

Tuesday - February 20, 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 Deputy City Clerk Carol Hensley.

Absent: Associate City Manager/City Clerk William F. Wolcott,

Jr.

INVOCATION

The invocation was given by Councilman Estes.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the minutes

of the February 6, 1990 meeting as submitted.

STUDENT REPRESENTATIVES INTRODUCED

Assistant City Manager Charles Penny introduced Angela

Minor, a sophomore at UNC-A, majoring in Political Science. He said Ms. Minor would be attending the next four Council meetings in connection with a Public Affairs Reporting Class.

Mr. Penny also introduced Shanae Sexton, a Junior at

Asheville High School and Class President, and Shaneta Earle, a Sophomore at Asheville High School and Vice-President of the Sophomore Class. He said they are the Asheville High School student representatives to City Council for the next four (4) Council meetings.

ASHEVILLE BREAKFAST LIONS CLUB - COLLECTION OF ALUMINUM

Johnny Clarke announced that the Asheville Breakfast

Lions Club will have collection points throughout the City for aluminum. He said the funds from the sale of the aluminum will be used for Asheville Breakfast Lions

Club projects.

I. PROCLAMATIONS:

A. Resolution No. 90-18 - Resolution recognizing recent retiree, Joe Morris.

John Rukavina, Chief of the Fire Department, recognized

Joe Morris, Inspection Specialist, for his 14 years of service with the City of Asheville. Mr. Morris retired

effective January 1, 1990.

Mayor Michalove read the resolution.

Upon motion of Councilman Price, seconded by Councilman

Ellison, Resolution No. 90-18 was unanimously adopted.

Mayor Michalove presented the resolution to Mr. Morris.

Resolution Book No. 18 - Page 78

II. PUBLIC HEARINGS:

A. Continuation of a public hearing relative to an

ordinance directing the Director of Building Inspections to demolish the dwelling located at 224 Flint Street.

Ordinance No. 1822 - Ordinance directing the Director of

Building Inspections to demolish the dwelling located at 224 Flint Street.

Mayor Michalove said this ordinance will direct the

Director of Building Inspections to demolish the structure located at 224 Flint Street, Asheville, North Carolina, and in so doing, comply with the provisions of the City of Asheville Housing Code. This public hearing was continued from the January 16, 1990 meeting pending further notification to all property owners.

The City Attorney said all parties involved with this

particular property have been legally notified.

Bob Hixon, Director of Inspections, reviewed the

condition of 224 Flint Street and explained the legal process to demolish the dwelling. He showed a video tape of the property in question.

Mayor Michalove closed the public hearing at 4:20 p.m.

Mayor Michalove said members of Council were previously

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

Councilman Frank moved for the adoption of Ordinance No.

1822. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1822 passed on

first reading.

Councilman Frank moved to suspend the rules and proceed

to the second reading of Ordinance No. 1822. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1822 passed on second reading.

Councilman Frank moved to suspend the rules and proceed to the third reading of Ordinance No. 1822. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1822 passed on third and final reading.

Ordinance Book No. 12 - Page 76 - 77

B. Continuation of a public hearing relative to an

ordinance directing the Director of Building Inspections to demolish the dwellings located at 36, 38, and 40 Cumberland Avenue.

Ordinance No. 1823 - Ordinance directing the Director of

Building Inspections to demolish the dwellings located at 36, 38, and 40 Cumberland Avenue.

Mayor Michalove said this ordinance will direct the

Director of Building Inspections to demolish the structure located at 36, 38, and 40 Cumberland Avenue, Asheville, North Carolina, and in so doing, comply with the provisions of the City of Asheville Housing Code. This public hearing was continued from the January 16, 1990 meeting pending further notification to all property owners.

The City Attorney said all parties involved with this particular property have been legally notified.

Bob Hixon, Director of Inspections, reviewed the

condition of 36, 38, and 40 Cumberland Avenue explained the legal process to demolish the dwelling. He showed a video tape of the property in question.

Mayor Michalove closed the public hearing at 4:30 p.m.

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

Councilman Frank moved for the adoption of Ordinance No. 1823. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1823 passed on first reading.

Councilman Frank moved to suspend the rules and proceed to the second reading of Ordinance No. 1823. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1823 passed on second reading.

Councilman Frank moved to suspend the rules and proceed to the third reading of Ordinance No. 1823. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1823 passed on third and final reading.

Ordinance Book No. 12 - Page 78 - 79

C. Public hearing relative to rezoning property located on Piedmont Avenue - Thompson.

Ordinance No. 1824 - Ordinance amending Zoning of property located at Five Piedmont Street (Petition of Miles Thompson, Trustee)

Mayor Michalove said the Asheville Planning and Zoning

Commission on January 3, 1990, reviewed and recommended approval of rezoning Ward 9, Sheet 6, Lots 41 from R-3 Residential District to CH Commercial Highway.

Mayor Michalove opened the public hearing at 4:33 p.m.

The City Clerk presented the notice to the public

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

Carol Alberice, from the Planning Department, summarized

the rezoning request. She said the property is located behind the Animal Hospital on Beaverdam Road. She reviewed the zoning of surrounding properties and said this rezoning is in accordance with the 2010 Comprehensive Plan. She said no opposition has been received relative to the rezoning.

Mayor Michalove closed the public hearing at 4:37 p.m.

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

Councilman Frank moved for the adoption of Ordinance No. 1824. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1824 passed on first reading.

D. Public hearing relative to rezoning property located on

Haywood Road - Smith.

Ordinance No. 1825 - Ordinance amending Zoning of property located on Haywood Road (Petition of Jack Smith, Agent)

Mayor Michalove said the Asheville Planning and Zoning

Commission on January 3, 1990, reviewed and recommended approval of rezoning Ward 6, Sheet 9, Lots 19-3/4 and 20 from R-3 Residential District to CS Commercial Service.

Mayor Michalove opened the public hearing at 4:39 p.m.

The City Clerk presented the notice to the public

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

Carol Alberice, from the Planning Department, summarized

the rezoning request. She said the property is located on Haywood Road, bordered by Dorchester Street. She reviewed the zoning of surrounding properties and said this rezoning is in accordance with the 2010 Comprehensive Plan. She said residential property would be protected by the buffering requirements. She said no opposition has been received relative to the rezoning.

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

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

Councilman Bratton moved for the adoption of Ordinance

No. 1825. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1825 passed on first reading.

III. OLD BUSINESS

A. Continuation of consideration of an ordinance 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 said a public hearing was held on

this matter on February 6, 1990 and the meeting would not be opened back up for public comments. He said the developer would be given an opportunity to speak and the spokesman for the neighborhood and then Council would make a decision on the rezoning.

Upon inquiry of Attorney Jack Stevens, the City

Attorney said the protest petitions received on

February 6, 1990 were valid and constituted forty-two percent (42%) of the property owners directly opposite the subject site extending 100' from the frontage on Bear Creek Road.

Mr. Stevens said he had reviewed the protest

petitions and disagreed with the City Attorney that the protest petition is valid. He asked for a different ruling.

Mr. Gwen Radeker, Associate Attorney for Jack

Stevens, said he had calculated the percentages of the protest petitions and less than fifteen percent (15%) of the property owners surrounding the entire tract proposed to be rezoned had signed the petition. He presented a map to show his calculations. He also argued that the petitions were not timely filed under the ordinance. He said Section 30-11-3 states that no protest petition shall be valid unless it is received by the City Clerk in time to allow at least two normal working days prior to the public hearing on the amendment so as to allow the municipal personnel to check the accuracy and sufficiency of the petition. He said the protest petitions were not received by the City Clerk until the day before the commencement of the hearing. He presented an "Objection to protest petitions filed in connection with proposed amendment of Ordinance No. 211, as amended" which stated the basis for the protest petitions not being valid.

Jim Price, of Wyatt Development Company, spoke in

support of the rezoning. He said if the rezoning is approved his company proposes to invest \$30 - \$35 million in Asheville. He said this is an opportunity, through rezoning, to make a marketable difference for the City of Asheville.

Bob Yeager, School Road, spokesman for the area

residents, said the property owners met the deadlines for filing the protest petitions and acted in good faith in presenting them. He said the proposed development could be put in a commercial area rather than a residential area.

Tom Bell, Attorney for the area property owners,

said in his opinion the protest petitions are valid. He said one might consider this rezoning as spot zoning since it is in the middle of a large tract of residential property. He said the increase in traffic would be a major problem. He said the rezoning is against downtown development and in violation of the 2010 comprehensive plan.

Julia Cogburn, Director of Planning, said the 2010

comprehensive plan clearly designates this property as residential property. She said in adopting the 2010 plan Council noted that the 2010 plan would be considered during rezoning issues.

Mayor Michalove said members of Council have three

(3) options: 1) rezone the property from R-3 Residential District to CH Commercial Highway; 2) send the rezoning request back to the Planning and Zoning Commission for further review; or 3) accept the recommendation of the Planning and Zoning Commission and deny the rezoning request.

Vice-Mayor Moore moved to accept the recommendation

of the Planning and Zoning Commission to deny the rezoning request. This motion was seconded by Councilman Frank.

Councilman Price said it was her hope that Council

would come to a unanimous decision in order not to get caught up with legal issues.

Councilman Ellison said even though the 2010 plan is

only a guide it should not be ignored. He said a commitment has been made to revitalize downtown and that should not be ignored. He said he had carefully reviewed the pros and the cons of the rezoning issue.

Councilman Estes said the growth on Highway 191 will

cause increased traffic.

Councilman Frank said the integrity of the City is

dependent upon the integrity of the neighborhood.

Mayor Michalove said the area in question is not in

the City and if it was not in the extraterritorial area Council would not be considering the rezoning. He said the traffic in the Malvern Hills and Shelborne Road area needs to be considered regardless of the rezoning. He said the issue before Council is strictly whether the property should be R-3 Residential District or Commercial Highway and not the proposed development.

On a voice vote Vice-Mayor Moore's motion to deny

the rezoning carried unanimously.

B. Report on Sign Permit Fees.

The City Manager said several weeks ago Council received

a request to review the sign permit fees. He said in reviewing the sign permit fees it was determined that administratively it is impossible to base the sign permit fee on the cost of the sign since there is no way to verify the cost of a sign. He said in order to obtain full cost recovery the sign permit fees should be \$2.00 per square foot. However, it was decided to charge a fee of \$1.50 and to monitor the fees from time to time. He presented a summary report from the Planning Director along with a report that showed the fees charged by other cities.

The City Manager recommended that the fee schedule be

changed to calculate the fee based on one side of the sign - sign structure - rather than the square footage of the sign faces. He said this would probably be more fair and equitable.

After discussion, Councilman Estes moved to accept the

recommendation of the City Manager to base the sign permit fee on the sign structure rather than the square footage of the sign faces. This motion was seconded by Councilman Price and carried unanimously.

IV. NEW BUSINESS:

A. Ordinance No. 1826 - Budget amendment to appropriate

funds for Affordable Homeownership Program.

Mayor Michalove said the appropriation will provide

\$82,624 of CDBG funds for Mountain Housing Opportunities, Inc. to establish an affordable homeownership program. The program will assist low income families in first time homeownership.

Marvin Vierra, Director of Community Development,

explained the history and purpose of the Homeownership Program.

Cindy Weaks, with Mountain Housing Opportunities, Inc.,

explained the details of the Affordable Homeownership Program. She said Mountain Housing Opportunities, Inc. is a non-profit housing corporation that repairs and rehabilitates houses for low income and elderly families. She said the program develops homeownership opportunities for first time homeowners. She said this

program will not conflict with the Neighborhood Housing Services in the Montford area.

Councilman Ellison moved for the adoption of Ordinance

No. 1826. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1826 passed on

first and final reading.

Ordinance Book No. 12 - Page 82

B. Resolution No. 90-19 - Resolution authorizing execution

of an agreement with Mountain Housing Opportunities, Inc. for an Affordable Homeownership Program.

Mayor Michalove said the appropriation will provide

\$82,624 of CDBG funds for Mountain Housing Opportunities, Inc. to establish an affordable homeownership program. The program will assist low income families in first time homeownership.

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 Councilman

Price, Resolution No. 90-19 was unanimously adopted.

Resolution Book No. 18 - Page 79

C. Ordinance No. 1827 - Ordinance amending Section 8-2 of

the Code of Ordinances of the City of Asheville (modifying Fire District 5 and deleting Districts 2, 3 and 4)

Mayor Michalove said this ordinance will modify Fire

District 5; delete Fire District 2, 3 and 4 (present Fire Districts were created in 1946; this is the first in a series of proposed changes based on review of all Fire Districts)

John Rukavina, Chief of the Fire Department, said a review of all Fire Districts is currently underway and this action is the first in a series of proposed changes.

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

Councilman Ellison moved for the adoption of Ordinance No. 1827. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1827 passed on first reading.

Councilman Ellison moved to suspend the rules and proceed to the second reading of Ordinance No. 1827. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1827 passed on second reading.

Councilman Ellison moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1827. This motion was seconded by Vice-Mayor Moore.

Councilman Price said she felt Council should wait on the third reading until next week in case any one would like to address the ordinance.

Councilman Ellison and Vice-Mayor Moore withdrew their motion to suspend the rules and proceed to the third reading of the ordinance.

D. Ordinance No. 1828 - Budget amendment for Walton Street

Pool improvements.

Mayor Michalove said this amendment is to request additional funding necessary to complete renovations to the Walton Street Pool and park area.

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. 1828 passed on first and final reading.

E. Ordinance No. 1829 - Budget amendment for Streets and

Sidewalk Bond Project Contract No. 7.

Mayor Michalove said the low bid for Contract 7 and

Alternates submitted by APAC Carolina, Inc. in the amount of \$1,314,218.00 will require sale of bonds to obtain funding necessary to execute the contract and get the work underway. This budget amendment will accomplish this.

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. 1829 passed on first and final reading.

Ordinance Book 12 - Page 85

V. CONSENT:

A. Resolution No. 90-20 - Resolution authorizing the Mayor

to execute a Municipal Agreement with the North Carolina Department of Transportation for the installation of railroad crossing signals on Crayton Road at the

Southern Railway.

SUMMARY: This action will authorize the North Carolina

Department of Transportation to proceed with the planning, design and installation of railroad crossing signals on Crayton Road.

Resolution Book No. 18 - Page 80

B. Resolution No. 90-21 - Resolution awarding Street and

Sidewalk Improvements Contract No. 7 to APAC Carolina, Inc., and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any

change orders within the budgeted amount with APAC

Carolina, Inc.

SUMMARY: APAC Carolina, Inc. was lowest responsible

bidder on Street and Sidewalk Improvements Contract No. 7 including Alternates. The bids have been tabulated and reviewed by Vaughn & Melton, Consulting Engineers and found to be in order. The recommendation of the Engineers and Public Works Department is that the contract and alternates be awarded to APAC Carolina, Inc.

Resolution Book No. 18 - Page 81

C. Bids for pistols for the Police Department.

SUMMARY: Award to low bidder meeting specifications,

Maryland Gun Works, Hyattstown, Maryland, for 93 "Sig Sauer" Model P220 .45 caliber pistols at \$458.00 each = \$42,594. and 114 seven round magazines at \$25.00 each = \$2,850. less trade-in for 94 used S & W revolvers at \$135.00 each - <\$12,555> for a total net bid

of \$32,889.

D. Resolution No. 90-22 - Resolution appointing member to the Asheville Transit Authority.

SUMMARY: This resolution will appoint David K. Fort as a member of the Asheville Transit Authority.

Resolution Book No. 18 - Page 82

Upon motion of Vice-Mayor Moore, seconded by Councilman Frank, the consent agenda was unanimously approved.

VI. OTHER BUSINESS:

A. Group Development Actions by the Planning and Zoning Commission

Gerald Green, from the Planning Department, 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. The action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on

the matter. The following action was taken by the Planning

and Zoning Commission at their meeting on February 7, 1990.

(1) Belvedere Phase II - Beaverdam Road

The Asheville Planning and Zoning Commission on February

7, 1990 reviewed and approved the site plan of the **Belvedere Phase II - Beaverdam Road** subject to the following contingencies: 1) Approval of an erosion control plan by the Planning Department prior to soil disturbance; 2) Corrections to the existing storm drainage system in Phase I prior to the issuance of Certificates of Occupancy for units in Phase II. These improvements shall include removal of speed breakers and installation of trench drains; and c) the Planning Department provide notice to property owners in Phase I and Phase II that fire prevention vehicles may have difficulty accessing the site during inclement weather.

After a brief discussion, Councilman Price moved to

schedule a public hearing relative to the Belvedere Phase II - Beaverdam Road Project for March 6, 1990. This motion was seconded by Councilman Frank and carried

unanimously.

(2) Park Avenue - Phase II

The Asheville Planning and Zoning Commission on February

7, 1990 reviewed and recommended denial of the site plan for **Park Avenue - Phase II.**

Council accepted the recommendation of the Planning and

Zoning Commission by taking no action.

CLAIMS - DORIS ROGERS (WATER) - CHASTAIN REAL ESTATE COMPANY (WATER) - BELINDA CROOKS (WATER) - DAN DONNELLY (SEWER) - ANNA WATLEY (SEWER) - WINKY MEADOWS (WATER) - MARTHA LAKENAN (SEWER) - FRANCINE COSTA (PARKS) - MARGARET WIMBERLY (WATER) - DANNY YATES (WATER) - JULIUS WILSON (SEWER) - BILL RHODES (WATER) - RICHARD

GLASS (STREETS)

The City Manager presented claims received from Doris

Rogers, Chastain Real Estate Company, Belinda Crooks, Dan Donnelly, Anna Watley, Winky Meadows, Martha Lakenan, Francine Costa, Margaret Wimberly, Danny Yates, Julius Wilson, Bill Rhodes, and Richard Glass.

Mayor Michalove referred the claims to the City

Attorney for investigation and recommendation.

RALPH BISHOP - LOTTERY SALES IN THE CITY

Ralph Bishop spoke to members of Council relative to

lottery sales in the City of Asheville.

VII. ADJOURNMENT

Mayor Michalove adjourned the meeting at 6:00 p.m.

MAYOR CITY CLERK
