

Tuesday - September 10, 1991 - 4:00 P.M.

Asheville Civic Center Banquet Room

Regular Meeting

Present: Councilman Norma P. Price, Presiding; Councilmen Mary Lloyd Frank, Wilhelmina Bratton, 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

Absent: Mayor Kenneth M. Michalove and Vice-Mayor William G. Moore

ANNOUNCEMENT

Due to the absence of the Mayor and Vice-Mayor, Councilman Bratton nominated Councilman Price to be temporary Chairman. Councilman Price was unanimously elected temporary Chairman.

INVOCATION

The invocation was given by Councilman Frank.

APPROVAL OF MINUTES

Councilman Price announced the approval of the minutes of the August 20, 1991, meeting as submitted.

I. PROCLAMATIONS:

A. Proclamation - "Minority Enterprise Development Week" - September 15 - 20, 1991

Councilman Price read the proclamation and presented it to Ms. Dee Williams, Asheville Business Development Center.

B. Presentation of Certificate for B*E*S*T Quarterly Winner No. 2 for 1991.

The City Manager said Detective Deborah B. Faulkner has been chosen as the City's B*E*S*T employee for the second quarter of 1991.

He said on April 12, 1991, Detective Faulkner was attending a "Critical Incident Stress Advance Training" in Baltimore, Maryland. While eating dinner at a local restaurant where at least two medical doctors, three emergency room nurses and one paramedic were also dining, Detective Faulkner saw one of those nurses choking, unable to breathe in or out. Immediately, without hesitation, she ran to the nurse and performed the Heimlich Maneuver which dislodged whatever caused the choking. Her quick reaction must have saved the nurse's life.

He presented Detective Faulkner with a Certificate for B*E*S*T Quarterly Winner No. 2.

C. Resolution No. 91-155 - Resolution in support of North Carolina Senior Games

Councilman Price read the resolution presenting it to Ms. Deanna Stone from the Buncombe County Parks and Recreation Department.

Ms. Stone said the 1991 Asheville-Buncombe Senior Games were conducted over a six-day period from May 13-18 with 349 participants (ranging in ages from 55 years old and up) competing in various competitions. This special event was sponsored by many local organizations including the Asheville, Buncombe County, and Black Mountain Departments of Parks and Recreation. On September 25-29, 1991, fifty-nine seniors who won local competitions and that are eligible to compete in the State games will travel to Raleigh as representatives from our area.

Upon motion of Councilman Frank, seconded by Councilman Ellison, Resolution No. 91-155 was unanimously adopted.

Resolution Book No. 18 - Page No. 502

D. Resolution No. 91-156 - Resolution commending the North Carolina Center for Creative Retirement.

Councilman Price read the resolution stating that the Center was featured in a November 29, 1990 article in the New York Times and, most recently, as the cover story in the July 14, 1991 issue of Parade Magazine. The Parade Magazine article highlighted UNCA's and Asheville's progressive attitude toward integrating retirees into the life of the campus and community.

The article has also brought the Center over 4,000 letters of inquiry plus hundreds of phone calls, and many of these inquiries centered around how individuals could establish community service volunteer programs in their own communities while many others were for information on the retirement potential in the Asheville area.

Councilman Price then presented the resolution to Dr. Ron Manheimer who thanked the Council on behalf of the North Carolina Center for Creative Retirement.

Upon motion of Councilman Ellison, seconded by Councilman Frank, Resolution No. 91-156 was unanimously adopted.

Resolution Book No. 18 - Page No. 503

D. Resolution No. 91-157 - Resolution in support of an Arson Task Force for Buncombe County.

District Attorney Ron Moore spoke in support of this resolution announcing his intent to form a "Task Force" for study of arson investigation and control activities in Buncombe County. This resolution expresses City Council's support of Moore's efforts.

Councilman Price 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 Bratton, Resolution No. 91-157 was unanimously adopted.

Resolution Book No. 18 - Page No. 504

II. PUBLIC HEARINGS:

A. Public hearing relative to group development plan of 33 Broadview Duplexes.

Councilman Price said since the Mayor and Vice-Mayor are not here today the Council will continue this public hearing until September 17, 1991 at 4:00 p.m. at the Asheville Civic Center Banquet Room.

Councilman Ellison moved to continue the public hearing relative to the group development plan for 33 Broadview Duplexes until September 17, 1991, at 4:00 p.m. at the Asheville Civic Center Banquet Room without further advertisement. This motion was seconded by Councilman Frank and carried unanimously.

B. Public hearing relative to application for Transit Operating Assistance Grant for the Asheville Transit Authority for Fiscal Year 1992.

Resolution No. 91-158 - 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.

Councilman Price opened the public hearing at 4:33 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 Ownbey, Planning Department, said each year the City of Asheville approves funding for the Asheville Transit Authority for transit operations. With the maximum amount of federal funds available for FY 1992, the City must again fund more than the 50% net cost it has done in the past. He said UMTA will provide \$638,765 and the City of Asheville \$931,635.

Upon inquiry of Councilman Ellison, Mr. Ownbey stated that there were no emergency funds or supplemental funds available.

In response to Councilman Estes' question about who determines the size of buses, Mr. Ownbey responded that the local government makes those type of determinations.

Councilman Price stated that the federal government does mandate some programs that have to be offered.

Councilman Frank hoped that a pending bill will allocate more money to the City. Mr. Ownbey stated that, at a joint work session with the Council and the Transit Authority, to be held in October, he would be presenting a comparison of legislation under consideration in the U.S. House and the U.S. Senate.

Mr. Ralph Bishop spoke concerning the total cost to operate the transit system and why the City won't let the private sector operate it.

Mr. Homer Kennedy asked if Council would consider putting Tacoma Circle back on the bus route.

Councilman Price closed the public hearing at 4:50 p.m.

Councilman Price said members of Council were previously furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Ellison, seconded by Councilman Estes, Resolution No. 91-158 was unanimously adopted.

Resolution Book No. 18 - Page No. 505

C. Public hearing relative to ordinance amending Chapter 30 of the Code of Ordinances of the City of Asheville to provide for zoning vested rights.

Ordinance No. 1943 - Ordinance amending Chapter 30 of the Code of Ordinances of the City of Asheville to provide for zoning vested rights.

Councilman Price opened the public hearing at 4:51 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, Senior Planner, said during their 1990 Regular Session, the North Carolina General Assembly ratified Senate Bill 766 as Chapter 996 of the 1989 Session Laws. This bill provides for the establishment of a statutory "vested right" upon approval of a "site specific development plan." Local governments are mandated to define what constitutes a "site specific development plan" and to identify the types of land use approvals for which development rights would be vested.

The proposed ordinance amendment establishes a vested right for a period of two (2) years following the approval of site specific development plans for the following developments:

Conditional Uses

Group Development

Small Projects

Subdivisions

Plans for these developments must be approved by City Council, or the Board of Adjustment for conditional uses. Development rights are vested following application by the landowner and a public hearing. Once development rights have been vested for a project, they can be revoked only if certain conditions are met.

Mr. Green said that the General Assembly has set a deadline of October 1, 1991, and therefore requested that Council consider this ordinance on its second and third readings on September 17, 1991.

City Attorney William F. Slawter answered questions and concerns raised by Councilman Ellison relative to an extension of the two-year period.

Upon inquiry of Councilman Ellison, City Attorney Slawter stated that the City's proposed ordinance was based on a model furnished to us by the North Carolina League of Municipalities.

Councilman Price closed the public hearing at 5:05 p.m.

Councilman Price 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. 1943. This motion was seconded by Councilman Ellison.

On a roll call vote of 5-0, Ordinance No. 1943 passed on first reading.

D. Continuation of a public hearing relative to a proposed wording amendment to the Zoning Ordinance - Neighborhood Parks.

Ordinance No. 1944 - Ordinance amending Chapter 30 of the Code of Ordinances of the City of Asheville to define Neighborhood Parks and Neighborhood Playgrounds and to include Neighborhood Parks as permitted uses in R-1 and R-2 Residential Districts

Councilman Price said the public hearing was continued from the August 20, 1991 meeting.

Gerald Green, Senior Planner, said neighborhood parks currently are not defined in the City of Asheville's Zoning Ordinance, although they are listed as permitted uses in the R-3 and R-5 Residential Districts. The proposed amendment provides a definition of neighborhood parks and identifies them as permitted uses in the R-1 and R-2 Residential Districts. Parks meeting the definition of neighborhood parks, such as the Griffin Boulevard Rose Garden, are currently located in the R-1 and R-2 Districts. The status of these parks as non-conforming uses prevents their expansion and/or improvement. New parks cannot be developed in the R-1 and R-2 districts, limiting the ability of the Parks and Recreation Department to meet the needs of the citizens of Asheville.

He said this amendment was requested by the Parks and Recreation Department, and the proposed amendment has been reviewed and approved by that department.

Councilman Price closed the public hearing at 5:12 p.m.

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

Councilman Estes moved for the adoption of Ordinance No. 1944. This motion was seconded by Councilman Bratton.

On a roll call vote of 5-0, Ordinance No. 1944 passed on first reading.

III. OLD BUSINESS:

A. Second reading of an ordinance relative to the adoption of an Ordinance amending Article 9 of Chapter 30 of the Code of Ordinances of the City of Asheville (Standards for Designating Historic Signs).

Councilman Ellison moved to remand this ordinance back to the Planning Department for further clarifications and study. This motion was seconded by Councilman Frank and carried unanimously.

IV. NEW BUSINESS:

A. Bond order authorizing the issuance of \$26,000,000 of General Obligation Water Bonds of the City of Asheville, North Carolina.

The City Manager said on August 6, 1991, the City Council passed two resolutions. The first directed the Finance Director to apply to the Local Government Commission for approval of the proposed water bonds; the second directed the City Clerk to publish a notice of intention to apply for LGC approval. Today's action introduces the Bond Order. It must be adopted September 17, 1991, following the public hearing.

Councilman Price declared the bond order introduced and said the order would be considered after the public hearing on September 17, 1991.

B. Resolution No. 91-159 - Resolution of the City of Asheville, North Carolina regarding Bond Order authorizing the issuance of \$26,000,000 of General Obligation Water Bonds of the City of Asheville, setting a public hearing thereon and directing publication of a notice of said public hearing.

The City Manager said this resolution acknowledges introduction of the Bond Order authorizing the issuance of \$26,000,000 of General Obligation Water Bonds, sets the date of a public hearing, directs publication of the bond order

with the notice of the public hearing and directs the filing of a statement of debt. He said the public hearing on water bonds would be September 17, 1991, at 4:00 p.m. in the Banquet Room of the Asheville Civic Center.

It was the consensus of the Council that they actively support this bond issue.

Councilman Price 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 Frank, Resolution No. 91-159 was unanimously adopted.

Resolution Book No. 18 - Page No. 507

C. Final plat approval - Sherwood Heights Subdivision

Don Sherrill, Urban Planner, said the Asheville Planning and Zoning Commission on

February 1, 1989, reviewed and approved the preliminary plat of Sherwood Heights Extension, subject to the following contingencies:

1. City Council granting a variance from City subdivision street grade standards of 12% to 18%;
2. NCDOT approval of connection to Elk Mountain Scenic Highway;
3. Compliance with Erosion Control Ordinance; and
4. Provision of sufficient water pressure to support fire protection.

City Council granted a variance to the Subdivision Ordinance Street Grade Standards from 12% to 18% in March of 1989. The developer submitted a revised preliminary plat in November of 1989 with the following changes:

1. A reduction in the number of lots from 16 to 14; and
2. A reduction in the length of 18% grade from 1000' to 700'.

Staff approval of those changes was given at that time.

The developer has submitted copies of the final plat for review and approval. The one year time limit between preliminary plat approval and final plat approval had expired. The developer was required to go back to the Planning and Zoning Commission for re-approval of the preliminary plat.

At their August 7, 1991, meeting the Asheville Planning and Zoning Commission re-approved the preliminary plat for Sherwood Heights Subdivision (addition) subject to the following contingencies:

1. City Council granting a variance from City subdivision street grade standards of 12% to 18%;
2. NCDOT approval of connection to Elk Mountain Scenic Highway;
3. Compliance with Erosion Control Ordinance; and
4. Provision of sufficient water pressure to support fire protection.

The Commission also included a recommendation in support of the variance

request to the street grade standards.

Sherwood Heights Subdivision addition is located off Elk Mountain Scenic Highway. The site is approximately 13 acres in size and includes 14 lots. The subdivision is located mostly within the City limits. A small portion of the subdivision is located outside the City limits but within the extra-territorial zoning jurisdiction. The property lies within the R-1 single family residential zoning district. Lot sizes range from .6 acre to over one acre.

The developer has completed the construction of the roadway to City standards for acceptance by the City of Asheville. The water lines have been installed to City specifications and approved by the City Engineering Department. The sewer lines have also been installed and will connect to the MSD system. Mike Jones, Assistant Fire Chief with the Asheville Fire Department, has performed a flow test on the hydrants installed, and found that the water flow and pressure were adequate for serving single family residences within the subdivision.

He said Ernie Hewitt of the City Erosion Control staff has confirmed that the development was in compliance with the City's Erosion Control Ordinance.

He said the developer has been requested to provide a copy of the NCDOT driveway permit approving the connection to Elk Mountain Scenic Highway.

He said the City Legal staff has advised the Planning Department to request that City Council reaffirm the variance request to the street grade standards when City Council considers the final plat approval.

Councilman Ellison moved to approve the Sherwood Heights Subdivision as recommended by the Planning and Zoning Commission. This motion was seconded by Councilman Estes and carried unanimously.

V. CONSENT:

A. Resolution No. 91-154 - Resolution providing for the maintenance of Zoning Maps.

Summary: The Buncombe County Tax Mapping Office has recently changed its systems of identifying tax parcels. The Tax Office formerly used a system identifying parcels by ward, sheet, and lot number. Parcels are now identified by what is referred to as a "PIN number." The maps of the Tax Department are also kept in file in the Planning and Zoning Department as our official zoning maps. This resolution will document the change from the old maps to the new maps, and will direct the maintenance of a set of the old maps for future reference.

Resolution Book No. 18 - Page No. 501

B. Resolution No. 91-160 - Resolution authorizing the Mayor of the City of Asheville to execute easement in favor of the Carolina Power and Light Company for property on Walnut Street.

Summary: Carolina Power and Light Company has requested that the City of Asheville execute a right-of-way easement on property belonging to the City of Asheville on Walnut Street, as shown on Carolina Power and Light Company Drawing RWA-8603, dated August 20, 1991.

Resolution Book No. 18 - Page No. 508

C. Resolution No. 91-161 - Preliminary resolution calling for a public hearing to levy special assessments for the Azalea Avenue Project beginning at the end

of the existing pavement on Azalea Avenue and ending at the end of the roadway.

Summary: This resolution will authorize the scheduling of a public hearing in order to levy special assessments for Azalea Avenue.

Resolution Book No. 18 - Page No. 511

VI. OTHER BUSINESS:

A. Report of Group Development Actions by Planning and Zoning Commission

Don Sherrill, Urban Planner, 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. He said in accordance with the new procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. He said the following action was taken by the Planning and Zoning Commission at their meeting September 4, 1991.

(1) Milkco

Don Sherrill, Urban Planner, said the group development request for Milkco Incorporated

involves a 7,000 sq. ft. addition to the existing industrial facility and the location of a 6,000 sq. ft. warehouse on the site. Milkco is located at the intersection of Deaverview Road and North Bear Creek Road. The site is 9.6 acres in area and lies within the City's Light Industrial zoning district. The existing parking meets the required parking requirements. The project includes the addition of 8,000 sq. ft. of parking to the existing parking area. Water and sewer services are available to the site. Fire protection is adequate for the additions. A City Driveway Cut Permit will be required to relocate an existing driveway entrance. The developer has made application for the permit. The improvements will include street trees along N. Bear Creek Road and parking lot trees within the new portion of the parking area.

At their September 4, 1991, meeting, the Asheville Planning and Zoning Commission voted to recommend approval of the group development request for Milkco Incorporated subject to two contingencies:

1. The developer meet the City's landscaping requirements for renovation of the employee parking area; and
2. Approval of the driveway entrance relocation by the City Public Works Department.

Council took no action regarding the report of the Planning and Zoning Commission, thereby approving the project.

B. Ordinance No. 1945 - Budget Ordinance amendment appropriating funds for the repair of Asheville Civic Center Air Conditioner Chillers.

City Manager Doug Bean said this budget amendment in the amount of \$25,000 is to appropriate funds for the repair of Asheville Civic Center Air Conditioner Chillers. He said that money is available in our contingency fund for building repairs.

Councilman Price 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. 1945. This motion was seconded by Councilman Frank.

On a roll call vote of 5-0, Ordinance No. 1945 passed on first and final reading.

Ordinance Book No. 12 - Page No. 489

C. Request by Councilman Ellison

Councilman Ellison asked the City Manager for information relative to having a swimming pool installed at the Montford Neighborhood Park.

D. Comments by Ralph Bishop

Mr. Ralph Bishop expressed concerns about the new parking meters for the downtown area.

E. Ordinance No. 1946 - An ordinance amending Chapter 5 (Animals and Fowls) of the Code of Ordinances of the City of Asheville.

City Attorney William Slawter stated that the proposed ordinance makes the following revisions to our current animal control ordinance:

1. The following new definitions are added:

A. Dangerous Animal

B. Owner

C. Owner's Real Property

D. Potentially Dangerous Animal

E. Restraint of a Dangerous or Potentially

Dangerous Animal

F. Severe Injury

2. The Animal Control Officer's duties and powers are expanded so as to authorize him to declare an animal to be a potentially dangerous animal upon a determination that the animal so qualifies as that term is defined.

3. An appeals board is established so that the owner of an animal may appeal a determination by the Animal Control Officer that an animal is a potentially dangerous animal. The ordinance provides that the County's Animal Control Advisory Board will serve as our appeals board. As the ordinance is written, a separate resolution appointing members would not be required.

Councilman Price 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. 1946. This motion was seconded by Councilman Ellison.

On a roll call vote of 5-0, Ordinance No. 1946 passed on first reading.

Councilman Ellison moved to suspend the rules and proceed to the second reading of Ordinance No. 1946. This motion was seconded by Councilman Frank and carried

unanimously.

On a roll call vote of 5-0, Ordinance No. 1946 passed on second reading.

Councilman Frank moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1946. This motion was seconded by Councilman Estes and carried unanimously.

On a roll call vote of 5-0, Ordinance No. 1946 passed on third and final reading.

Ordinance Book No. 12 - Page No. 491

F. CLAIMS - Miriam Mansfield (Public Works) - Lora Laird (Parking) - Karen Severson (Water) - Dawn Hoffman (Water) - Paul Hensley (Parking) - Bill Crawford (Water) - Janie Marlowe (Water) - George Hogan (Water) - George Lyda (Water) - Neil Smith (Water) - John McClung (Water) - Doris L. Spencer (Parks) - Ray Axelson (Sanitation) - James Stines (Sanitation) - Marvin Koch (Water) - Marsha Browning (Water)

The City Manager said claims were received from Miriam Mansfield, Lora Laird, Karen Severson, Dawn Hoffman, Paul Hensley, Bill Crawford, Janie Marlowe, George Hogan, George Lyda, Neil Smith, John McClung, Doris L. Spencer, Ray Axelson, James Stines, Marvin Koch and Marsha Browning.

He said these claims have been referred to the appropriate insurers for investigation.

G. LAWSUITS - Spiros Apostolopoulos - Alleged personal injury and property damage from an automobile accident.

The City Manager said the City was served with a lawsuit on August 26, 1991 involving Spiros Apostolopoulos relative to alleged personal injury and property damage from an automobile accident.

VII. ADJOURNMENT.

Councilman Price adjourned the meeting at 5:55 p.m.

MAYOR CITY CLERK
