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Tuesday - October 11, 1988 - 4:00 P.M.

Regular Meeting

Present: Mayor W. Louis Bisette, Presiding; Vice-Mayor Kenneth

M. Michalove; Councilmen Mary Lloyd Frank, Norma T. Price, Wilhelmina Bratton, and Russell Martin; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Associate City Manager/City Clerk

William F. Wolcott, Jr.

Absent: Councilman Walter R. Boland

INVOCATION

The invocation was given by Councilman Price.

APPROVAL OF MINUTES - SEPTEMBER 27, 1988 MEETING

Mayor Bisette announced the approval of the minutes of the September 27, 1988 meeting.

I. PROCLAMATIONS:

A. Proclamation - Asheville Area Chamber of Commerce Day -

October 11, 1988

Mayor Bisette read the proclamation. He stated that a

copy was given to the Asheville Area Chamber of Commerce during a meeting on Monday, October 10, 1988.

B. Proclamation - Industrial Appreciation Day -

October 14, 1988

Mayor Bisette read the proclamation. He said a copy

of the proclamation would be presented to the Asheville Area Chamber of Commerce during a luncheon on Friday,

October 14, 1988.

II. PUBLIC HEARINGS:

A. Public hearing relative to rezoning property at 22

Herron Avenue - Petition of Attorney Harold Bennett for Mr. David Caudel.

Ordinance No. 1719 - An Ordinance amending Ordinance

No. 322, known as "An Ordinance Providing for the Zoning of the City of Asheville," as amended, petition of Attorney Harold Bennett for David Caudel, property

located at 22 Herron Avenue.

Mayor Bisette said the Asheville Planning and

Zoning Commission on September 7, 1988 reviewed and recommended approval of rezoning a portion of Lot 1, Sheet 10, Ward 6, from R-3 Residential District to CS Commercial Service District with a 5' strip along Herron Avenue to remain R-3 Residential

District.

Mayor Bisette opened the public hearing at

4:35 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the affidavit of publication.

Carol Albrice, from the Planning Department, said

the Planning and Zoning Commission said the lot in question is located on Herron Avenue, one lot off of Haywood road. She said the lot is surrounded by residential and commercial service districts. She said the property has an offer to purchase contingent upon the rezoning. She said access would be off Herron Avenue. She said the Planning and Zoning Commission wanted a 5' strip along Herron Avenue to remain R-3 Residential District. She said the 2010 Comprehensive Plan does not indicate this property for an expanded commercial area. She said Herron Avenue is basically a low density residential area.

Mike Moser, Chairman of the Planning and Zoning

Commission, said the Commission recommended approval but requested the 5' strip remain residential to allow for a buffer between the residential and commercial property.

David Caudel, petitioner, said the rezoning is

requested to expand his business. He said if the property is not rezoned he will be forced to move his business to another location where City requirements are less restrictive. He said the only

access will be from existing commercial property.

Mike Demos, Demos Furniture and Appliance Company,

spoke in support of the rezoning.

Carol Albrice said no written oppositions to the

rezoning was received. She said the main oppositions at the meeting were increased traffic in the area and the fact that Herron Avenue has no sidewalks.

Mayor Bisette closed the public hearing at

5:05 p.m.

Mayor Bisette said members of Council were

previously furnished copies of the ordinance and it would not be read in its entirety.

Vice-Mayor Michalove moved for the adoption of

Ordinance No. 1719 contingent upon the Planning and Zoning Commission's recommendation. This motion was seconded by Councilman Frank.

On a roll call vote of 6-0, Ordinance No. 1719

passed on first reading.

B. Public hearing relative to amending Zoning Ordinance

No. 322, Section 30-11-3, wording amendment relative to protest petitions.

Ordinance No. 1720 - Ordinance amending Ordinance No.

322, known as "An ordinance providing for the zoning of the City of Asheville," as amended (wording amendment - Section 30-11-3. Protests)

Mayor Bissette said the Asheville Planning and Zoning

Commission on September 21, 1988 reviewed and recommended approval of a proposed wording amendment relative to protest petitions.

Mayor Bissette opened the public hearing at 5:08 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the affidavit of publication.

Patty Tallerday, Acting Director of Planning, said the

proposed amendment clarifies the protest petition

procedure and sets forth a prescribed form to be used for protest petitions. She said this amendment also prescribes that the protest petition procedure does not apply for an initial zoning of property added to the territorial coverage of the ordinance as a result of annexation or otherwise.

The City Attorney said this amendment would allow the

city ordinance to conform to state law.

Mayor Bissette closed the public hearing at 5:11 p.m.

Mayor Bissette said members of Council were previously

furnished copies of the ordinance and it would not be read in its entirety.

Councilman Price moved for the adoption of Ordinance

No. 1720. This motion was seconded by Councilman Martin.

On a roll call vote of 6-0, Ordinance No. 1720 passed

on first reading.

C. Public hearing relative to zoning property in the South

Annexation Area including the Racquet Club and Deerfield (Limestone) annexed into the City Limits.

Ordinance No. 1721 - An ordinance amending Ordinance

No. 322, known as "An Ordinance providing for the zoning of the City of Asheville," as amended, South Annexation Area including Racquet Club and Deerfield

Mayor Bissette said the Asheville Planning and Zoning

Commission has recommended zoning for the South Annexation Area.

Mayor Bissette opened the public hearing at 5:12 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the affidavit of publication.

Verl Emrick, from the Planning Department, said the

property to be rezoned is in the South Annexation Area including the Racquet Club and Deerfield annexed into the City Limits as of August 31, 1988. He presented tax maps and a generalized map showing the proposed zoning and a comparison document showing Limestone Township zoning compared to the proposed zoning by the Planning and Zoning Commission. He said the Planning staff met with the Limestone Planning Council, the Racquet Club, the Condominium Club and the Oak Forest Homeowners Association relative to the zoning. He presented certifications of notifications of the zoning that were sent to all affected property owners. He said in proposing the various zoning districts the 2010 Comprehensive Plan, nonconforming uses, and the concepts used by the Limestone Planning Council were taken into consideration.

By the use of a map, Mr. Emrick outlined the proposed

zoning for all areas. He said a number of letters and telephone calls had been received requesting specific changes to the zoning as proposed by the Planning and Zoning, which were generally as follows:

1. Ward 7, Sheets 92, 93, 102: All R-2 change to R-1.

2. Ward 7, Sheet 94, Lot 49 and 8: Change to CG

Commercial General

3. Ward 7, Sheet 109, Lots 1, 2, 3, 4, 5, 6, and 88:

Change to R-4 Residential

4. Ward 7, Sheet 108, Lot 45: Change to R-3

Residential District.

5. Ward 7, Sheet 98, Lots 282 and 298: Change to CS

and create a CS paragraph in the ordinance.

Zack Ledbetter requested that Ward 7, Sheets 92, 93,

and 102 be changed to a R-1 Residential District classification.

Bill Estes, 186 Birch Lane, said the Limestone Planning

Council worked long and hard on zoning the property in this area and requested that the area on Birch Lane remain

zoned to a R-1 Residential District classification. He said this area is strictly a single family residential area.

Dick Woody, from Skyland, requested that Council leave

the area as the Limestone Planning Council originally zoned it. He said the residents do not want duplexes, condominiums, or multifamily units in the area that is strictly a single family residential area.

Jane Heath, of 242 Birch Lane, said her property was

not annexed but feels it will be next in Asheville's annexation process. She requested that Council follow as closely as possible the zoning by the Limestone Planning Council.

Clifford Edmonds, owner of Sweeten Creek Cottages, said

he owns eight acres with mobile homes and cottages on the property. He requested that the zoning by the City allow him the opportunity to expand his business.

Mr. Emrick said the staff could possibly look at a R-4

zoning classification for Mr. Edmond's property which would allow for expansion of the business with a group development review.

Gene Shope from Arden said he owns seven acres on

Sweeten Creek Road. He said he purchased the property for commercial use. He requested that his property be zoned CG Commercial General.

Mayor Bisette requested that the Planning Staff review

the proposed zoning for Mr. Shope's property.

Albert Sneed, Attorney representing VME America (Clarke

Equipment Company), said his client could comply with a Heavy Industrial zoning classification but could not comply with Light Industrial.

Garland Wade referring to the noise that comes from VME

America's operations requested that Council do something about the noise coming from the blowers at VME America. He said the company had stopped the knocking noise but needs to do something to stop the blowers from roaring in his house at night.

After discussion, Mayor Bisette closed the public

hearing at 6:05 p.m.

Mayor Bisette said members of Council were previously

furnished copies of the ordinance and it would not be read in its entirety.

Councilman Price moved for the adoption of Ordinance

No. 1721. This motion was seconded by Councilman Frank.

Council requested that the Planning Staff look into all the requests made during the public hearing.

On a roll call vote of 6-0, Ordinance No. 1721 passed on first reading.

D. Public hearing relative to imposing a moratorium on the issuance of permits for off-premise advertising signs within the City of Asheville.

Ordinance No. 1722 - An Ordinance imposing a 90 day moratorium on the issuance of permits for off-premise advertising signs.

Mayor Bissette said the Sign Commission, the Asheville

Planning and Zoning Commission and the Asheville City Council will conduct a joint work session regarding a proposed sign ordinance in the near future and thereafter the Planning and Zoning Commission and the City Council will consider action thereon. The process should be completed within ninety (90) days. It is in the best interest of the City and all residents of the zoning jurisdiction of the City, as well as persons engaged in the sign business, that signs not be erected during said interim period which would not conform to the new ordinance.

Mayor Bissette opened the public hearing at 6:10 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the affidavit of publication.

The City Attorney said the 90 day time period should

give the Sign Commission and Council sufficient time to get the new sign ordinance implemented. He said the ordinance would not apply to on-premises signs. He said he had received a call from Holland Outdoor Advertising Company's attorney requesting that the ordinance not apply to signs with existing applications for sign permits.

June Grant, a local realtor, said businesses need

published guidelines. She questioned the legality of the proposed ordinance.

Jack Brook, speaking on behalf of the Coalition of

Scenic Beauty, said at one time he had presented to Council a petition containing some 2,000 signatures asking for a moratorium on sign permits until such time as tighter controls could be implemented.

Paul Garrison with Naegle Outdoor Advertising Company

asked for a clarification on what signs would be included in the moratorium, particularly questioning whether or not existing sign permits would be valid.

A discussion was held relative to amending the proposed

ordinance to impose a moratorium on signs that would not comply with the proposed revisions to the sign ordinance.

Mayor Bissette closed the public hearing at 6:24 p.m.

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

Councilman Martin moved for the adoption of the ordinance imposing a 90 day moratorium on sign permits for signs in excess of 150 square feet per face and in excess of 25' in height. This motion was seconded by Councilman Bratton.

On a roll call vote of 6-0, Ordinance No. 1722 passed on first reading.

Vice-Mayor Michalove moved to suspend the rules and proceed to the second reading of Ordinance No. 1722.

This motion was seconded by Councilman Bratton and carried unanimously.

On a roll call vote of 6-0, Ordinance No. 1722 passed on second reading.

Vice-Mayor Michalove moved to suspend the rules and proceed to the third reading of Ordinance No. 1722. This motion was seconded by Councilman Bratton.

Councilman Price said she would prefer to give the public at least a week's notice of Council's intentions prior to the third reading of the ordinance.

The General Manager of Naegle's Outdoor Advertising

Company objected to the ordinance as proposed stating that this would allow his competitor to build signs but would prohibit his company from building theirs. He said in his opinion the proposed ordinance is not fair.

After discussion Vice-Mayor Michalove and Councilman

Bratton withdrew their motion to suspend the rules and proceed to the third reading of the ordinance.

III. OLD BUSINESS:

A. Ordinance No. 1713 - Second reading of an ordinance

relative to the annexation of property generally known as the Beaverdam Valley Area.

Mayor Bissette said pursuant to Chapter 160A of the

North Carolina General Statutes the City of Asheville has examined certain areas to determine if they qualify for annexation. Certain statutory procedures are required for annexation. A public hearing was held on September 13, 1988. The ordinance was read on first reading on September 27, 1988.

Upon inquiry of Vice-Mayor Michalove, the City Manager

said the Beaverdam Volunteer Fire Department is negotiating a five year contract with the City of Asheville for providing fire protection services. He

said the Volunteer Fire Department would continue to receive funding from the County for residents they serve that are not being annexed.

On a roll call vote of 6-0, Ordinance No. 1713 passed on second reading.

B. Ordinance No. 1714 - Second reading of an ordinance

relative to the annexation of property generally known as the Hansel Avenue Area.

Mayor Bisette said pursuant to Chapter 160A of the

North Carolina General Statutes the City of Asheville has examined certain areas to determine if they qualify for annexation. Certain statutory procedures are required for annexation. A public hearing was held on September 13, 1988. The ordinance was read on first reading on September 27, 1988.

On a roll call vote of 5-1, Ordinance No. 1714 passed on second reading with Councilman Martin voting "no".

C. Ordinance No. 1715 - Second reading of an ordinance

relative to the annexation of property generally known as the Plemmons Property.

Mayor Bisette said pursuant to Chapter 160A of the

North Carolina General Statutes the City of Asheville has examined certain areas to determine if they qualify for annexation. Certain statutory procedures are required for annexation. A public hearing was held on September 13, 1988. The ordinance was read on first reading on September 27, 1988.

On a roll call vote of 6-0, Ordinance No. 1715 passed on second reading.

D. Ordinance No. 1706 - Third reading of Ordinance revising the Motor Vehicle Registration Tax - City Stickers.

Mayor Bisette said this ordinance would increase revenue and decrease expenses with an estimated net result of \$100,000 increase in revenue.

On a roll call vote of 6-0, Ordinance No. 1706 passed on third and final reading.

Ordinance Book No. 11 Page No. 305

E. Ordinance No. 1710 - Third reading of an ordinance

zoning Oteen property annexed into the City Limits August 31, 1988.

Mayor Bisette said the Asheville Planning and Zoning

Commission on August 17, 1988 reviewed and recommended zoning for the Oteen property which was annexed into

the City Limits on August 31, 1988.

On a roll call vote of 6-0, Ordinance No. 1710 passed on third and final reading.

Ordinance Book No. 11 Page No. 315-316

F. Ordinance No. 1716 - Second reading of an ordinance

amending Section 18-12 of the Code of Ordinances regulating noise.

Mayor Bissette said at Council's direction, the City

Attorney has proposed an amendment to the noise ordinance to regulate noise within 500 feet of a residential district during building operations and has also proposed to include noise from loud speakers and amplifiers.

Mike Rollins, Executive Director of the Asheville Area

Chamber of Commerce, said the Chamber's Economic Development Board will be talking to businesses about the ordinance prior to the third reading; however, from reading the ordinance it appears that businesses would not have a problem complying with the ordinance.

Councilman Martin said the present noise ordinance lists

approximately 15 different types of noises that are prohibited. He questioned whether or not it is feasible to list all the specific noises.

The City Attorney said a noise does not have to be

specifically prohibited by the noise ordinance in order

to be unlawful since a section in the present ordinance provides that it is unlawful "for any person to create, assist in creating, permit, continue or permit the continuance of any unreasonably loud, disturbing or unnecessary noise in the City." He said what constitutes "unreasonably loud," "disturbing" or "unnecessary" would be a judgement call. He said courts could issue an injunction for the abatement of a certain noise.

John Walsh said the ordinance should specify decibel

levels.

Rendall Davis said the ordinance should specify decibel

levels.

After discussion, Councilman Martin moved to amend the

ordinance to exclude the provision relative to loud speakers and sound amplification. This motion was seconded by Vice-Mayor Michalove.

After further discussion, Councilman Martin and Vice-

Mayor Michalove withdrew their motion giving the City Attorney an opportunity to prepare an amendment to the proposed ordinance to exclude loud speakers and sound amplification.

Albert Sneed, Attorney representing VME Americas, said

in his opinion his client would not be in violation of the proposed ordinance.

On a roll call vote of 6-0, Ordinance No. 1716 passed on second reading.

G. Resolution relative to closing a portion of Cliff

Street.

Mayor Bissette said a petition has been filed by

Westgate Shopping Center of Asheville, Inc. requesting that a portion of Cliff Street which has never been paved or otherwise utilized be permanently closed to the public use. This closing is in connection with the Westgate Shopping Center Expansion Project - Phase II. A

public hearing on this matter was held on September 27, 1988. Action on the resolution was continued until October 11, 1988.

Councilman Frank moved to continue action on the

resolution until November 15, 1988. This motion was seconded by Vice-Mayor Michalove and carried unanimously.

H. Presentation by Kenilworth Forest Community.

Rendall Davis from White Pine Drive said Council has not

taken any action relative to the complaints the residents on White Pine Drive brought to Council regarding the construction of the Asheville Mall Expansion Project. He said in his opinion the residents in the area deserve some protection. He said something needs to be done about the lights that shine in his house from the mall parking lot. He said he would also like to review the buffering plan.

Mayor Bissette told Mr. Davis that the City staff has

been working very close with the residents and the developer and a lot of action has been taken. He said the developer meets the code requirements. He said Council must rely on the City Attorney's opinion as to the developer complying with the ordinances.

The City Manager noted that the developer is complying

with the Buffering ordinance, the landscaping plan has been submitted and approved, the lighting plan has been submitted and accepted and that shields will be placed on the parking lot lights after they area installed. He said the buffering plan around the Penny's Loading Dock area shows more trees and higher trees than required by the buffering ordinance. He said there are two outstanding issues that the City Staff is working with the developer on, those being the T-intersection of Bracketown Road and they will be presenting the specifications on that and the grading around the Mosely property and the developer would have to show the City a plan for compliance in this area.

Councilman Bratton said she felt the actions now should

be handled administratively and that the City Manager, the City Staff, the residents and the developer are dealing with all the problems associated with the expansion project.

I. Report relative to Campground Road.

The City Attorney presented the following report to

members of Council relative to Campground Road:

MEMORANDUM TO: W. Louis Bisette, Jr., Mayor, and

Members of the Asheville City Council

FROM: Bill Slawter, City Attorney

DATE: October 7, 1988

SUBJECT: Campground Road

At the September 20 City Council meeting, Mr. Stan

Kanope of 39 Campground Road addressed the City Council regarding various activities on his street which may be in violation of the zoning ordinance. One question related to the parking of trucks in the area, especially asphalt trucks that might be associated with a business being conducted in the area. During a discussion regarding his complaints, the question was raised of whether the parking of such trucks in that area would be illegal.

Section 28-51 of the Code of Ordinances prohibits the

parking of large trucks on all City streets except for very limited purposes. If trucks such as the asphalt trucks which were described were being routinely parked on Campground Road, they would be in violation of Section 28-51. There is no ordinance which would prohibit the parking of a truck such as this on one's private property. In fact, I doubt that such an ordinance could lawfully be enacted.

If the trucks were being kept in that location as part

of a business operation, then the owner of the trucks would be in violation of the zoning ordinance for operating a commercial establishment in a residential district. Gary McDaniels advises me that he has made trips to Campground Road since the September 20 City Council meeting, and has found no evidence of violation of the zoning ordinance. He stated further that he had not seen an asphalt truck in that area. One resident of Campground Road does apparently have a tractor-trailer truck parked in his yard on a recurring basis, but this

does not violate any existing law.

Gary plans to continue to monitor the situation and will

take action with regard to any zoning violations that he may discover. Please let me know if you have additional questions.

IV. NEW BUSINESS:

A. Ordinance No. 1723 - Budget Ordinance amendment to

appropriate second year funding of Fair Housing

Assistance Program Grant.

Mayor Bisette said to appropriate Second Year

funding of \$29,000 of HUD Fair Housing Assistance Program grant funds. Project will be subcontracted with the Asheville-Buncombe Community Relations Council for staff support to the Fair Housing Commission.

Councilman Martin moved for the adoption of

Ordinance No. 1723. This motion was seconded by Vice-Mayor Michalove.

On a roll call vote of 6-0, Ordinance No. 1723

passed on first and final reading.

Ordinance Book No. 11 Page No. 377

B. Report relative to city stickers.

The City Manager said the City is losing approximately

\$42,000 annually by providing free parking in the parking garages to individuals having a city sticker. He said Council members need to decide whether or not to continue this procedure. He said perhaps another method of providing parking in the garages could be made available which could be administered in a better manner.

Council members indicated that they would like to study

this issue more before making a decision on the city

stickers.

V. CONSENT:

A. Sale of Disposal Parcel 57-C in the East Riverside

Redevelopment Project.

SUMMARY: The Housing Authority has tentatively

accepted a bid for Disposal Parcel 57-C in the East Riverside Redevelopment Project from Tri-Star Development in the amount of \$117,000 to be used as Office-Institutional. Disposal Parcel 57-C is located on Southside Avenue and will be developed as a 10,000

square foot medical office complex.

B. Motion scheduling public hearing relative to Downtown

Design Review for November 1, 1988.

Upon motion of Councilman Bratton, seconded by Vice-Mayor

Michalove the consent agenda was unanimously approved.

VI. OTHER BUSINESS:

REPORT OF GROUP DEVELOPMENT ACTIONS BY THE PLANNING AND ZONING

COMMISSION

Patty Tallerday, Acting Director of Planning, said the City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission relative to group developments at the next scheduled regular meeting of the City Council. She said in accordance with the new 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. She said the following action was taken by the Planning and Zoning Commission at their

meeting on October 5, 1988.

(1) HOTEL DEVELOPMENT - BILTMORE DAIRY PROPERTY - HENDERSONVILLE

ROAD

Ms. Tallerday said the Asheville Planning and Zoning Commission on October 5, 1988, reviewed and recommended approval of the group development plans of **the Hotel Development - Biltmore Dairy Property -Hendersonville Road** subject to the

following conditions:

a) Compliance with the conditions set forth by the Town of

Biltmore Forest Board of Adjustment.

b) Approval of erosion control plan by the City Engineering

Department.

Ms. Tallerday said the Planning Department received a letter from Howard Johnson's Motor Lodge's attorney stating that

they had not received sufficient notice that this matter was

being heard by the Planning and Zoning Commission.

After discussion, Councilman Price moved to schedule a public hearing on the group development plan for October 25, 1988 if the City Attorney determines, after talking with the attorneys involved, that a public hearing is advisable. This motion was seconded by Vice-Mayor Michalove and carried unanimously.

CLAIMS - ARTHUR GOWAN (WATER) - NATTIE METCALF (SANITATION) - ELMER ROBINSON (SANITATION)- BOB LAWRENCE POWER EQUIPMENT COMPANY (WATER) - HARLIS QUEEN (SEWER) - PAT DAVIS (PARKING) - KENNETH WORLEY (SEWER) - BRIDGET JONES (PARKS) - T. GORDON WILF, JR. (POLICE)

The City Manager presented claims received from Arthur Gowan, Nattie Metcalf, Elmer Robinson, Bob Lawrence Power Equipment Company, Harlis Queen, Pat Davis, Kenneth Worley, Bridget Jones, and T. Gordon Wilf, Jr.

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

LAWSUITS - JACK V. WEBB V. CITY OF ASHEVILLE AND DAN GRINDSTAFF D/B/A G & S FENCE COMPANY (PERSONAL INJURY)

The City Manager said the City was served with a lawsuit on September 26, 1988 involving Jack V. Webb v. City of Asheville and Dan Grindstaff d/b/a G & S Fence Company relative to a personal injury when playing softball at Shiloh field.

Mayor Bissette referred the lawsuit to the Corporation

Counsel for investigation and recommendation.

ADJOURNMENT:

Upon motion of Councilman Martin, seconded by Vice-Mayor Michalove, the meeting adjourned at 7:55 p.m.

MAYOR CITY CLERK
