

Tuesday - March 27, 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, Eugene W. Ellison and William W. Estes; City Attorney William F. Slawter; City Manager Douglas O. Bean; and Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: Councilman Wilhelmina Bratton

INVOCATION

The invocation was given by Councilman Frank.

APPROVAL OF THE MINUTES

Mayor Michalove announced the approval of the minutes of the March 6, 1990, City Council meeting as well as the approval of the minutes of the March 20, 1990, City Council meeting.

I. PROCLAMATIONS:

A. Proclamation proclaiming the month of April 1990 as "National Weight Loss Month."

Mayor Michalove proclaimed the month of April 1990 as "National Weight Loss Month" in the City of Asheville.

B. Proclamation proclaiming March 31, 1990, as "Multiple Sclerosis Day."

Mayor Michalove proclaimed March 31, 1990, as "Multiple Sclerosis Day" in the City of Asheville and stressed the importance of fighting this debilitating disease.

C. Proclamation proclaiming the month of April 1990 as "Symphony Month."

Mayor Michalove proclaimed the month of April 1990 as "Symphony Month" in the City of Asheville and presented the proclamation to Ms. Dot Rosenberg.

Ms. Rosenberg mentioned several opportunities for school children and others in our community to hear the North Carolina Symphony and encouraged participation by everyone.

D. Proclamation proclaiming the week of March 11 - 17, 1990, as "Girl Scout Week."

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Mayor Michalove proclaimed the week of March 11-17, 1990, as "Girl Scout Week" in the City of Asheville and mentioned that the Girl Scout cookies get better every year!

II. PUBLIC HEARINGS:

A. Public hearing on the question of annexation of property located on U.S. 25 pursuant to N. C. Gen. Stat. sec. 160A-58.2 (Petition received from R. L. Jordan Oil Company).

ORDINANCE NO. 1839 - ANNEXATION OF R. L. JORDAN PROPERTY

Mayor Michalove said that a petition had been received from the R. L. Jordan Oil Company requesting annexation of a

noncontiguous area located on US Highway 25 (Hendersonville Road). Mayor Michalove then opened the public hearing at 4:16 p.m.

City Clerk William F. Wolcott, Jr. presented the notice to the public setting the time and date of the public hearing and the affidavit of publication.

Senior Planner Patricia Tallerday stated that on February 14, 1990, the petition for annexation was received in the Planning Department. She stated that this area meets all the requirements of N. C. Gen. Stat. sec. 160A-58. She stated that this particular piece of property is located approximately .96 mile from the corporate limits of the City of Asheville and is approximately 1.1 miles from the Town of Fletcher. She stated that Mr. Pulliam had pictures of the property (which is a restaurant) if Council desired to see them. She said that fire protection will be provided by the Skyland Volunteer Fire Department and the City is in the processing of negotiating that agreement. The Buncombe County Sheriffs Department, along with the Asheville Police Department, will be providing the patrol and investigation services. There will be no additional costs relative to water and sewer services as the area is presently served by an 8" public water main and also a 6" public sewer line. She said that the total annual revenue from this property would be \$2,059.

Councilman Ellison asked if the Planning Department had received any negative comments concerning this annexation and Ms. Tallerday stated that they had received none.

From an inquiry of Councilman Price, Ms. Tallerday stated that this property is in a future annexation plan, but is not in the current plan.

Mayor Michalove closed the public hearing at 4:21 p.m.

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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. 1839. This motion was seconded by Councilman Price. On a roll call vote of 6-0, Ordinance No. 1839 passed on its first reading.

Councilman Ellison moved to suspend the rules and proceed to the second reading of Ordinance No. 1839. This motion was seconded by Vice-Mayor Moore and carried unanimously. On a roll call vote of 6-0, Ordinance No. 1839 passed on its second reading.

Councilman Price moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1839. This motion was seconded by Councilman Frank and carried unanimously. On a roll call vote of 6-0, Ordinance No. 1839 passed on its third and final reading.

Ordinance Book No. 12, Page 107 and 108

B. Resolution No. 90-44 - Resolution authorizing the City Manager to execute on behalf of the City of Asheville an agreement by and between the City of Asheville and the Skyland Volunteer Fire Department to provide fire protection service to the newly annexed noncontiguous area located on U.S. Highway 25 (R. L. Jordan Oil Company property).

City Manager Douglas O. Bean said this resolution will provide the necessary fire protection services to the property located on U.S. Highway 25 (the R. L. Jordan Oil Company property).

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 Vice Mayor Moore, seconded by Councilman Frank, Resolution No. 90-44 was unanimously adopted.

Resolution Book 18, Page 106

C. Public hearing relative to amending the Urban Mass Transportation Grant Application for 1989-90.

RESOLUTION NO. 90-45 - AMEND URBAN MASS TRANSPORTATION GRANT APPLICATION - SKYLAND EXPERIMENTAL TRANSIT ROUTE & 504 HANDICAPPED PROGRAM

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Mayor Michalove opened the public hearing at 4:24 p.m.

City Clerk William F. Wolcott, Jr. presented the notice to the public setting the time and date of the public hearing and the affidavit of publication.

City Manager Douglas O. Bean said that this grant amendment is for the funding of the Skyland experimental transit route which occurred July 1, 1989, through December 31, 1989, and also this amendment will include additional funding for the increased

cost of the 504 Handicapped Program. Mr. Bean stated that the upcoming budget ordinance amendment relates to this particular item also.

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 Ellison, Resolution No. 90-45 was unanimously adopted.

Resolution Book 18, Page 107

D. ORDINANCE NO. 1840 - Continuation of a public hearing relative to the rezoning of property on Glendale Avenue from R-3 Residential District to LI Light Industrial District.

Mayor Michalove reopened the public hearing at 4:28 p.m.

City Clerk William F. Wolcott, Jr. presented the notice to the public setting the time and date of the public hearing and the affidavit of publication.

Planning Director Julia Cogburn said that a petition to rezone property located on Glendale Avenue from R-3 Residential District to HI Heavy Industrial District was received from Mr. Harold Bartlette. The Planning Staff recommended denial of the petition due to the comprehensive plan and also felt there would be an unusual configuration of the area since the owner of Lot 7 did not want a residential portion of property to be included in the petition to rezone to an industrial use. The Planning and Zoning Commission, at its February 2, 1990, meeting unanimously approved the rezoning from R-3 Residential to a LI Light Industrial District.

Upon inquiry, Mrs. Cogburn stated that an effort was made contact the owners of Lots 7 and 8 to ask them to join in the petition, but they refused to sign. Verbal opposition was expressed by the owner of Lot 7. Mr. Elbert Taylor, agent for the Bartlettes, handed out pictures of the property to members of Council.

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Mr. Taylor asked that the Council consider hearing this ordinance on the second and, if possible, the third reading today since an error had been made in the publication of the legal notice and they have been trying to get this property rezoned since September 1989.

Mayor Michalove closed the public hearing at 4:38 p.m.

Upon inquiry of Councilman Price relative to this rezoning being considered spot zoning, Mrs. Cogburn stated that the Legal Division was contacted on that particular point and their opinion was that this did not constitute spot zoning.

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. 1840. This motion was seconded by Vice-Mayor Moore. On a roll call vote of 6-0, Ordinance No. 1840 passed on its first reading.

Councilman Price stated that it is a standard not to approve rezonings on all three reading in one day and she felt that she could not vote for suspending the rules especially since there was opposition to the rezoning.

Vice-Mayor Moore moved to suspend the rules and proceed to the second reading of Ordinance No. 1840. This motion was seconded by Councilman Ellison and was defeated on a 4-2 vote, with Councilmen Frank and Price voting "no."

City Attorney William F. Slawter stated that there needed to be a 3/5's vote of all members of Council in order to suspend the rules and this would require five (5) affirmative votes; therefore, Mayor Michalove stated that the second reading of Ordinance No. 1840 would be held at next week's meeting.

III. OLD BUSINESS:

A. Ordinance No.1838 - Second reading of an ordinance regulating the operation of horse-drawn carriages in the City.

Mayor Michalove stated that the City of Asheville's Code of Ordinances does not provide for the operation of horse drawn vehicles in the City. He said that this ordinance passed on its first reading on March 20, 1990, and that the City Attorney was to address some comments and concerns that were expressed at that meeting.

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Mayor Michalove stated that he had received a several letters and phone calls, in opposition to this ordinance, from humane societies and concerned citizens regarding the use of horse-drawn carriages in the City.

City Attorney Slawter stated that several changes were made in the ordinance that Council members now had which took into account the changes that the Grove Park Inn had requested. He stated that one additional street (Lynwood Road) needed to be added to the ordinance in Section 23 (A) at the request of Mr. Jack Westall, representing the Grove Park Inn.

Mr. Slawter stated that the present ordinance does not have specific design standards in it but the Charleston, South Carolina, ordinance did. He offered to give Council members copies of the Charleston ordinance and if the Council members wanted to get that specific, and that language could be added.

Mr. Slawter said that Section 26 of the ordinance had been amended to address the cleaning of the streets a concern expressed at the last Council meeting.

Councilman Price expressed her concern about the health of the animals as it related to the number of hours the horses work, the certificate of health required, rotating the animals, etc.

Councilman Ellison addressed Mr. Robert Fleming, who is interested in starting the new horse-drawn carriage business in downtown Asheville, with several questions concerning the health of the animals as it related to Councilman Price's concern and others, such as availability of water, proper rest, cool down time after each tour, the use of sick animals, etc. He said that he has received several phone calls and feels that with all the information presented at this meeting, he would need more time to make an intelligent decision concerning this matter.

Mr. Fleming stated that he intends to take the temperature of the horse after each tour, regardless of whether that

specific language is in the ordinance or not. He said he is also very much concerned about the health of the horses.

Councilman Price stated that she felt Mr. Fleming would take the proper measures in the health of the animals but felt that specific language must be in the ordinance to protect the animals and the City if for some reason another person would take over the business.

Mr. Michael Rasko spoke against the use of horse-drawn carriages in the City stating that many cities have abandoned this type of business. He stated that Cam MacQueen, Coordinator

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of the Coalition to Ban Carriage Horses, would be sending the Council statistics that would be very helpful in assisting them to make the correct decision - not to allow horse-drawn carriages in downtown Asheville. His concerns, among others, was the load capacity, hours, weather extremes, asphalt and accidents which can happen when the animals are startled. He felt this type of business was wrong for the downtown area.

Ms. Virginia Schmidt spoke against the use of horse-drawn carriages in the City stating that she has contacted Charleston officials and noted the problems associated with that type business there. She mentioned the hot weather making the pavement even hotter for the horses, the frustration of the

slowness of the carriages on drivers in cars, the overcrowding of the carriages, the horses breathing the exhaust fumes, the diaper vs. sling, among other concerns. She stated that she was not as concerned about the Grove Park Inn business as the downtown Asheville business because the Grove Park Inn carriages stayed in wooded areas. She asked Council members to look further into this type business before voting on it for second reading.

Ms. Lynn Howard spoke against the use of horse-drawn carriages also. Her concern, among others, was the use of seat belts and the safety of the animals.

Mr. Vic Trantham, 36 Beechwood Road, spoke in favor of the horse-drawn carriage ordinance. He manages a hotel and feel that this type of business would offer the tourists a leisurely look at Asheville and feels that this would be a very good attraction for our City. He felt that Mr. Fleming would do everything necessary to protect the health of the horses.

Ms. June Grant spoke in favor of the horse-drawn carriages and felt that horses are bred to work and that the Council should work with the organizations to protect the rights of the animals.

Mr. David Weynand, President of the Asheville Downtown Association, spoke in favor of this ordinance. He felt it would be an attraction to our City and also agreed that Mr. Fleming would do everything necessary to protect the health of the horses.

Mr. Fleming stated that he would be using poly-urethane shoes on the horses to protect their hooves from the hot pavement. He intended to use head lights and tail lights, in addition to turn signals on each carriage.

Upon inquiry of Councilman Ellison, Mr. Fleming explained the diapering system v. the sling system on the horses.

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Councilman Price suggested that the Council incorporate language into the ordinance about the ratio of the weight of the horses as it related to the load capacity.

An unidentified woman spoke in opposition to this ordinance stating that horses were not bred to wear poly-urethane shoes and diapers. She expressed concerns relative to the traffic in downtown area with the slow-moving carriages.

Upon inquiry of Mr. Ralph Bishop, Mr. Slawter said that anyone could have this type of business and that it was not a monopoly for Mr. Fleming. Mr. Bishop also stated that there would be a traffic problem on Wall Street.

Councilman Price felt she could not vote on the second reading of this ordinance at this time. She felt more information was needed and more changes needed to be made.

Councilman Ellison suggested that the organizations and concerned citizens opposed to this ordinance meet with City representatives to try to iron out some differences, if they can.

Councilman Frank felt that additional time was necessary in order for her to absorb this new information and felt she could not vote on the second reading at this time.

Councilman Price moved to (1) postpone the second reading of Ordinance No. 1838 for two weeks, (2) ask the City Attorney to contact cities who went out of this type of business and find out why and give a report to the Council, and (3) have the City Manager instruct the Downtown Development Department to contact concerned citizens and organizations who have expressed concern regarding this type business and iron out some concerns. This motion was seconded by Vice-Mayor Moore and carried unanimously.

IV NEW BUSINESS:

A. ORDINANCE NO. 1841 - Budget Amendment to amend the City's Asheville Transit Authority Budget to reflect an amendment to the UMTA Grant.

City Manager Bean stated that this budget amendment ordinance is related to the resolution discussed earlier in the meeting. He said this would fund the Skyland experimental transit route which occurred July 1, 1989, through December 31, 1989. He said that this budget amendment will also include additional funding for the increased cost of the 504 Handicapped Program.

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

Councilman Ellison moved for the adoption of Ordinance No. 1841. This motion was seconded by Councilman Estes. On a roll call vote of 6-0, Ordinance No. 1841 passed on its first and final reading.

Ordinance Book No. 12, Page 110

B. Resolution No. 90-46 - Consideration of a resolution awarding the bid to and authorizing the City Manager to sign a contract with Buckeye Construction Company Inc. for the project known as Hansel Avenue Annexation Area Sanitary Sewer Line Improvements.

City Manager Bean stated that this resolution would authorize the City of Asheville to enter into a contract with Buckeye Construction Company Inc., as the lowest bidder, for the Hansel Avenue Annexation Area Sanitary Sewer Line improvements.

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

Councilman Price moved for the adoption of Resolution No. 90-46. This motion was seconded by Vice-Mayor Moore and carried unanimously.

Resolution Book No. 18, Page 108

C. Appeal of James F. S. Whitworth from the decision of the Disability Review Board for Asheville Police Officers and Firefighters.

Due to the anticipated length of this item, it has been moved to the end of this meeting.

V. OTHER BUSINESS:**A. Request from Ellis Cannady for adequate fire protection services in the Deaverview area.**

Mr. Ellis Cannady, representing M.B. Haynes Corporation and others, spoke to Council about the need for adequate fire protection in the Deaverview area. He read from a letter from Assistant Fire Chief Mike Jones stating that there was not adequate fire protection in that area. He also read from a letter from the Asheville-Buncombe Water Authority which said

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that in February of 1991 a new line would be installed to alleviate the inadequate fire situation. He appealed to the City Council to ask the Asheville-Buncombe Water Authority to use emergency funds to install the new line into the Deaverview area.

Mr. Ralph Gardner, President of Milkco, Inc., also urged the City Council to do whatever they could to get adequate fire protection to this area.

Mayor Michalove stated that the Council would look into this concern and let them know next week what exactly the Council can and cannot do.

B. Suzanne Lewis

Ms. Suzanne Lewis, owner of 231 Montford Avenue, introduced herself to the members of Council and invited them to come to her store and see for themselves that the business now located there is a clean and reputable business.

C. Clarence Benton

Mr. Clarence Benton urged Council members to issue the beer permit to Ms. Lewis at 231 Montford Avenue. He stated that other establishments pay approximately \$100 for this permit, but due to

a petition of 12-13 people opposed to this permit, Ms. Lewis will have to spend \$5,000-\$6,000 for this same permit. He urged the Council not to penalize Ms. Lewis because of the petition.

D. Claims

The City Manager said claims were received from Ms. Emma Curry (sewer claim), Mr. Dick Plemmons (sewer claim) and Ms. Frieda Lynch (sewer claim). He also stated that the City was served with a lawsuit on March 23, 1990, by Mr. Alan E. O'Donnell relative to an appeal from a Civil Service Board decision.

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

E. Ralph Bishop

Mr. Ralph Bishop asked the City Manager to instruct the Chief of Police to investigate the business 704 Riverside Drive.

CONTINUATION OF NEW BUSINESS:**C. Appeal of James F. S. Whitworth from the decision of the Disability Review Board for Asheville Police Officers and Firefighters.**

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Mayor Michalove announced that, since he had participated in the deliberations and decision of the Disability Review Board concerning the request of Mr. Whitworth, he would ask to be excused from participation in the consideration of

this matter by the City Council in order to avoid the possibility of a conflict of interest. Upon motion of Councilman Price, seconded by Councilman Ellison, the City Council voted unanimously to excuse Mayor Michalove from participation in consideration of this matter.

Mr. Whitworth was present at the City Council meeting for the presentation of his appeal, and was represented by his attorney, Gary A. Dodd. Following the presentation of testimony and other evidence on behalf of Mr. Whitworth the Council held an executive session to discuss the merits of Mr. Whitworth's claim, which executive session was called for by motion of Councilman Frank, seconded by Councilman Ellison, and adopted unanimously by the City Council. Following deliberations in executive session, the City Council returned to open session and upon a unanimous vote of 5 to 0 voted to uphold the decision of the Disability Review Board and deny the request of Mr. Whitworth. The City Council further directed the City Attorney to prepare appropriate findings of fact and conclusions of law in support of their decision for approval by the City Council at a future meeting. A copy of the transcript of proceedings is on file in the Office of the City Clerk.

VI. ADJOURNMENT

Mayor Michalove adjourned the meeting at approximately 8:00 p.m.

MAYOR CITY CLERK
