

Tuesday - September 25, 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; ; Assistant City Manager Charles Penny; and Associate City Manager/City Clerk William F. Wolcott,

Jr.

Absent: City Manager Douglas O. Bean

### **INVOCATION**

The invocation was given by Councilman Frank.

### **APPROVAL OF MINUTES**

Mayor Michalove announced the approval of the minutes of the September 18, 1990 meeting as submitted.

### **I. PROCLAMATIONS:**

#### **A. Proclamation - "Asheville Area Chamber of Commerce Day"**

**- September 27, 1990**

Mayor Michalove read a proclamation proclaiming

September 27, 1990 as "Asheville Area Chamber of Commerce Day" in recognition of the contributions made by the Asheville Area Chamber of Commerce to our economy, businesses and quality of life.

#### **B. Proclamation - "Operation Desert Shield Airlift Week" -**

**September 25 - September 30, 1990**

Mayor Michalove read a proclamation proclaiming

September 25 - September 30, 1990 as "Operation Desert Shield Airlift Week" in recognition of the men and women who have left the Asheville and Western North Carolina area to serve in Saudi Arabia. This is also an appeal to their needs for personal items being collected by WWNC and WKSF/FM to make their stay more comfortable.

#### **B. Resolution No. 90-136 - Resolution of appreciation to**

**recent retiree, William G. Kelly.**

Mayor Michalove read a resolution of appreciation to

recent retiree, William G. Kelly, who has been with the City for 27 years. He worked in the Police Department as a Lieutenant and retired in August, 1990.

Upon motion of Councilman Price, seconded by Vice-Mayor

Moore, Resolution No. 90-136 was unanimously adopted.

Mayor Michalove presented the resolution to Chief Gerald

Beavers, Police Chief. Chief Beavers said he would make sure Lieutenant Kelly received the resolution.

**Resolution Book No. 18 - Page 222**

**C. Resolution No. 90-137 - Resolution of appreciation to recent retiree, Junior Lee.**

Mayor Michalove read a resolution of appreciation to

recent retiree, Junior Lee, who has been with the City for 26 years. He worked in the Water Maintenance Department as a Utility Operations Supervisor and retired in August, 1990.

Upon motion of Councilman Ellison, seconded by

Councilman Price, Resolution No. 90-137 was unanimously adopted.

Mayor Michalove presented the resolution to Junior Lee.

**Resolution Book No. 18 - Page 223**

**II. PUBLIC HEARINGS:**

**A. Public hearing relative to rezoning property on**

**Swannanoa River Road for Gold Dot Foods.**

**Ordinance No. 1869 - Ordinance rezoning property located on Swannanoa River Road.**

Mayor Michalove opened the public hearing at 4:17 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the

affidavit of publication.

Carol Alberice, from the Planning Department, said

the petitioner would like to rezone a part of the southeastern portion of Lot 40 of Ward 8, Sheet 6, shown on the Buncombe County Tax maps (Swannanoa River Road) from R-2 Residential District to LI Light Industrial. The Asheville Planning and Zoning Commission on August 8, 1990, reviewed and recommended approval of rezoning a part of the southeastern portion of Lot 40 of Ward 8, Sheet 6 as shown on the Buncombe County tax maps (Swannanoa River Road) from R-2 Residential District to LI Light Industrial.

Mrs. Alberice reviewed the surrounding zoning and

current property uses. She said the rezoning is appropriate for the Comprehensive Plan for the City. She said the Planning and Zoning Commission received three comments from surrounding property owners; one of general interest and the other two were concerned about increased traffic in the Kenilworth area. She said she felt these concerns were

addressed during the Planning and Zoning Commission public hearing.

Mayor Michalove closed the public hearing at 4:25

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. 1869. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1869

passed on first reading.

**B. Public hearing relative to Aberdeen Meadows Site Plan.**

Mayor Michalove opened the public hearing at 4:27 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the

affidavit of publication.

Gerald Green, from the Planning Department, said the

Asheville Planning and Zoning Commission on September 5, 1990, reviewed and approved the site

plan with one contingency.

1. The project site is designated as flood hazard

area. In order to develop the project as proposed, revisions to the mapped flood

elevations will be required.

Mr. Green said Mr. and Mrs. J. Stanley Crum are

proposing the development of 20 two-bedroom apartments on the 3.29 acre site located at the intersection of Beaverdam Road and Killian Road. The entrance to the project will be off Killian Road approximately 60 feet from its intersection with Beaverdam Road. Heavy landscaping is proposed to screen the project from the neighboring residential

property and from Beaverdam Road.

He said several issues regarding the project site

were considered by the Planning staff and the Commission in reviewing this group development

request:

1. The project site is designated as a flood hazard

area. In order to develop the project as proposed, revisions to the mapped flood elevations will be required. Developers have petitioned FEMA for this revision.

2. Traffic on Beaverdam Road is at capacity for C

level of service (medium level of safety and convenience). Additional traffic on the road will compromise the safety of travel on

Beaverdam Road.

3. The sewer line serving the project site is at

capacity and suffers from heavy levels of infiltration. Replacement of the sewer line is scheduled for the 1991-1992 fiscal year.

Mr. Green said approval has been given for water and sewer and fire protection.

He said a petition was received in opposition to the

project containing approximately 200 signatures. He said the petition expressed sewer and traffic problems as their main objection.

A lengthy discussion was held relative to the need for a new sewer line in the area and heavy traffic in the Beaverdam area due to the many multifamily units in Beaverdam.

Sally Crum, proposed developer, said the project would compliment the community and it has been determined that this area is in need of rental units.

Bill Stamey, 21 Killian Road, spoke in opposition to the project. He said he was not opposed to the development but felt there should be no more new developments in the area until a new sewer line is installed. He also cited traffic and water pressure as problems in the area.

Stanley Masters, Killian Road, spoke in opposition to the project due to sewer problems.

Lisa Toland, Sycamore Road, spoke in opposition due to the existing traffic conditions on Beaverdam Road.

Jack Crum, developer, said they feel confident with the project and have reviewed all the concerns carefully. He said their project would comply with all requirements.

John Broadbooks, Landscape Architect for the project, said the developers have spent a considerable amount of money on the project and the project has been through many reviews by various committees and the Planning and Zoning Commission.

Jan Weigman, Architect for the project, appealed to Council to approve the project.

Upon inquiry of Council, Harold Huff, Director of Water and Sewer Services, said it is his understanding that MSD has scheduled the installation of a new sewer line in the area in the spring of 1991. He said MSD has given their approval for this project.

Mayor Michalove closed the public hearing at 5:24 p.m.

Councilman Estes moved to approve the site plan for the Aberdeen Meadows as recommended by the Planning and

Zoning Commission; further that a letter be requested from MSD giving a firm commitment to install a sewer line in the area with a projected completion schedule and that the City staff conduct a study on traffic accidents in the area to include a recommendation to improve traffic problems on Beaverdam Road. This motion was seconded by Councilman Ellison.

George Jensen, Project Engineer, said the sewer from this project would not be a problem since it is only domestic. He said the main problem with the sewer in the area is caused from water infiltration into the sewer line.

Councilman Bratton made a substitute motion to postpone action on the Aberdeen Meadows until October 2, 1990 giving the city staff an opportunity to obtain a firm commitment from MSD on the sewer line and until a traffic study is made. This motion was seconded by Vice-Mayor Moore, which motion **failed** on a voice vote of 3-4 with Vice-Mayor Moore, Councilman Frank and Councilman Bratton voting "yes."

On a voice vote of 4-3, Councilman Estes's motion was **approved** with Vice-Mayor Moore, Councilman Frank, and Councilman Bratton voting "no."

### **C. Public hearing relative to Transit Operating Assistance**

#### **Grant for FY 91.**

#### **Resolution No. 90-138 - Resolution authorizing the**

#### **filing of an application with the Department of Transportation, United States of America, for a grant under the Urban Mass Transportation Act of 1964, as amended**

Mayor Michalove opened the public hearing at 5:54 p.m.

The City Clerk presented the notice to the public setting the time and date for the public hearing and the affidavit of publication.

Carl Owenby, from the Planning Department, said this

is an application for an annual operating assistance grant for transit operations under Section 9 of the UMTA of 1964.

He said the project will be for the period of July

1, 1990 through June 30, 1991, for the purpose of assisting with the operation of the Asheville Transit Authority.

He said the project will take into consideration

the social needs of the elderly and handicapped by providing half-fare rates for those persons 65 years or older and those who are handicapped.

Mayor Michalove closed the public hearing at

5:57 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 Bratton, seconded by Councilman Price, Resolution No. 90-138 was unanimously approved.

**Resolution Book No. 18 - Page 224 - 225**

**III. OLD BUSINESS:**

**A. Resolution No. 90-139 - Resolution authorizing the North**

**Carolina Department of Transportation to dead end Academy and Center Street at their intersection with Hendersonville Road.**

Mayor Michalove said the North Carolina Department of

Transportation designs for improvements to Hendersonville Road would result in excessive grades and additional right-of-way to connect Academy Street and Center Street to the new roadway. Dead ending each of these streets will eliminate the excessive grades and additional right-of-way acquisition and still provide access to Hendersonville Road via Yorkshire and Fairview

Streets.

Assistant City Manager Charles Penny reviewed the following report relative to dead-ending of Center

Street:

"MEMORANDUM TO: Mayor Michalove and Members of City Council

FROM: Charles W. Penny, Assistant City Manager

DATE: September 21, 1990

SUBJECT: Dead-ending of Center Street

Four weeks ago City Council considered dead-ending Center Street as a part of the Hendersonville Road Project and decided to delay a decision on this action pending the resolution of two (2) concerns. One concern was the installation of a turn around on Center Street and the other was the placement of a traffic light at the intersection of Old West Chapel Road and Hendersonville Road.

Attached is a letter from Division Engineer, Gene Edmonds, in reference to the turn around on Center Street. City Council asked that the State consider placing the turn around or a driveway on a piece of property located behind the old Ingle's grocery store. The State considered this request and the attached letter indicates the appraisers would not recommend the use of that property due to the amount of right-of-way that is being taken from the front of the Ingle's property. The appraisers are concerned that "the highway right-of-way along the Ingle property frontage does not leave a desirable after value but the remaining area would be usable." The State recommends installation of the cul-de-sac as originally submitted.

The State did conduct the traffic count on Old West Chapel and Hendersonville Road. Traffic counts were also taken on Academy and Center Streets and based on information received from the counts the State could not justify the

placement of a light at Old West Chapel and Hendersonville Road at a speed of 35 mph. I was contacted by Gene Edmonds on Wednesday and informed that if the City would agree to increase the speed limit on Hendersonville Road upon completion of the project to 45 mph a traffic light would be installed at the intersection of Old West Chapel and Hendersonville Road. The traffic light would be included as a part of the project. The City's Traffic Engineering Division recommends that the speed be increased to 45 miles per hour once the project is completed. The design speed of Hendersonville Road will be 50 mph. If City Council is agreeable to setting the speed limit at 45 mph, staff will need to submit a letter to the North Carolina Department of Transportation stating that the City concurs with the request to set the speed limit at 45 mph and the traffic light can then be

included as part of the Hendersonville Road project.

If you have any further questions or concerns, please do not hesitate to contact me."

Gene Edmonds, with the North Carolina Department of Transportation, said a speed limit of 35 mph on a five lane highway is impossible to enforce.

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

Councilman Price moved to amend Resolution No. 90-139 by deleting the second section in the resolved provisions of the resolution which states "The plans for project No. 8.1841602 Sheet No. 6 and Sheet No. 8 be revised to show a tee type turn around suitable to the City at the dead end of Academy Street and Center Street." This motion was seconded by Councilman Ellison and carried unanimously.

Councilman Bratton then moved to adopt Resolution No. 90-139 as amended. This motion was seconded by Councilman Frank and carried unanimously.

#### **Resolution Book No. 18 - Page 226**

#### **IV. NEW BUSINESS:**

##### **A. An Ordinance amending Chapter 18 with respect to offenses and miscellaneous provisions (Loitering for the purpose of Drug Activity).**

Police Chief Gerald Beavers said the City of Greensboro,

the City of Fayetteville, and the City of Winston-Salem have adopted ordinances to enforce "Loitering for the purpose of Drug Activity". He said these ordinances have been challenged in the courts and several clauses held invalid by the courts, but the major portion has survived. He said this ordinance is desperately needed to allow the Asheville Police Department to better control Asheville drug activity and to stop the loitering and lingering necessary to actively participate in drug related activity.

After discussion relative to the constitutionality of

the ordinance, it was decided to postpone action on the ordinance until an opinion is obtained from the Attorney General's office on the constitutionality of the ordinance.

#### **V. CONSENT:**

##### **A. Scheduling public hearing relative to zoning ordinance amendment addressing concrete runways for mobile homes**

**in mobile home parks for October 9, 1990.**

SUMMARY: The Asheville Planning and Zoning Commission

on September 5, 1990 reviewed and recommended approval of the ordinance amendment addressing concrete runways for mobile homes in mobile

home parks.

**B. Resolution No. 90-140 - Resolution renewing option to purchase land for a fire station relocation for the west annexation area.**

SUMMARY: This is an additional 3-month option to

purchase land for a station relocation. Part

of the monthly remittance (\$500.00) will go towards the purchase price. Total monthly

payment will be \$1,200.00.

**Resolution Book No. 18 - Page 227**

**C. Resolution No. 90-141 - Resolution authorizing the City**

**Manager to sign an agreement providing for delivery of fire protection services to the Veteran's Administration Medical Center at Oteen through December 31, 1990.**

SUMMARY: The current contract will expire on October

1, 1990. The Veterans Administration has had a fire protection contract with the City for several years. The additional 3 months will allow time for the Veterans Administration and Fire Department staffs to renegotiate the contract.

**Resolution Book No. 18 - Page 228**

**D. Resolution No. 90-142 - Resolution awarding engineering services contract Phase 3 (1988 - 89) Street and Sidewalk Improvements to Vaughn and Melton Engineers.**

SUMMARY: This engineering contract will provide for the

construction specifications and drawings to rehabilitate Patton Avenue from Meeker Motors

to Biltmore Avenue.

**Resolution Book No. 18 - Page 229**

**E. Resolution No. 90-143 - Resolution authorizing the Mayor**



**to execute on behalf of the City of Asheville a Federal Aviation Grant Agreement, Project No. 3-37-0005-12.**

SUMMARY: The Federal Aviation Administration has offered

a grant to the Asheville Regional Airport Authority in the amount of \$283,000 for "Runway Centerline Lighting Project". The FAA requires that all sponsors execute the grant agreements. This resolution will authorize the Mayor to execute the Grant Agreement.

**Resolution Book No. 18 - Page 230**

**F. Resolution No. 90-144 - Resolution authorizing the Mayor**

**to execute a grant agreement from North Carolina**

**Humanities for an Urban Trail Grant.**

SUMMARY: The City has taken the lead in organizing 9

organizations in developing a concept for an Urban Trail Project. The trail would be in the core area of the downtown and tell of the

social, political, cultural and architectural history of Asheville - an experimental, local history museum. The grant would provide a consultant to design the direction of historical research and an oral history

component.

**Resolution Book No. 18 - Page 231**

Upon motion of Vice-Mayor Moore, seconded by Councilman

Bratton, the consent agenda was unanimously approved.

**VI. OTHER BUSINESS:**

**A. Petition - Killian Road - Resurfacing**

Mayor Michalove reported that he had received a petition

from the residents of Killian Road for resurfacing.

**B. Claims - Barry Carlisle (Water) - Cheryl Andrews (Water) -**

**Bennie Lake (Water) - Charles West (Streets) - Glenn Tucker (Streets) - Southern Bell (Water) - Scott McKinley**

**(Inspections) - Eliza Brewer (Water) - Chuck Gary (Water)**

**Lawsuit - Florence Brummer and Harry Brummer (Alleged abuse**

**of power for failure to reissue zoning and building permits)**

Claims were submitted from Barry Carlisle, Cheryl Andrews,

Bennie Lake, Charles West, Glenn Tucker, Southern Bell,

Scott McKinley, Eliza Brewer, and Chuck Gary.

The City was served with a lawsuit on September 19, 1990

involving Florence Brummer and Harry Brummer (alleged abuse of power for failure to reissue zoning and building permits).

The claims have been referred to the appropriate insurers

for investigation. The lawsuit has been referred to the appropriate legal counsel for action.

### **C. Lawsuits - Harry Brummer**

Mayor Michalove moved that the City Attorney be instructed

to take whatever legal action is necessary against Harry Brummer for frivolous lawsuits taken out against the City of Asheville. This motion was seconded by Councilman Price and carried unanimously.

### **D. Resolution No. 90-145 - Resolution authorizing execution of subordination agreements regarding the Pack Plaza Project**

The City Attorney presented a resolution authorizing

execution of subordination agreements regarding the Pack Plaza Project. He said this resolution is a housecleaning resolution that clarifies priorities in the Project.

Upon motion of Councilman Price, seconded by Councilman

Ellison, Resolution No. 90-145 was unanimously adopted.

### **Resolution Book No. 18 - Page 232**

### **E. Letter - NCDOT - Speed Limit on Hendersonville Road**

Councilman Ellison moved to authorize the City Manager to

forward a letter to the North Carolina Department of Transportation stating that the City concurs with the request to set the speed limit at 45 mph on Hendersonville Road. This motion was seconded by Councilman Bratton and carried unanimously.

## **VII. ADJOURNMENT.**

Mayor Michalove adjourned the meeting at 6:52 p.m.

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**MAYOR CITY CLERK**

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