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Tuesday - May 8, 1990 - 4:00 p.m.

Regular Meeting

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

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

### **APPROVAL OF THE MINUTES**

The minutes of the April 10, 1990, and May 1, 1990, City Council minutes were approved.

### **I. PROCLAMATIONS**

#### **A. Proclamation - "Law Enforcement Officers Week" - May 14-18, 1990, and "Peace Officers Memorial Day" - May 15, 1990**

Mayor Michalove proclaimed the week of May 14-18, 1990, as "Law Enforcement Officers Week" and also May 15, 1990, as "Peace Officers Memorial Day". He presented the proclamation to Chief of Police Gerald Beavers.

#### **B. Presentation of Distinguished Budget Presentation Award**

City Manager Doug Bean stated that the Government Finance Officers Association voted to award the City of Asheville's fiscal year 1989-90 budget document the Distinguished Budget Presentation Award. He said that this award is the highest form of recognition in governmental budgeting. He presented the award to Robert G. Wurst, Audit/Budget Director. Mr. Wurst praised City employees Peggy Gardner, Hugh Romine and Debbie Messer who also worked many hours preparing the document.

### **II. PUBLIC HEARING**

#### **A. Public Hearing - Rezoning Property on Shiloh Road at the request of Perry M. Weaver.**

Mayor Michalove opened the public hearing at 4:19 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.

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Ms. Carol Alberice, Urban Planner II in the Planning Department, said that on April 4, 1990, the Asheville Planning and Zoning Commission reviewed and recommended approval of rezoning property on Shiloh Road (Ward 7, Sheet 18, Lot 125-1/2) from R-3 Residential District to CH Commercial Highway District. She said it is a vacant lot which is approximately 7,700 square feet.

Upon inquiry of Councilman Ellison, Ms. Alberice stated that adjacent property owners are not informed of the proposed use of the property that is requested to be rezoned. She did state, however, that they are informed that a request has been made to rezone from one district to another but that they do not list all the acceptable uses in that district.

Councilman Ellison suggested that we let the adjacent property owners know what the proposed use will be and Ms. Alberice stated that she would be happy to pass his suggestion along to the Planning Director.

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

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. 1849. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1849 passed on its first reading.

### **III. OLD BUSINESS**

#### **A. Second reading of Ordinance No. 1846 - An ordinance allowing horse stables as a conditional use in CBD, CS, LI and HI zoning districts.**

Councilman Ellison moved to continue the second reading of this ordinance until May 15, 1990, at which time a new draft incorporating the changes to date will be considered at that time. This motion was seconded by Vice-Mayor Moore and carried unanimously.

#### **B. Third reading of Ordinance No. 1843 - An ordinance amending Chapter 12 of the Code of Ordinances of the City of Asheville regarding fire hydrant testing.**

Mayor Michalove stated that members of Council have been furnished with copies of this ordinance and it would not be read in its entirety.

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On a roll call vote of 7-0, Ordinance No. 1843 passed on its third and final reading.

### **Ordinance Book No. 12 at Page 112-113.**

### **IV. NEW BUSINESS**

#### **A. Ordinance amending Chapter 5 (Animals and Fowls) of the Code of Ordinance of the City of Asheville.**

City Attorney William Slawter explained that this ordinance will allow civil penalties for all violations of the animal control ordinance.

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

Councilman Price moved for the adoption of Ordinance No. 1850. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1850 passed on its first reading.

Councilman Price moved to suspend the rules and proceed to the second reading of Ordinance No. 1850. This motion was seconded by Councilman Frank and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1850 passed on its second reading.

Councilman Price moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1850. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1850 passed on its third and final reading.

**Ordinance Book No. 12 at Pages 122-123**

**B. Budget ordinance amendment to fund management expenses for properties on Biltmore Avenue.**

City Manager Doug Bean stated that this budget ordinance amendment will provide a budget for management expenses for properties which were acquired in the Pack Plaza negotiations. He said these properties are the Asheville Arts Council, Brown and Associates and Fains. He stated that these properties do generate rent income and this amendment will allow property management expenditures.

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

Councilman Bratton moved for the adoption of Ordinance No. 1851. This motion was seconded by Councilman Price.

On a roll call vote of 7-0, Ordinance No. 1851 passed on its first and final reading.

**Ordinance Book No. 12 at Page 124**

**B. Resolution to approve a special permit allowing the conversion of a Type VI single family dwelling located at 95 Church Street in Asheville to a business within the primary fire limits under the provisions of N. C. Gen. Stat. sec. 160A-436, as amended in 1989**

Mr. Bob Hixson, Director of Inspections, said that this resolution would approve the issuance of a special permit which would allow the conversion of a wood frame single family dwelling to a business occupancy within the primary fire limits. He said that this permit is needed to allow Mr. David Levitch to obtain a certificate of occupancy for the building at 95 Church Street. He said that this building was a single family dwelling (wood frame) that has been renovated and converted to a business. He said that this work was done after a permit was issued by the Building Inspections Division. He said that the certificate of compliance permit was issued in error because the wood frame building should not have been modified, repaired or moved in the primary fire limits without a special permit of the local building inspections department and the approval of City Council and the Department of Insurance. This resolution would now provide approval of the special permit by the City Council and forward it on to the Department of Insurance for their approval.

Mayor Michalove stated that this resolution has been previously furnished to members of Council and will not be read in its entirety.

Councilman Price moved for the adoption of Resolution No. 90-66. This motion was seconded by Councilman Ellison and carried unanimously.

**Resolution Book No. 18 at Page 134**

**D. Budget ordinance amendment for repairs to the Civic Center Parking Deck.**

City Manager Doug Bean stated that this budget amendment would appropriate funds for repair and maintenance of the Civic

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Center Garage. He said that the funds are currently appropriated in the Capital Improvements Project budget.

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

Vice-Mayor Moore moved for the adoption of Ordinance No. 1852. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1852 passed on its first and final reading.

**Ordinance Book No. 12 at Page 125**

**V. CONSENT**

**A. Scheduling a public hearing relative to an appeal from petitioner Roger N. Chipman from the Planning and Zoning Commission's denial of the rezoning of 9 properties from R-1 Residential District to CG Commercial General District on Sweeten Creek Road and Royal Pines Drive for June 5, 1990.**

**B. Motion to amend Resolution No. 90-63 scheduling a public hearing on the intent to close a portion of Irving Street. Original resolution set public hearing for May 29, 1990. This motion will set the public hearing for June 5, 1990.**

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

**VI. OTHER BUSINESS**

**A. Group development action by the Planning and Zoning Commission**

Ms. Carol Alberice 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 actions were taken by the Planning and Zoning Commission at their meeting on May 2, 1990:

**1. Overlook Village Landscape Plan**

Ms. Alberice stated that at the Planning and Zoning Commission's meeting on May 2, 1990, the Commission unanimously denied the revisions to the Overlook Village landscape plans dated August 2, 1989, and stated that no permanent certificate of

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compliance would be issued until the March 16, 1989, plans were implemented. She said 22 trees were to remain on the northern edge of the property but they were removed. They have to be replaced by substantial trees. She said that the Planning and Zoning Commission reaffirmed landscape plans originally drawn on March 16, 1989, and approved on April 16, 1989, at a special meeting of the Commission.

Ms. Alberice stated that she had just received a letter dated May 7, 1990, from the developer of the Overlook Village Shopping Center, Mr. Dale B. Kays, clarifying the owner's position and asking the City Council for a public hearing which they feel will clear up a misunderstanding with respect to the Planning and Zoning Commission's denial of their landscape plans. A copy of that letter will be on file in the City Clerk's Office.

Upon inquiry of Councilman Ellison, Ms. Alberice stated that if the landscape plan is not approved by the Council, they would continue to operate, as they have been, under a temporary certificate of compliance. They would have to comply with all the zoning matters, including the landscape plan before a permanent certificate of compliance would be issued.

Councilman Price explained the procedure in detail of the Overlook Village group development, stating that the City Council has already approved the site plan subject to the Planning and Zoning Commission's approval of the landscape plan.

Councilman Ellison felt that since the Planning and Zoning Commission had already denied the landscape plan, it should be no problem in granting the developer a public hearing. He felt that if a citizen disagrees with the Planning and Zoning Commission, they should have a right to appeal to the City Council.

City Attorney William Slawter stated that the ordinance is silent with regard to an appeal of this nature. He said that the City Council would have the right to hear such an appeal, but that the City Council is not required to hear that appeal.

Upon inquiry of Councilman Price, Ms. Alberice stated that the Planning and Zoning Commission did not support any changes to the last approved landscape plan.

Vice-Mayor Moore suggested that the Chairman of the Planning and Zoning Commission be present if, and when, a public hearing was held. Councilman Price spoke against Vice-Mayor Moore's suggestion.

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Councilman Bratton stated that there needs to be some consistency in procedure for appeals. She said that the Council has already delegated authority to the Planning and Zoning Commission and now it has found its way back to the City Council.

A motion was made by Councilman Ellison to set a public hearing on this matter for June 5, 1990. This motion was seconded by Vice-Mayor Moore and carried on a 4-3 vote, with Vice-Mayor Moore and Councilmen Ellison, Frank and Estes voting "yes" and Councilmen Bratton and Price and Mayor Michalove voting "no."

## **2. Logan Avenue Restoration - 124 Logan Avenue**

Mr. Gerald Green, Senior Planner in the Planning Department, said that the Planning and Zoning Commission, at its May 2, 1990, meeting, reviewed and approved the site plan for the restoration of 124 Logan Avenue. He said that the proposed change is from a single-family dwelling to 4 apartments. He said the construction activity on the home would be limited to internal renovation, with the exception of enlarging the parking area and some landscaping. He said all services are available at the site.

City Council accepted the recommendation of the Planning and Zoning Commission by taking no action.

## **3. Park Avenue - Phase II**

Mr. Gerald Green stated that the Planning and Zoning Commission, at its May 2, 1990, meeting, reviewed the revised plan for the proposed development and recommended denial of the site plan. He stated that Mr. Chuck Brown, developer, was present at the meeting and has requested the City Council postpone any action on this matter until May 22, 1990. Mr. Brown felt that postponement would give him additional time in which to weigh the options that were available to him - (1) to request a public hearing, (2) to revise the plan and send it back to the Planning and Zoning Commission or (3) to present a new plan. Mr. Brown confirmed this request.

Councilman Price moved to postpone City Council action on this item for two weeks at the developer's request. This motion was seconded by Vice-Mayor Moore and carried unanimously.

Mr. Green stated that he would put together a report for the Council on the comments of the Planning and Zoning Commission on the denial of this group development.

## **B. Budget Work Session**

It was the consensus of the City Council to schedule their next budget work session during the Pre-Council time on June 5,

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1990. The work session would begin at 1:00 p.m. and no other Pre-Council items would be discussed.

### **C. Claims**

City Manager Doug Bean stated that the following claims were received by the Legal Services Division for the week ending May 4, 1990: Michael Waddell (Parks); Martha Lakenan (Sewer); Debbie Bulsiewicz (Water); Deanna Coxie (Parks); Darlene Case (Water); and Beverly-Hanks & Associates (Streets). He stated that these claims have been referred to the appropriate insurers for investigation.

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There was some discussion held relative to amending the ordinance of the Disability Review Board to establish specific procedures in order that a record of proceedings can be established.

### **CONTINUATION OF NEW BUSINESS**

#### **B. Appeal of James Randall from the decision of the Disability**

##### **Review Board for Asheville Police Officers and Firefighters**

Mayor Michalove announced that, since he had participated in

the deliberations and decision of the Disability Review Board concerning the request of Mr. Randall, 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 Ellison, seconded by Vice-Mayor Moore, the City Council voted unanimously to excuse Mayor Michalove from participation in

consideration of this matter.

Mr. Randall 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 on behalf of Mr. Randall, the City Council held an executive session to discuss the merits of Mr. Randall's claim, which executive session was called for by motion of Vice-Mayor Moore, seconded by Councilman Frank, 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 6-0 voted to uphold the decision of the Disability Review Board and deny the request of Mr. Randall that his claim be reconsidered. A copy of the transcript of

proceedings is on file in the Office of the City Clerk.

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### **VII. ADJOURNMENT**

Councilman Bratton moved to adjourn the meeting at 6:17 p.m.

This motion was seconded by Councilman Price and carried unanimously.

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CITY CLERK MAYOR

