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Ⓢ Tuesday - January 10, 1989 - 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, Russell Martin and Arthur "Bob" York; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Associate City

Manager/City Clerk William F. Wolcott, Jr.

Absent:

INVOCATION

The invocation was given by Councilman Frank.

APPROVAL OF MINUTES - DECEMBER 20, 1988

Mayor Bisette announced the approval of the minutes of the December 20, 1988 meeting as submitted.

Ⓢ. PROCLAMATIONS:

Ⓢ A. Proclamation - Martin Luther King Day - January 16, 1989

Mayor Bisette read the proclamation and presented a copy to Oralene Simmons with the Parks and Recreation Department.

Ray Kisiah, Director of Parks and Recreation, reported that a member of the Parks and Recreation staff, Ms. Oralene Simmons, has received three major awards within the last three months in recognition of her service to this community in helping to create Martin Luther King Week activities, specifically the Martin Luther King Prayer Breakfast which will be held for the fifth consecutive year on Saturday, January 14, at the Asheville

Civic Center. The awards were:

1. The Award of Excellence by Region IX of the North Carolina Recreation and Parks Society in October;
2. The Outstanding Achievement Award by the Municipal Division of the NCRPS was presented in High Point in November; and
3. The annual Human Rights Award for promotion and practice of social progress and protection of basic human rights was presented by the Asheville and Buncombe County Baha'i

Community.

In addition to these awards, Oralene has been appointed a member of the N. C. Martin Luther King, Jr. Holiday Commission by Governor Martin. She was sworn in

as a member of this state commission by Mayor Bisette in December.

Mayor Bisette and members of Council expressed appreciation to Oralene Simmons for her efforts in obtaining these awards and expressed that this recognition reflects upon the City of Asheville as well.

® B. Proclamation - "Land-of-Sky Chess Week" -

January 9 - January 15, 1989

Mayor Bisette read the proclamation and presented a copy to Wilder Wadford, President of the Asheville Chess Club, who outlined the activities of the Asheville Chess Club and the details of the Land of Sky Chess Grand Prix to be held on January 13- 16, 1989 at the Grove Park Inn.

®II. PUBLIC HEARINGS:

® A. Public hearing relative to the final subdivision plat

for Inn at the Ridge.

Mayor Bisette said the Asheville Planning and

Zoning Commission on December 7, 1988, reviewed and approved the preliminary subdivision plat subject to utility easements being added consistent with the Inn at the Ridge Group Development. This contingency has been complied with and the final plat is submitted for approval.

Mayor Bisette opened the public hearing at 4:33

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.

Tom Elmore, with the Planning Department, outlined

the details of the subdivision plat, stating that this would be an 80 unit apartment complex behind the VA Hospital next to the Folk Art Center. He presented members of Council with a video of the location of the proposed complex. He said the plat has been reviewed and recommended for approval by all city departments.

Mayor Bisette closed the public hearing at 4:40

p.m.

Vice-Mayor Michalove moved for the approval of the

final subdivision plat for Inn at the Ridge. This motion was seconded by Councilman Martin and carried

unanimously.

® B. Public hearing relative to amending Section 30-5-12.

OI- Office Institutional District to permit banks. ®

Ordinance No. 1745 - An Ordinance amending Sections 30-

5-12 and 30-7-1 of the Code of Ordinances of the City of Asheville

Mayor Bissette said the Asheville Planning and Zoning

Commission on December 7, 1988, voted to approve staff's recommendation that Sec. 30-5-12, OI Office-Institutional District be amended to permit banks.

Mayor Bissette opened the public hearing at 4:41 p.m.

The City Clerk presented the notice setting the time and

date for the public hearing and the affidavit of publication.

Verl Emrick, for the Planning Department, said branch

banks have become more prevalent since the adoption of the Zoning Ordinance in 1977. He said Planning and Zoning Commission felt there is now a need to include branch banks as a conditional use in the Office Institutional zone. He outlined the specific requirements for banks as a conditional use in the Office Institutional zone.

Mayor Bissette closed the public hearing at 4:48 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 York moved for the adoption of Ordinance No.

1745. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1745 passed on

first reading.

® C. Public hearing relative to TAPS RV Park, located on

U. S. 70 - East.

Mayor Bissette said the Asheville Planning and

Zoning Commission on December 7, 1988, reviewed and recommended approval of the site plan subject to the following:

1) A variance being granted by City

Council which reduces the front setback to 10 feet,

2) City Attorney approval of an executed

access easement or lease providing access between Highway 70 and the site,

3) Engineering Department approval of an

erosion control plan,

4) Planning Director approval of any

structure or office to be located on the premises for registration of guests if found to be necessary, and

5) City approval of any proposed subdivision.

Mayor Bissette opened the public hearing at 4:50 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.

Tom Elmore, with the Planning Department, outlined the details of the group development plan for TAPS RV Park to be located on U.S. 70 adjacent to Poseidon Restaurant. He said the project would consist of 37 RV spaces. He said the developer is presently negotiating with the Cricket Inn for a

"check-in/check-out" agreement for individuals using the park. He said if this negotiation proves successful the developer could use the Cricket Inn as an access or as an alternative they propose to access the property directly from Highway 70. He said the developer is leasing the property from the Poseidon Restaurant. He said they are requesting approval from the City for the park prior to signing a lease with Poseidon Restaurant.

Upon request by Mayor Bissette, Councilman Bratton

moved to excuse Mayor Bissette from discussion and vote on this issue due to his law firm represents the Poseidon Restaurant. This motion was seconded by Vice-Mayor Michalove and carried unanimously.

At the request of Councilman Martin, the City

Attorney ruled that Councilman Martin did not have a conflict of interest in this matter due to his firm providing services to one of the individuals involved in this project.

Mr. Elmore presented members of Council with a video

of the location of the proposed park. He also outlined the contingencies recommended by the Planning and Zoning Commission. He said the property is zoned Commercial Highway. He said at present there are no RV parks in the City of Asheville and no permanent spacings would be provided.

Upon inquiry of Councilman York, Mr. Elmore said he did not know whether the park would be subject to a "room tax".

Vice-Mayor Michalove closed the public hearing at 5:06 p.m.

Councilman Price moved for the approval of the Group

Development plan for TAPS RV PARK to be located on U. S. 70 East, adjacent to

Poseidon Restaurant with the contingencies specified by the Planning and Zoning Commission and further that the buffering be as indicated by the staff in that the trees along the river remain and be maintained. This motion was seconded by Councilman Frank and carried

unanimously.

® D. Public hearing relative to an addition of the motel at the Black Forest Restaurant on U. S. 25.

Mayor Bissette said the Asheville Planning and Zoning Commission on December 13, 1988, reviewed and approved the site plan subject to the following contingencies:

1. Approval of the erosion control plan;
2. Receipt of a letter of approval on water and sewer services;
3. The City Council grant a variance to the

number of parking spaces required for the Restaurant and Motel, with said variance in the amount of 48 parking spaces, due to the fact that the Black Forest Restaurant had only 90 parking spaces when it was annexed into the City which amounted to a shortage of 48 parking spaces being an existing condition when the property was annexed; and

4. The City Council grant a variance to the

requirement that all of the parking area be paved since part of the parking area for the Black Forest Restaurant was paved and part was graveled when the property was annexed into the City, thereby allowing an existing condition to remain; provided that all of the parking spaces for the Black Forest Motel be paved and provided that all of the parking spaces, including the graveled parking area, be separately designated.

Mayor Bissette opened the public hearing at 5:09 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.

Tom Elmore, with the Planning Department, outlined

the details of the group development plan for the addition of the motel at Black Forest Restaurant on U. S. 25. He presented members of Council with a video of the location of the addition which is to include 20 additional motel units. He explained the variance requested to the number of parking spaces required for the Restaurant and Motel. He said the staff had recommended that the parking variance not be granted; however, the Planning and Zoning

Commission felt the parking variance was in order.

A discussion was held relative to the paving of the parking spaces. Several members of Council felt that the areas should not be paved in order for the development to keep its natural character.

Councilman Martin said in his opinion the parking variance should not be granted.

Mr. Herbert Schlenker, owner of the Black Forest Restaurant, said it was his intention to pave all the parking spaces that he could but he could not pave all of them.

Kenneth Pankow, with Pankow Engineering Company, spoke in support of the project. He said they would be saving all the bigger trees and in his opinion a gravel parking lot would be in keeping the character of the restaurant.

Mayor Bisette closed the public hearing at 5:25 p.m.

Councilman Martin and Councilman Frank said they would be voting against the project because they felt the parking variance should not be granted and Council should accept staff's recommendation not to grant the variance.

Councilman Price moved for the approval of the group development plan for the addition to the motel at the Black Forest Restaurant on U. S. 25 as recommended by the Planning and Zoning Commission. This motion was seconded by Councilman York and carried on a voice vote of 5-2, with Councilman

Martin and Councilman Frank voting "no".

Ⓢ E. Public hearing relative to continuance of a moratorium on the issuance of permits for off-premise advertising signs within the zoning jurisdiction of the City of Asheville.

Ⓢ Ordinance No. 1746 - An ordinance extending a moratorium on the issuance of permits for off-premise advertising signs.

Mayor Bisette said on October 18, 1988 City Council adopted an ordinance imposing a moratorium on the issuance of permits for off-premise advertising signs within the zoning jurisdiction of the City of Asheville. The moratorium expires on January 16, 1989. 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. 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 5:26

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 current moratorium for

off-premises advertising signs expires on January 16, 1989. He said this ordinance would extend the moratorium until May 17, 1989 giving the Sign Commission and Council ample opportunity to adopt a new ordinance regulating signs.

Mayor Bissette said he received a request from a

local sign company that the ordinance be amended to allow a sign company to replace an existing sign if the need arose.

Albert Sneed, Attorney representing Summey Outdoor

Advertising Company, requested that the ordinance be amended to allow a sign company to replace an existing sign. He presented suggested language to the City Attorney for an amendment to the ordinance. He said this amendment would not allow an increase in the number of signs in the City but would allow for replacement. He said the present ordinance places a hardship on the sign companies in that there are leases involved with many of the off-premises advertising signs which from time to time have to be negotiated.

Frank Graham, Attorney representing Neagle Outdoor

Advertising Company, made the same request as Attorney Albert Sneed.

Mayor Bissette closed the public hearing at 5:35

p.m.

The City Attorney suggested that the ordinance

contain a new section as follows: "Provided that this moratorium shall not apply to the issuance of

permit for the reconstruction of any sign legally existing on October 18, 1988, at the same site or at an alternate site otherwise allowed by the Code of Ordinances. Provided further, that such permit shall only be issued upon proof that the existing sign will be demolished, moved or removed and that any replacement sign shall not exceed the dimensions or height of the existing sign and shall otherwise comply with the requirements of the sign ordinance."

Councilman Price moved for the adoption of Ordinance

No. 1746 adding the provision suggested by the City Attorney. This motion was

seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1746

passed on first reading.

Councilman Price moved to suspend the rules and

proceed to the second reading of Ordinance No. 1746. This motion was seconded by Councilman Bratton and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1746

passed on second reading.

Councilman Price moved to suspend the rules and

proceed to the third reading of Ordinance No. 1746. This motion was seconded by Councilman Bratton and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1746

passed on third and final reading.

Ordinance Book No. 11 Page No. 417 - 418

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III. OLD BUSINESS:®

IV. NEW BUSINESS:

A. Report on the Certificate of Occupancy Inspections

Procedure.

The City Manager reviewed the following report to Mayor

Bissette and Members of City Council:

"MEMORANDUM TO: Mayor Bissette and Members of City Council

FROM: Douglas O. Bean, City Manager

DATE: January 6, 1989

SUBJECT: Certificates of Occupancy

Just before Christmas we became aware that the majority of units at Wind In The Oaks were occupied without a Certificate of Occupancy.

For some time, we had been working with Mr. David Lynn who is in a unit that not only does not have a Certificate of Occupancy but is actually unsafe for human habitation. We were in the process of working with Mr. Lynn when he went to Action Line about his particular problem. At that point in time, Action Line pursued this matter, and we have done further investigations into the Certificate of Occupancy procedure in the City of Asheville.

I think it is important that we clarify for you the current

situation on enforcing Certificates of Occupancy.

A. North Carolina Building Code: The North Carolina Building

Code requires that before any newly constructed unit is inhabited a Certificate of Occupancy must be obtained. Since the law states that the owner is responsible for a CO, the responsibility transfers with any change of ownership.

In most situations, the purchaser of a dwelling unit, the attorney representing the purchaser, the financial institution that is providing the financing, or the realtor who is representing the purchaser requires that the seller deliver the property in conformance with the terms of the building permits. This means that generally the seller is responsible at closing for providing the Certificate of Occupancy.

The situation at Wind In The Oaks, and at other places throughout the City, involves the purchase of property without obtaining a CO, which then constitutes a violation of

the State Building Code.

The City is not aware of changes in ownership and is thus in the position of placing the code compliance burden on what

may be an unsuspecting purchaser of a dwelling unit. The law does not allow the City to take any action against the previous owner, because it clearly states that a violation does not occur until the unit is occupied and that the owner at the time it is occupied is the individual who is responsible for code compliance. This is generally treated as a contractual obligation between the seller and the owner,

and it is not a part of state law.

B. Minimum Housing Code: A similar situation involves the

enforcement of the City's Minimum Housing Code. When a unit becomes vacant, a CO has to be obtained before it can be re-occupied. The same procedure is in effect with existing buildings since the owner is required to obtain a CO before a unit can be occupied.

C. Building Inspections Procedure: It has been the stated

procedure of the Building Inspections Division that inspections are made when they are called for by a contractor or owner. There are several key times throughout the construction that inspections are required, and Building Inspectors will respond to requests for an inspection for footings, insulation, etc. up until the time a CO is requested.

Regular or follow-up spot inspections that are not called for by the owner or contractor have not been regularly performed by the Building Inspections Division since there is not an automated records keeping system currently in place.

D. Immediate Action:

1. At the present time, we have asked all of our Building Inspectors to search their personal inspection logs to determine if there are other structures throughout the City that they believe are occupied and do not have CO'S.

2. The owners of all units that are found to be occupied without a CO will be notified and times will be scheduled for an inspection of their units.

3. The Inspections Division staff will go over their inspection report with the owners to give advice and time schedules for correction of any violations of the State Building Code or Minimum Housing Code.

4. Building Inspectors, with their manual system, are to do a spot check of any new construction, even if an inspection

has not been called for, at least every 30 days. This will not solve the problem of individuals violating the ordinance by occupying the dwelling, but it simply means that we will be able to determine a violation much sooner and take prompt

action.

E. Long-Term Actions:

1. The staff will be working with Carolina Power & Light Company to determine if there is a way through electrical inspections to only give power on a temporary basis until such time as a CO is issued.

2. The staff will investigate ways that state law can be changed to reduce the possibility of violations of the ordinance through requirements that a CO be a condition of any property sale.

3. It is important that we move as quickly as possible to automate the Inspections Division recordkeeping system.

4. A public education campaign needs to be conducted that will provide information to realtors, attorneys, financial institutions, and the general public on the need for a Certificate of Occupancy.

F. Conclusion: It is unfortunate that a Wind In The Oaks

situation took place. It is certainly incumbent upon the City to identify and take prompt action when a violation of the City Code is discovered. Internal steps will be taken to ensure that projects will be monitored more closely and that any violations will be promptly noted and rectified.

Like any other ordinance or law, there is still the possibility of violations. We cannot totally eliminate this possibility, and there is nothing under the law that would change the present situation that we have at Wind In The Oaks, that being an unsuspecting buyer purchased property without ensuring that a CO was in place. Unfortunately, the City should have discovered this violation earlier. We would still be in the position of having to be the bearer of bad news since state law requires us to enforce the ordinance on

the owner.

WIND IN THE OAKS

Certificates of Occupancy Issued

Building Total Number CO'S

Number of Units Issued

#1 3 3

#2 4 0

(Unit #204 - Condemned)

#3 5 0

#6 5 1 (#604)

#7 5 0

There are 22 total units at Wind In The Oaks, and four (4) units have Certificates of Occupancy. There are two other structures in the development, a club house and pool house, and neither have Certificates of Occupancy. In addition, two foundations have been built and the buildings are incomplete at this time.

To date, we have received calls to inspect 14 of the remaining 18 units that have not been issued Certificates of Occupancy.

John Walsh, a local resident, said in his opinion a building permit is a contract between the contractor and the City of Asheville, and in the case of the Wind in the Oaks the contractor broke the contract and could be held responsible for the violations.

Robert Newton, owner of one of the units at Wind in the Oaks, read an article from the Asheville Citizen-Times dated June 20, 1979 about the City rigidly enforcing the Certificate of Occupancy procedure and inspections. He said in his opinion the Certificate of Occupancy certifies safety of buildings. He criticized the City for not consistently implementing a plan for the issuance of Certificates of Occupancy. He said there are problems with every unit at Wind in the Oaks, even the four that Certificates of Occupancy have been issued. He said the Inspection Department is negating their responsibility by not complying with the law.

David Lynn, owner of one of the units at Wind in the Oaks, said the City has not enforced its own procedure for the issuance of Certificates of Occupancy or the state building code in that no inspection of any kind was made of his unit. He said he was surprised during a recent condemnation hearing that several documents regarding inspections of his unit are now materializing. He said the City is allowing "unethical contractors" to build without inspections.

Paul Robershire, owner of one of the units at Wind in the Oaks, said the builder's of the units are attempting to correct the problems at Wind in the Oaks. However, they have called for inspections and can not get an inspector to talk with them or to come for an inspection.

Chief John Rukavina, Fire Chief and Director of Inspections, said he would check into the complaint that the inspectors are not talking with or making inspections for the builder's at Wind in the Oaks.

Robert Newton invited members of Council to attend David Lynn's condemnation hearing on January 18, 1989 in the First Floor City Hall Conference Room.

Mayor Bissette said he and members of Council are concerned about the problems at Wind in the Oaks and have instructed the City Manager to thoroughly investigate this complaint.

Councilman Price requested a follow-up report on this matter at next week's Council meeting.

@V. CONSENT:

@ A. Resolution No. 89-1 - Resolution authorizing the City

Manager to execute a right-of-way agreement between Thomas John Craig and wife, Anne H. Craig, and the City

of Asheville.

SUMMARY: In order to be able to replace the sidewalk

along Murdock Avenue in its present location at 132 Murdock will require the removal of three (3) trees. The additional right-of-way dedicated by Mr. and Mrs. Thomas John Craig will allow the sidewalk to be relocated in back of the trees and allow the trees to remain. This resolution will allow the City Manager to execute the necessary right-of-way agreement on behalf

of the City of Asheville.

Resolution Book No. 17 Page No. 311

@ B. Resolution No. 89-2 - Resolution authorizing the City

Manager to execute utility agreement with the North Carolina Department of Transportation for the

Sardis/Brevard Road Improvement Project.

SUMMARY: The Asheville-Buncombe Water Authority at its

special meeting of December 12, 1988 approved the installation of a water line associated with the Sardis Road/Brevard Road widening project. The Utility Agreement with the N. C. Department of Transportation must be between the City of Asheville, as owner of the Water System, and the North Carolina Department of Transportation.

Resolution Book No. 17 Page No. 312

@ C. Resolution No. 89-3 - Resolution of intent to close a

portion of Centre Street and calling a public hearing on

the question for February 14, 1989.

SUMMARY: A petition has been received from all property

owners along the unopened right-of-way of Centre Street between Harnett Street and Clinton Avenue, requesting that the portion be closed. This portion has been reviewed by the Operational Departments of the City and no objections to closing the petitioned portion of Centre Street have been received.

Resolution Book No. 17 Page No. 313

@ D. Resolution No. 89-4 - Resolution authorizing the Mayor

of the City of Asheville to accept real property located at 443 Broadway.

SUMMARY: The fee simple owners of 443 Broadway

Avenue desires to sell the real property to the City of Asheville for the price of One Dollar (\$1.00). The owners have executed a deed to the City as Grantee of the property

located at 443 Broadway.

Resolution Book No. 17 Page No. 314

Upon motion of Councilman Martin, seconded by Councilman Frank, the consent agenda was unanimously

approved.

@VI. OTHER BUSINESS:

@CLAIMS - SHARON FULLER (WATER) - MRS. JOHN REEVIE (SEWER) - EUGENE OCHSENREITER (STREETS) - TOM FRANCIS (WATER) - RITA METCALF (SEWER) - JERMAINE MOSLEY (PARKS) - GREG WATSON (INSPECTIONS) - CARLOS GOMEZ (SEWER) - PATRICIA COLE (POLICE) - DOROTHY OGLESBY (WATER) - DEWAYNE LITTLE (SEWER) - STEVE SAWYER (WATER) - TOM HICKMAN, JR. (POLICE) - DOROTHY GREEN (STREETS) - MICHAEL RAY (WATER) - DAWNWOOD HOMEOWNERS ASSOCIATION (PARKS) - JAMES MCLAIN (SEWER) - BETTY WILLIAMS (SEWER) - BARBARA PAGE (WATER)

The City Manager presented claims received from Sharon Fuller, Mrs. John Reeve, Eugene Ochsenreiter, Tom Francis, Rita Metcalf, Jermaine Mosley, Greg Watson, Carlos Gomez, Patricia Cole, Dorothy Oglesby, Dewayne Little, Steve Sawyer, Tom Hickman, Jr., Dorothy Green, Michael Ray, Dawnwood Homeowners Association, James McLain, Betty Williams, and Barbara Page.

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

@APPOINTMENT OF COUNCILMAN MARTIN TO ECONOMIC DEVELOPMENT PARTNERSHIP

Vice-Mayor Michalove moved that Councilman Russell Martin be reappointed to the Economic Development Partnership for a two (2) year term, term expiring December 31, 1990. This motion was seconded by Councilman Bratton and carried unanimously.

@VII. ADJOURNMENT

Upon motion, the meeting adjourned at 6:30 p.m.

MAYOR CITY CLERK
