority, Chamber of Commerce, and Community Relations Council to carry out the 1985-86 CDBG program as approved by City Council on May 14, 1985 and outlined in the Statement of Objectives and Project Use of Funds. \$1,382,000.00 funds are already budgeted in CDBG Fund.

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 Price, seconded by Councilman Frank, Resolution No. 85-183 was unanimously adopted.

Complete text of Resolution No. 85-183 will be found in Resolution Book No. **15** at page **329**.

BIDS - ALUMINUM STRUCTURE PLATE - PIPE ARCH - PUBLIC WORKS DEPARTMENT

10. Consideration was given to a motion relative to bids received for aluminum structure plate - pipe arch.

Mayor McDevitt said sealed bids were invited to furnish one (1) lot of aluminum structure plate, .125" thick to fabricate 10' 9" span x 6' 10" rise pipe arches into two (2) 60' runs and two (2) 30' runs for the Public Works Department, Street Division. Request for bids included a statement that all materials and labor necessary to fabricate the pipe arches at the job site be furnished by the vendor. Nine (9) invitations were mailed to prospective bidders; however, only one bid was received. This bid was from Silverman Company in Asheville in the amount of \$22,572.00. There are sufficient funds in the Street Division Budget to cover this cost.

The Acting City Manager noted that the materials would be used to increase the size of the culvert at Riverside Drive and Lyman Street.

Councilman Bissette moved to award the bid to Silverman Company in the amount of \$22,572.00. This motion was seconded by Councilman Frank and carried unanimously.

APPROVAL OF THE CONSENT AGENDA

11. Consideration was given to a motion approving the consent agenda.

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.

Resolution No. 85-184

A. Resolution authorizing the City Manager to enter into a lease agreement

with the Buncombe County Child Development Program to be conducted at the William C. Reid Memorial Recreation Center.

HIGHLIGHTS: The City owns property known as William C. Reid Memorial

Recreation Center. The Buncombe County Child Development Program is currently using the annex building to this property as well as the kitchen and cafeteria in the main Reid Recreation Center. This resolution will authorize the

City Manager to enter into a lease agreement with Buncombe County for a five (5) year period with an option to renew the lease for an additional five (5) years.

FISCAL IMPACT: Revenues - \$1,200.00 annually.

Resolution Book No. 15 at page 330.

B. Motion to schedule a public hearing for rezoning property located at

Georgia Avenue and Craven Street for October 29, 1985.

HIGHLIGHTS: The Asheville Planning and Zoning Commission at a meeting

held September 11, 1985, considered the petition of Mr. Lawrence Lynch that Ward 6, Sheet 1, Lot 91, be rezoned from R-3 Residential District to CS Commercial Service District. The property is located at Georgia Avenue and Craven Street. After review and discussion, the Commission voted to recommend to City Council that a portion of Lot 91, Sheet 1, Ward 6, be rezoned from R-3 Residential District to CS

Commercial Service District.

FISCAL IMPACT: None

C. Motion to schedule a public hearing relative to a site plan for Pack

Plaza Project for October 29, 1985.

HIGHLIGHTS: On November 27, 1984 City Council reviewed and approved the

site plan of the South Pack Plaza Project in concept. As all of the project is now owned by Pack Plaza Associate Limited Partnership or the Asheville Housing Authority, it is in order for the City Council to schedule a public

hearing and give final approval to the site plan.

FISCAL IMPACT: Total Project Cost: \$18,200,000

Developer Debt/Equity \$13,000,000

UDAG Grant 3,200,000

Local Contributions 2,000,000

Anticipated Tax Increase:

Property \$56,970

Sales 23,400

Personal 21,000

Total \$ 101,370/yr.

Upon motion of Councilman Bissette, seconded by Councilman Price, the consent agenda was unanimously approved.

RESOLUTION NO. 85-185 - RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ASHEVILLE TO MAKE APPLICATION FOR A COMPUTER ENRICHMENT PROGRAM

12. Consideration was given to a resolution authorizing the Mayor of the City of Asheville to make application for a computer enrichment program.

Mayor McDevitt said \$2,407.00 in state funds is available to provide enrichment programs in three neighborhoods with local match in the amount of \$2,229.00 to be provided by City through in-kind staff services and departmental supplies in place at the Reid Memorial, Montford, and Stephen Lee Center service areas. He said this program would be aimed at deterring juvenile delinquency using computers as recreation. This resolution will authorize the Mayor to apply for said grant.

Mayor McDevitt read the resolution.

Upon motion of Councilman Price, seconded by Councilman Frank, Resolution No. 85-185 was unanimously adopted.

Complete text of Resolution No. 85-185 will be found in Resolution Book No. **15** at page **331**.

CLAIMS - MICHAEL GUZMAN (STREETS) - SIMON DEMOS (SANITATION)

13. The Acting City Manager presented claims received from Michael Guzman and Simon Demos.

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

DISCUSSION OF CITY COUNCIL CABLE TELEVISION COMMISSION REPORT

13. John Jerose, General Manager of Asheville Cablevision, introduced

Mr. Tom Marinkovich, President of Daniels and Associates of Denver, Colorado, managing partner of Asheville Cablevision.

Mr. Tom Marinkovich, President of Daniels and Associates, Inc., read the following presentation to the City Council:

Wade Hargrove, Attorney representing Asheville Cablevision and Daniels and Associates, Inc., said for the last twenty years he had represented many cable companies, radio stations, television stations, and newspapers. He said the operation of a cable television company is very difficult and involves millions of dollars, with a continuing need for the upgrading of a system. He said it is impossible for a cable company to please everyone all the time. He said another difficulty in the operation of a cable company is that television is an emotional issue with many people. He said many states regulate cable companies; however, the State of North Carolina leaves that authority to local municipalities. He said the regulation of a cable company is different from regulating utilities such as electric, water and telephone systems. He said the cable companies are protected under the First Amendment rights.

Mr. Hargrove then reviewed in detail the legal aspects of the Cable Television Commission Report as to whether the current franchise, pursuant to Chapter 1122 of the 1967 Session Laws, is valid for a period of twenty years or a period of thirty-five years as a result of Section 213 of the Asheville Charter; whether or not the current franchise is "an exclusive franchise"; whether or not Asheville Cablevision invalidated the franchise by re-tiering their channels in March of 1985; whether or not Asheville Cablevision has breached the franchise agreement by the widespread reception and service problems; and whether or not the City of Asheville could/should invalidate the current franchise agreement.

Mr. Hargrove said in his opinion the current franchise is valid until the year 2002 as a result of a special election with regard to the franchise held on July 28, 1967. He said Chapter 1122 of the 1967 Session Laws in no way superceded Section 213 of the Asheville Charter. He said the Council reaffirmed the current franchise in March of 1983 by authorizing the assignment to American Cable TV Investors, and Section 4 of the reassignment states that the franchise is valid until August, 2002. He said Daniels and Associates has invested millions of dollars and committed millions of dollars, to the Asheville system which it would not have done if they felt the franchise agreement would have expired in 1987. He said the City of Asheville has accepted thousands of dollars in franchise fees since its inception. He said, in his opinion, the court system would estop the City from challenging the 35 year franchise. He said in his opinion

sufficient evidence has not been presented to prove or constitute a breach of the current agreement or a default thereunder.

He said the re-tiering of the channels of March of 1985 was, in fact, legal under the First Amendment and Section 625-D of the Federal Cable Act of 1984.

Mr. Hargrove said Asheville Cablevision is sincere in wanting to clear up any misunderstandings between Asheville Cablevision, City Council, or the subscribers. He said they are very willing to address all concerns relative to the franchise agreement.

Mr. Hargrove said when the assignment of the franchise was granted in March, 1983, Daniels and Associates took on the responsibility of rebuilding a system that had been in place for many years. He said the outdated and

deteriorated equipment caused many problems and disruption of service. However, Daniels and Associates has replaced, and will replace in the future, much of this outdated and deteriorated equipment.
