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

Regular Meeting

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

G. Moore; Councilmen Wilhelmina Bratton, Mary Lloyd Frank, Norma T. Price, 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: None

INVOCATION

The invocation was given by Reverend James F. Wills.

APPROVAL OF MINUTES

Mayor Michalove announced approval of the minutes of the February 20, 1990 and February 27, 1990 meetings as submitted.

I. PROCLAMATIONS:

A. Resolution No. 90-29 - Resolution recognizing recent retiree, Caroline Martin

Harold Huff introduced Caroline Martin, Customer Service

Representative, who retired effective February 1, 1990. He said Ms. Martin was retiring after 22 years of service to the City of Asheville. He said Ms. Martin had consistently been complemented by the citizens of Asheville for her kindness to them and her willingness to go the extra mile in serving them.

Mayor Michalove read the resolution and presented the resolution to Ms. Martin thanking her for her service to the City of Asheville.

Upon motion of Councilman Ellison, seconded by Vice Mayor

Moore, Resolution No. 90-29 was unanimously adopted.

B. Proclamation proclaiming April 22, 1990 as "Earth" Day and April 16 - 22, 1990 as "Earth" Week.

Mayor Michalove read a proclamation proclaiming April 22, 1990, as "Earth Day" and April 16-22, 1990, as "Earth Week". He presented the proclamation to Hara Sidnick.

C. Presentation of "Recycling Achievement Award" by Altrusa

International, Inc.

Barbara Ann Hughes, President of Altrusa International,

Inc., presented a "Recycling Achievement Award" to the Asheville City Council for their outstanding contributions to recycling and their efforts to protect and preserve the beauty of our earth.

Ms. Hughes said Altrusa International, Inc. is an

international association of business executives and professionals who volunteer their energies and expertise in projects dedicated to community betterment. She recognized Julia Cogburn, Planning Director, as an active member of the association.

Mayor Michalove accepted the award on behalf of the City

Council.

ANNOUNCEMENT - MAYOR MICHALOVE - RECYCLING MEETING

Mayor Michalove announced there would be a special meeting

tonight at 7:00 P.M. at Vance School relative to Recycling. He invited the public to attend the meeting. He said a presentation would be made on the "Recycling Goals and Objectives for the City of Asheville" prepared by Hazen and Sawyer, P.C., and that the City Council would receive comments from the public relative to the report and

recycling.

II. PUBLIC HEARINGS:

A. Public hearing relative to Group Development for Belvedere

II Project.

Mayor Michalove opened the public hearing at 4:25 p.m.

The City Clerk presented the notice to the public and the affidavit of publication.

Gerald Green, Senior Planner, said the Asheville

Planning and Zoning Commission reviewed the request of Ralph Kiger of Condominium Builders, Inc. on February 7, 1990, for Phase II of the Belvedere Project to be located on Beaver Ridge Road. He said the development consists of 6.33 acres and is zoned R-2. He said adjacent property is zoned R-1 and R-2. He said Phase II of this project will consist of 17 single-family dwellings. He said water and sewer services are available, but that the Fire Department has indicated concern that they might not be able to provide fire protection services during severe weather due to the

steep grades and sharp curves. In addition, he said several property owners had voiced concern about storm drainage problems from Phase I of the project and also grading required for Phase II. He said 95 percent of the grading had been completed for Phase II, and the area has been seeded to prevent erosion.

Mr. Green said the Commission had addressed the above

concerns by approving the site plan subject to the following contingencies:

(a) Approval of an erosion control plan by the Planning and Zoning Commission prior to soil disturbance;

(b) 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.

Mr. Green said the letter or notice to property owners

of Phase I and Phase II relative to fire protection could possibly open up questions of liability and therefore the matter should be addressed at the public hearing.

Mr. Green answered questions from members of Council

relative to grades, trench drains, and fire protection for the project. Mr. Green advised Council that the Planning Department is working on standards for developing on steep properties.

Mr. Louis Fogg of the Timbers Condominiums voiced

concern about the steep bank located behind 4 of the units. He said that he could see nothing that will assure people that the hill will not be partially scalped.

Mr. Jack Baber, Chairman of Architectural Committee of

the Timbers Condominiums, requested that his Committee be given the opportunity to review the final grading and erosion control plans for the project when they are submitted by the developer.

Mr. Clark Walker, 2602 Timber Trail, said it is hard to

know how the drainage is going to be without a topographical view showing how the homes will be situated. He said there is presently two large gullies within the property line of the Belvedere project.

Ralph Keiger of Condominium Builders, Inc. with the

current zoning, he could have developed 24 additional units in Phase II, but that he had reduced the density to 17 units. He said none of the Belvedere homeowners have objected to the plans for Phase II and that very little earth moving is left to be done. He said they

have no intention of digging into the bank.

By use of a map, Mr. Green answered questions from Mrs.

Sarah Brig, 2701 Timber Trail, about the type of dwellings shown.

Mayor Michalove closed the public hearing at 4:51 p.m.

Vice Mayor Moore moved that the Council go into

executive session to discuss legal questions relative to the project. This motion was seconded by Councilman Frank and carried unanimously.

Mayor Michalove called the meeting back to order at 5:05

p.m.

Councilman Ellison moved to approve the variances for

Phase II of the Belvedere Project with the deletion of Item C of the Planning and Zoning recommendations. Councilman Price seconded this motion and with Councilman Ellison's consent added that the motion include a provision that a committee be established to communicate with the neighborhood, including the Timbers Condominiums Association, to resolve complaints associated with the project and also to keep them informed of issues concerning the project. This motion passed on a 4-3 vote with Vice Mayor Moore and Councilmen Frank and Bratton voting "no".

Vice Mayor Moore, Councilmen Frank and Bratton said they

felt they could not support the project because they felt a personal responsibility in approving development of residential units when the Fire Department is

uncertain they can provide adequate fire protection.

III. OLD BUSINESS:

A. Ordinance No. 1824 - Third reading of an ordinance rezoning

property located on Piedmont Avenue - Thompson.

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. He said this ordinance was read on first reading on February 20, 1990 and on second reading on February 27, 1990.

Mayor Michalove said this ordinance has been read and would not be reread in its entirety.

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

Ordinance Book 12, Page 80

B. Ordinance No. 1825 - Third reading of an ordinance rezoning

property located on Haywood Road - Smith.

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. He said this ordinance was read on first reading on February

20, 1990 and on second reading on February 27, 1990.

Mayor Michalove said this ordinance has been previously read and would not be reread in its entirety.

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

final reading.

Ordinance Book 12, Page 81

C. Ordinance No. 1831 - Second reading of an ordinance amending

Section 25-16 of the Code of Ordinances of the City of

Asheville (Parade Permits).

Mayor Michalove said at a recent City Council meeting, an

anti-abortion group made a presentation regarding recommended changes in the parade permit ordinance. He said the Police Department and the City Attorney have reviewed this ordinance and recommend the attached amendment in order to address two of the concerns raised by that group. He said the other changes requested by the group were not included in the ordinance amendment as drafted. This ordinance was read on first reading on February 27, 1990.

Mayor Michalove said this ordinance has been previously read

and would not be reread in its entirety.

On a roll call vote of 7-0, Ordinance No. 1831 passed on second

reading.

John Ponti, Project Manager of the Animal Rights Coalition, voiced opposition to the ordinance stating that the some sections are in direct conflict with First Amendment Rights under the Constitution. He said the the City had denied a American Civil Liberties Union's request for a permit for the purpose of protesting the Ringling Bros. Circus. He also questioned the City's ability to limit protests to

daylight hours only.

Mr. Robert Brown of Fairview, North Carolina, asked several questions relative to the fee required for the permit, what they pay for, and what happens if a person or group can't pay the fee. The City Manager explained that the fees were to cover administrative costs and that a permit could not be issued without the fee since the fee is required by ordinance.

IV. NEW BUSINESS:

A. Ordinance No. 1833 - Budget amendment to appropriate funds

for the Asheville-Buncombe Community Christian Ministry Shelter Program.

Mayor Michalove said Community Development Block Grant funds

in the amount of \$85,000 will be appropriated for renovation to the ABCCM shelter on Coxe Avenue. He said the renovation on the front one-third of the building will enable the facility to provide improved daytime shelter activities. He said an agreement will be executed with ABCCM to administer the project.

Mayor Michalove said there was concern on the part of the

City Council that the program fits into Community Development Objectives in relationship to the things the City told the Federal Government it would do. He said some of the newer members of Council may need to review the Community Development Program in order to see the allocations made to different programs.

Reverend Scott Rogers, speaking on behalf of the Asheville-

Buncombe County Christian Ministry, said due to lack of funds, renovations to their building on Coxe Avenue had stopped in October of 1989. He said lack of funds had also suspended renovations to the building, some of the daytime activities, staffing for daytime programs, and completion of the facility. He said \$25,000 had been raised to hire staff for the daytime program. He said several daytime services were in place, but that the program itself is under-utilized due of renovations needed to make the facility usable. In addition, he said, landscaping needs to be done around the building, proper drainage needs to be added, and a severe water problem corrected on the north side of the building. He said the requested funds will enable the Asheville-Buncombe County Christian Ministry to do a proper job in providing improved daytime services to the homeless.

The Council discussed issues relative to the relationship of

the ABCCM to the BEACON and other programs serving the homeless, the number of homeless being served, the possibility of the ABCCM jeopardizing their funding base by seeking funds from a governmental agency, and the possibility of the agencies getting together and routing their requests for funding in a coordinated effort to the City Council.

Marvin Vierra, Community Development Director, said he had

received a letter from HUD saying the program was eligible for CDBG funding.

Mayor Michalove said the City's current CDBG entitlement is

\$1,037,000. He said the City had already programmed \$500,000 to the Downtown Loan Fund, \$100,000 to the Shelter Program, and \$80,000 to Housing Projects. He said this leaves approximately \$800,000. He said he is not sure this type program fits with what the City told HUD they were going to do with the funds when they made application for the funds.

Mr. Vierra said the overall program is consistent with the

emphasis on housing this year as shown in our Statement of Objectives. He said, however, Program Income comes into the city over a period of years and comes from the sale of land. He said it would be necessary to amend our application to show HUD that we are using those funds. He said the City would not have Program Income on an ongoing basis, and that he didn't foresee having these type of funds to use anymore. He said the City is not under any deadline to spend these funds, but that he would advise not waiting much longer to appropriate the Program Income

In response to Councilman Frank, Reverend Rogers said the

ABCCM has 6 months of funding available for daytime program, but that the requested funding does have a serious impact on the number of daytime services provided and that safety is also a major issue.

Mayor Michalove said copies of the ordinance were previously

distributed to Council Members, and the ordinance would not be read in its entirety.

Councilman Price moved for the adoption of Ordinance No.

1833. This motion was seconded by Councilman Frank.

Councilman Bratton made a substitute motion to delay the

decision for one week so staff could prepare a report on the funds appropriate from CDBG funds. This motion died for lack of a second.

On a roll call vote of 7-0, Ordinance No. 1833 passed on

first and final reading.

Ordinance Book 12, Page 89

B. Resolution No. 90-30 - Resolution approving execution of a

Community Development Block Grant Agreement with Asheville-Buncombe Community Christian Ministry for renovation of the ABCCM Shelter.

Mayor Michalove Community Development Block Grant funds in

the amount of \$85,000 will be appropriated for renovation to the ABCCM shelter on Coxe Avenue. He said the renovation on the front one-third of the building will enable the facility

to provide improved daytime shelter activities. An agreement will be executed with ABCCM to administer the project.

Mayor Michalove said this resolution was previously distributed to

members of Council and would not be read in its entirety

unless there was a specific request to do so.

Upon motion of Councilman Ellison, seconded by Councilman Bratton, Resolution No. 90-30 was unanimously adopted.

Resolution Book No. 18, Page 91

C. Public Hearing Scheduled - Resolution adopting Minority and

Women Business Procurement Plan.

Mayor Michalove said upon the advice of the City Attorney a

public hearing will be scheduled relative to the adoption of the Minority and Women Business Procurement Plan.

Councilman Price moved to schedule a public hearing relative

to the Minority and Women Business Procurement Plan for March 20, 1990. This motion was seconded by Councilman Frank and carried unanimously.

D. Ordinance No. 1835 - Budget amendment for Motor Transport

Service Station Expansion

Mayor Michalove said this ordinance will record the

appropriation fund balance to acquire Snow property for Motor Transport Service Station.

Mayor Michalove said copies of this ordinance was previously

distributed to members of Council and would not be read in its entirety unless there was a specific request to do so.

Councilman Price moved for the adoption of Ordinance No.

1835. This motion was seconded by Vice Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1835 passed on

first and final reading.

Ordinance Book 12, Page 93

E. Ordinance No. 1836 - Budget amendment to revise the Festival

Fund.

Mayor Michalove said due to increased activity from Bele

Chere '89 and Light Up Your Holidays revenues and expenditures exceeded estimates. He said this action reflects this adjustment and adjusts line items as needed.

Mayor Michalove said copies of this ordinance was previously

distributed to members of Council and would not be read in

its entirety unless there was a specific request to do so.

Councilman Ellison moved for the adoption of Ordinance No. 1836.

This motion was seconded by Vice Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1836 passed on first and

final reading.

Ordinance Book 12, Page 94

F. Sale of Disposal Parcel 142 in East End/Valley Street

Community Improvement Program.

Mayor Michalove said the Housing Authority has tentatively

accepted the following bid for Disposal Parcel 142 in the East End/Valley Street Community Improvement Program in the amount \$4,901.00 to Bruce C. White. He said Parcel 142 is to be developed with a single family home under the Incentive Housing Program. Mayor Michalove said this

property is located on Short Jordan Street.

Councilman Estes moved to approve the sale of Disposal

Parcel 142 in the East End/Valley Street Community Improvement Program for \$4,901.00. This motion was seconded by Vice Mayor Moore and carried unanimously.

V. CONSENT:

Mayor Michalove said Item B, Resolution to appoint member to

the Western North Carolina Air Pollution Board, had been deleted from the Consent Agenda and would be considered at next week's meeting so that staff could obtain information relative to attendance.

A. Resolution directing the City Clerk to investigate the

validity of a petition for annexation.

SUMMARY: G.S. 160A-58.1 as amended, requires the City

Council to instruct the City Clerk to investigate the validity of a petition for a noncontiguous annexation. The property is located on U.S. 25 (Hendersonville Road) and is owned by R.L. Jordan

Oil Company of North Carolina, Inc.

**C. Resolution No. 90-32 - Resolution appointing members to the
Downtown Commission.**

SUMMARY: This resolution will appoint Wilhelmina Bratton

and Mary Lloyd Frank as members of the Asheville

Downtown Commission.

Resolution Book No. 18, Page 93

**D. Resolution No. 90-33 - Resolution directing the City Clerk
to advertise an offer of purchase for upset bids regarding
property on Ivanhoe Avenue.**

SUMMARY: The City owns a vacant lot on Ivanhoe Avenue

adjacent to the home of Margaret Heissenberg. Mrs. Heissenberg has made an offer to purchase the property for its appraised value of \$3,250. The City has no anticipated use for the property. Before the sale can be authorized, a notice of the offer must be published in the newspaper. This resolution will direct the City Clerk to publish the required notice. Assuming there is no upset bid, a subsequent resolution will authorize the

Mayor to execute a deed of conveyance.

Resolution Book No. 18, Page 94

Upon motion of Vice Mayor Moore, seconded by Councilman Ellison, the Consent Agenda was unanimously adopted.

VI. OTHER BUSINESS:

CLAIMS - GREGORY ROBINSON (WATER)

The City Manager presented claims received from Rita Wright

(Sanitation), McDonald's (Police), Southern Bell (Sewer) and Mrs. John Lanning (Sewer).

Mayor Michalove said this claim has been referred to the to the City

Attorney for investigation and recommendation.

LAWSUITS - THE EDUCATION CENTER, INC. D/B/A RICHMOND HILL

**INN AND CONFERENCE CENTER VS CITY OF ASHEVILLE (APPEAL FROM BOARD OF
ADJUSTMENT - PAUL DAVID JUNKYARD)**

The City Manager said the City had been served with a lawsuit initiated by The Education Center, Inc. d/b/a Richmond Hill Inn and Conference Center relative to the Appeal from the Board of Adjustment decision regarding the Paul Davis Junkyard.

Mayor Michalove referred the lawsuit to the City Attorney for appropriate legal action.

FOREST LAKE SUBDIVISION - REQUEST BY JOE ENDERLE

At the request of Joe Enderle of Jensen Engineering, Council

agreed to schedule consideration of the variances for the Forest Lake Subdivision under the "Old Business" section of the agenda on March 13, 1990.

REQUEST TO SELECT AUDITOR - REPORT BY CITY MANAGER

The City Manager said staff has recommended that the Council

not reappoint current auditor, Ernst & Young, to perform the audit work for the City. He said this recommendation is based on the following reasons:

1. The company promised that a partner would be assigned to

the audit team, and this has not been done. He said the contract called for at least 140 hours of on-site work by a partner or manager.

2. Much of the statement preparation work which should have

been done by the auditors has actually been done by City staff.

3. One of the partners, Arthur Young, who prepared and

presented the proposal, was transferred to another office and the City was not advised of this change. Furthermore, he said, Mr. Young was not licensed to practice in North Carolina, and the audit contract was rejected by the Local Government Commission.

4. The final "camera ready" audit report that was due October

31, 1989 was late and not received by the City until December 21, 1989, and draft reports were substandard.

Vice Mayor Moore moved to authorize the City Manager to begin

the process to select a new audit firm. This motion was seconded by Councilman Frank and carried unanimously.

COUNCILMAN BRATTON - WEST ASHEVILLE COMMUNITY MEETING

Councilman Bratton said because she was scheduled to go out of

town tonight, she would not be able to attend the Community Meeting at Vance School in West Asheville. She asked Mayor Michalove to announce the reason for her absence.

STATEMENT BY COUNCILMAN BRATTON - UPCOMING APPOINTMENT TO ASHEVILLE REGIONAL AIRPORT AUTHORITY

Referring to an earlier discussion in the Pre-Council work

session, Councilman Bratton said she had nominated and lobbied for Dr. Otis B. Michael's appointment to the Asheville Regional Airport Authority in order to get a more diverse representation on the community on the Airport Authority. She said she felt Dr. Michael was well qualified to fill the vacancy because he has lived in Asheville since his birth, he is a former member of City Council, he is a pilot and uses the Airport regularly. She

said she felt he had earned the right to serve on the Authority.

Councilman Bratton said she just wants to make sure that we

have diverse representation on the Airport Authority, and that she is convinced that will come about. Above all, she said, it was her hope to work in a unified way to provide the kind of progressive leadership that is going to move all of Asheville forward, but with special emphasis on the black community.

Councilman Frank said the Council had considered two well-

qualified black people for this appointment and three well-qualified people as a whole.

RESOLUTION NO. 90-43 - APPOINT MEMBER TO THE TOURISM

DEVELOPMENT AUTHORITY

Mayor Michalove said three individuals were being considered

for appointment to the Tourism Development Authority - Don Tomlinson of Quality Inn, who lives inside the City; Kurt Eckel of Holiday Inn, who lives outside the City but within 1 mile of the city limits; and John Winkenwerder of Ramada Inn, who lives inside the City. Mayor Michalove said all of these individuals had indicated an interest in serving on the Authority.

Councilman Ellison moved to appoint John Winkenwerder to

fill the unexpired term of Charles Clamurro, term expiring August 30, 1991, on the Tourism Development Authority. This motion was seconded by Vice Mayor Moore and carried

unanimously.

Resolution Book No. 18, Page 105

SHEILA BLACK - REQUEST TO BAN SMOKING IN GROCERY STORES

Sheila Black appeared before City Council to request that

they ban smoking in grocery stores. This said smokers infringe on the health, welfare and safety of other citizens. She said she had also been a witness to a small, barefoot child stepping on a cigarette that had not been extinguished properly. She said this situation was not only dangerous, but also was a potential fire hazard.

Councilman Frank said she had indicated an interest in "no

smoking" in restaurants and extending what is currently in effect in the City Hall Building to other places and had assumed that someone on staff was working on this.

Mayor Michalove told Ms. Black that the Council would look

into this matter and be back in touch with her.

RALPH BISHOP - INQUIRY OF COUNCILMAN ELLISON

Ralph Bishop asked Councilman Ellison several questions

relative to his constitution right to seek redress, minutes of City Council Meetings, and the Police Department.

VII. ADJOURNMENT

Mayor Michalove adjourned the meeting at 6:30 P.M.

City Clerk Mayor
