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Tuesday - February 6, 1990 - 4:00 P.M.

Regular Meeting

Present: Mayor Kenneth M. Michalove, Presiding; Vice-Mayor

William G. Moore; Councilmen Mary Lloyd Frank, Norma T. Price, Wilhelmina Bratton, Eugene W. Ellison and William W. Estes; 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 Bratton.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the minutes of the January 30, 1990 meeting.

I. PROCLAMATIONS:

A. Recognition of "BEST" Employee of the Year - Celia Lytle

The City Manager introduced Celia Lytle, employee in the

Purchasing/Warehousing Division, who was nominated as "BEST" Employee of the Year in connection with the City's "BEST" program. He said "BEST" stands for "Becoming Excellent Servants Team". He said Celia was nominated by many coworkers for showing good customer

relations skills.

B. Proclamation - "Post Anesthesia Nurses Awareness Week" -

February 5 - 11, 1990

Mayor Michalove read the proclamation and presented a

copy to Kathy Wilborn with the Post Anesthesia Nurses

Association.

C. Proclamation - "National Salute to Hospitalized Veterans

Week" - February 11 - 17, 1990

Mayor Michalove read the proclamation and presented a

copy to Stan Johnson, Associate Medical Center Director, and Darlene Kirstein, Director of Volunteer Services, VA Hospital.

D. Presentation of USS Asheville Replica by Asheville

Cablevision

Joe Haight, General Manager of Asheville Cablevision,

presented a replica of the USS Asheville purchased by Asheville Cablevision for the City of Asheville.

Mr. Haight also presented a contract to the City of

Asheville for the removal of fire alarm wire to be removed by the employees of Asheville Cablevision. He said the wire would be sold and the money would be given to the Irene Wortham Center. He said they anticipate receiving in excess of \$10,000.

Mr. Haight also introduced several staff members of

Asheville Cablevision.

II. PUBLIC HEARINGS:

A. Continuation of a public hearing relative to closing a portion of Rosewood Avenue.

Resolution No. 90-16 - Resolution closing a portion of Rosewood Avenue

Mayor Michalove said a petition was received requesting

that an unopened portion of Rosewood Avenue be closed. This unopened remnant of Rosewood Avenue occurred when adjoining property was resubdivided and the developers of the subdivision redesigned the street system. The closing has been reviewed by the Technical Review Committee and found to have no effects upon water or sewer utilities or any other uses advantageous to the

City.

Mayor Michalove said this public hearing was held on

January 23, 1990 and continued until February 6, 1990

until all adjacent property owners could be notified.

The City Attorney noted that all adjacent property

owners have been notified of the proposed closing of a portion of Rosewood Avenue.

Ron Sneed, Attorney for the petitioner, appeared before

Council requesting the closing of a portion of Rosewood Avenue.

Mayor Michalove closed the public hearing at 4:18 p.m.

Mayor Michalove said members of Council were previously

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

Upon motion of Councilman Frank, seconded by Vice-Mayor

Moore, Resolution No. 90-16 was unanimously adopted.

Resolution Book 18 - Page 75 - 76

B. Public hearing relative to rezoning property located at

I-240 - Bear Creek Road - Jim Price, Wyatt Development

Company, Developer.

Mayor Michalove said the Asheville Planning and

Zoning Commission on November 1, 1989, voted to deny the rezoning petition of Lot 1, Sheet 16, Lower Hominy; Lot 6-1/2, Sheet 17, Lower Hominy; and Portion of Lot 1, Sheet 16, Ward 5, from R-3 Residential District to CH Commercial Highway District. They voted to continue this petition for reconsideration to the December 6 meeting. There was no motion to reconsider, therefore, the denial of November 1 stood.

Mayor Michalove opened the public hearing at 4:22

p.m. He explained the procedure for conducting the public hearing. He said a spokesman for a group would be allowed to address Council with unlimited time. He said individuals would be limited to three (3) minutes. He said a paper would be circulated among the audience that individuals could sign voicing their support or opposition to the rezoning. He asked that members of the public not repeat concerns that have already been expressed.

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 members of Council are

required to review the rezoning request on the merits of the Commercial Highway District zone and not on the proposed use for the property.

He said pursuant to the Zoning Ordinance the

adjacent property owners presented a protest petition on February 2, 1990 with sufficient signatures to invoke a 3/4 vote requirement to rezone the property in question. He said therefore it would take six (6) affirmative votes to rezone the property.

Carol Alberice, Planning Department, reviewed the

rezoning request stating that the property consists of 92.29 acres and is within Asheville's

extraterritorial zoning district. She said the property is located off I-240 at Bear Creek Road and is currently zoned R-3 Residential District. She showed a video of the property requested to be rezoned. She said a portion of the property is located within the flood plain of Hominy Creek.

Mrs. Alberice reviewed the background of rezoning

requests for this property. She said the 2010 Comprehensive Plan shows this property as medium density residential.

She also reviewed the recommendation of the Planning

and Zoning Commission rendered in November, 1989. She said the rezoning was denied on a vote of 5-1.

Mike Moser, Chairman of the Planning and Zoning

Commission, also reviewed the recommendation of the Commission. He said Council should keep in mind this is a rezoning request and not a group development approval. He said there is no special use zoning for this area that this specific project could utilize.

Jack Stevens, Attorney representing Wyatt

Development Company, requested that Council rezone this property to permit the proposed project by his client. He said the proposed project is unlike any other in this area and will not compete with other shopping centers in the area but will complement the shopping centers. He said the developer proposes a Sam's Discount Store and will invest \$30 million in land and improvements and \$5 million in road improvements. He said the proposed project will have a minimum impact on traffic in the area. He said the project will create approximately 1,000 jobs for the area and will be an investment for the community. He said his client fully expects to be annexed in the City when his development is complete. He said the land proposed to be developed has been vacant for a number of years and this project would be a major investment for the City. He said a multifamily use of this property would generate more traffic.

Jim Price, of Wyatt Development Company, said his

company has had public meetings in the area to address the concerns of the residents. He said his company will be using 60-65 acres of the 92 acres for the project and they are willing to have just the 60-65 acres rezoned. He said the wooded area that would remain zoned R-3 would not be disturbed and would be a buffer for the R-3 Residential property. He presented a rendering of the proposed

shopping center.

Roger Lewis, Frank Coleman and Associates, Inc.,

consulting traffic engineers, presented a traffic

impact analysis for the proposed shopping center at I-240/Bear Creek Road. (Traffic impact analysis on file in the Planning Department)

Mr. Stevens presented a rendering of a possible

multifamily residential unit that could be developed under the present zoning.

Mr. Stevens said he would like to be afforded an

opportunity to review the protest petition that was presented.

The following individuals spoke in opposition to the

rezoning stating that the proposed project would increase traffic in the area; would affect the environment in the area; is in conflict with the 2010 plan; will create competition for existing shopping centers; and the project will upset the precedent for downtown revitalization.

Bob Yeager - School Road

Kathy Watley - Bear Creek Road

Sylvia Robinson - Arthur Road

Paul Forte - Malvern Hills - Arthur Road

Kent Hewitt - Malvern Hills - 19 Cranford Road

Michael Green -

Mark Rosenstein - Asheville Downtown Association

Carroll Hughes, Architect - 39 Patton Avenue

Robert Carr - 370 Midland Drive

Stacy Dortch - Mothers of Malvern Hill Association

Paul Greene - Malvern Hills

Carlton Cranford - 105 Shelburne Road

Jane Gionvita -

Phylliss Armstrong - 11 Bear Creek Road

Hazel Fobes -

Charles Harkins - School Road - Malvern Hills

Mr. Peyton - Asheville School

E. G. Roberts - School Road

The following individuals spoke in support of the

rezoning stating that the project will be good for the economy and will increase revenue through taxes.

Dr. L. C. Waller - 7 Shady Lane - Candler, N. C.,

McClain Hall - petitioner for rezoning

Deborah Bates - presented petition in favor of the

rezoning containing approximately 80

signatures.

Eddie Evans - Pastor of Trinity Baptist Church

Jerry Young - 6 Rash Road

Bea Coates - South Bear Creek Road

Evonne Robinson - 181 Bear Creek Road

The developers answered general questions from

members of Council.

Bob McDonald, Traffic Engineer, said existing

traffic counts are consistent with the traffic impact

analysis presented by the developers.

Upon inquiry, Julia Cogburn, Director of Planning,

said the Planning and Zoning Commission did not consider rezoning the reduced area and leaving the remainder R-3 Residential District.

After a lengthy discussion, Mayor Michalove closed the public hearing at 7:14 p.m.

Mayor Michalove said the ordinance was previously presented to members of Council and it would not be read in its entirety.

Councilman Ellison said he was not prepared to vote

on the issue today since he had received new information and he would be in favor of remanding the rezoning to the Planning and Zoning Commission in order that the Commission could consider the rezoning of the reduced area.

Vice-Mayor Moore said he would object to the rezoning since it is a violation of the 2010 Comprehensive Plan.

Councilman Estes said he felt he needed more time to study the rezoning request.

Councilman Price moved to support the recommendation

of the Planning and Zoning Commission and to deny the rezoning request. This motion was seconded by Vice-Mayor Moore.

Councilman Ellison made a substitute motion to

remand the rezoning to the Planning and Zoning Commission in order that the Commission could consider rezoning the 62 acres instead of the 92 acres. This motion was seconded by Councilman Estes.

After discussion, Councilman Bratton moved to

postpone action on the rezoning request for two (2) weeks. This motion died for the lack of a second. (A discussion was held whether or not the Mayor could second a motion - since it was undecided Councilman

Bratton's motion died for the lack of a second).

On a voice vote of 5-2, Councilman Ellison's

substitute motion **failed** with Councilman Ellison and Councilman Estes voting "aye" and Mayor Michalove, Vice-Mayor Moore, Councilman Bratton, Councilman Frank, and Councilman Price voting "no".

Vice-Mayor Moore called for the question on the original motion.

On a voice vote of 4-3, Councilman Price's motion to

accept the recommendation of the Planning and Zoning Commission and to deny the rezoning request **failed**

with Councilman Frank, Councilman Price, and Vice-Mayor Moore voting "aye" and Mayor Michalove, Councilman Bratton, Councilman Ellison, and Councilman Estes voting "no".

Councilman Bratton then moved to postpone action on

the rezoning request for two (2) weeks. This motion was seconded by Councilman Ellison and **carried** on a voice vote of 5-2, with Vice-Mayor Moore and Councilman Frank voting "no" and Mayor Michalove, Councilman Ellison, Councilman Bratton, Councilman Estes and Councilman Price voting "aye".

The City Attorney said he would continue to research

to determine the right of the Mayor to make a motion

and/or second a motion.

III. OLD BUSINESS:

A. Ordinance No. 1816 - Third reading of an ordinance

amending Section 28-81.4 and Section 28-81.7 of Article IV, Speed Regulations (lowering speed limits on Midland

Drive and a portion of Sweeten Creek Road (U.S. 25A)

Mayor Michalove said this action will lower the existing

35 mph speed limit on Midland Drive to 30 mph and will lower the existing 50 mph speed limit on a portion of Sweeten Creek Road to 45 mph. This ordinance was read on first reading on January 23, 1990 and on second reading on January 30, 1990.

Mayor Michalove said members of Council were previously

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

On a roll call vote of 7-0, Ordinance No. 1816 passed on

third and final reading.

Ordinance Book No. 12 - Page 70

IV. NEW BUSINESS:

A. Ordinance No. 1819 - Budget amendment for ATA Capital

Funds FY 89.

Mayor Michalove said this budget amendment is for

\$64,000 which is the ATA Capital Grant for FY 89. Since the grant contract was not approved by UMTA until June of 1989 due to the legal issues that evolved with the 13 (c) labor agreement, the staff failed to setup a line item in the 67 Fund for the capital purchases.

Mayor Michalove 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. 1819. This motion was seconded by Councilman Ellison.

On a roll call vote of 7-0, Ordinance No. 1819 passed on first and final reading.

Ordinance Book No. 12 - Page 73

B. Ordinance No. 1820 - Budget Amendment for Planning Work

Program Funds FY 90.

Mayor Michalove said the City's budget amendments for

the Planning Work Program elements for FY 90, which include the original funding (June 27, 1989) and the increase in funding (August 22, 1989) for the transit consultant were inadvertently omitted in the Section 9 applications submitted to Council.

Mayor Michalove said members of Council were previously

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

Councilman Estes moved for the adoption of Ordinance

No. 1820. This motion was seconded by Councilman

Price.

On a roll call vote of 7-0, Ordinance No. 1820 passed

on first and final reading.

Ordinance Book No. 12 - Page 74

C. Ordinance No. 1821 - Budget Amendment to appropriate funds for Citywide Housing Rehabilitation Program

Mayor Michalove said this budget amendment will

appropriate \$230,000 of CDBG land sale program income for the Citywide Housing Rehabilitation Program which is administered by the Housing Authority.

Mayor Michalove said members of Council were previously

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

Vice-Mayor Moore moved for the adoption of Ordinance No. 1821. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1821 passed on first and final reading.

Ordinance Book No. 12 - Page 75

V. CONSENT:

A. Sale of Disposal Parcel 151 - East End/Valley Street

Community Improvement Program.

SUMMARY: The Housing Authority has tentatively

accepted a bid for Disposal Parcel 151 in the East End/Valley Street Community Improvement Program. This action will accept their

recommendation.

B. Bids for annual contract for bituminous concrete

materials (asphalt).

SUMMARY: Award of term purchase contract to furnish

the City's annual requirement for Bituminous Concrete Materials (Asphalt) to the only bidder, APAC-Carolina, Inc., Asheville, North

Carolina, for a total of \$176,425.00

C. Resolution No. 90-17 - Resolution authorizing the City

Manager to sign an application for grant funds from the North Carolina Arts Council and to enter into an agreement with North Carolina Arts Council for

administration of the grant.

SUMMARY: This action will authorize the City Manager

to sign an application for grant funds for \$1,500 from the N. C. Arts Council to promote the arts in the Afternoon Rooms at five sites through a series of children's instructional

programs.

Resolution Book No. 18 - Page 77

Upon motion of Vice-Mayor Moore, seconded by Councilman

Frank, the consent agenda was unanimously approved.

VI. OTHER BUSINESS:

CLAIMS - THOMAS FERREIRA (WATER) - ARCHIE HUNTSINGER (STREETS) - WANDA PUTNAM (WATER) - OPHELIA LOGAN (STREETS) - JOHN PAVONE (WATER) - GLEN GENTRY (WATER) - PHILIP FERGUSON (POLICE) -

HAMILTON GREGORY (WATER) _____

Claims were presented from Thomas Ferreira, Archie

Huntsinger, Wanda Putnam, Ophelia Logan, John Pavone, Glen Gentry, Philip Ferguson, and Hamilton Gregory.

Mayor Michalove referred the claims to the City

Attorney for investigation and recommendation.

COURT DECISION - CHESTNUT/LIBERTY STREET HISTORIC DISTRICT

The City Attorney announced that the North Carolina

Court of Appeals upheld the decision of the Superior Court making the Chestnut/Liberty Street Historic District nonexistent.

Mayor Michalove asked the City Attorney to give members

of Council a full report on this matter during the Pre-Council work session on February 20, 1990.

MEETING OF FEBRUARY 13, 1990 CANCELLED

Mayor Michalove announced that the regular meeting

scheduled for February 13, 1990 has been cancelled since the majority of Council members will be attending a meeting in Chapel Hill.

VII. ADJOURNMENT.

Mayor Michalove adjourned the meeting at 8:30 p.m.

MAYOR CITY CLERK
