

Tuesday-October 29, 1991-4:00 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; City Attorney William F. Slawter; City Manager Douglas O. Bean; and Associate City Manager/City Clerk William F. Wolcott

Absent: None

INVOCATION

The invocation was given by Councilman Price.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the October 15, 1991, and October 22, 1991, City Council minutes as submitted.

ANNOUNCEMENT OF CITY MANAGER INTERN

City Manager Bean introduced Ben Wax, Superintendent of Recreation in the Parks, Recreation and Public Facilities Department, who has the pleasure of being the City Manager Intern for this quarter.

I. PROCLAMATIONS:

A. PROCLAMATION - LUPUS AWARENESS MONTH - OCTOBER, 1991

Mayor Michalove proclaimed the month of October, 1991, as "Lupus Awareness Month."

B. PROCLAMATION - READING IS COOL - WEEK OF NOVEMBER 4-9, 1991

Mayor Michalove proclaimed the week of November 4 - 9, 1991, as "Reading is Cool" week and presented the proclamation to Ms. Ann Hunting-Williams, Program Director for the Pisgah Girl Scout Council Inc.

C. RESOLUTION NO. 91-179 - RESOLUTION OF APPRECIATION TO RECENT RETIREE, JAMES WALDROP

Due to the absence of Mr. Waldrop, Mayor Michalove read and presented the resolution of appreciation of James Waldrop to Fire Chief John Rukavina.

Upon motion of Councilman Ellison, seconded by Vice-Mayor Moore, Resolution No. 91-179 was unanimously adopted.

Resolution Book No. 19 at Page 23

D. RESOLUTION NO. 91-180 - RESOLUTION OF APPRECIATION TO RECENT RETIREE, FURMAN HANEY

Jim Ewing, Director of Public Works, said Furman Haney has served the City of Asheville and its citizens for 31 years in the Street Division and was sorry to lose such a valuable employee.

Mayor Michalove read the resolution of appreciation.

Upon motion of Councilman Ellison, seconded by Vice-Mayor Moore, Resolution No. 91-180 was unanimously adopted.

Resolution Book No. 19 at Page 24

E. REPORT FROM THE MINORITY BUSINESS COMMISSION

Mr. Larry Linney, Chairman of the Asheville Minority Business Commission, gave a detailed and statistical status report which is to be made annually.

Mr. Linney stated that the following are recommendations by the Minority Business Commission to the City of Asheville:

1. Establish a joint City-County Minority Business Plan.
2. Restore the 5% penalty for contractor non-compliance with the Minority Business Plan in performing good faith efforts in construction contracts.
3. Have department and division heads assign a person in each department and/or division who deals with contracts to inform the Minority Business Coordinator of executed contracts with minority businesses.

II. PUBLIC HEARING:

PUBLIC HEARING RELATIVE TO GROUP DEVELOPMENT PROJECT OF LOWE'S COMPANIES INC. TO BE LOCATED ON SOUTH TUNNEL ROAD

Mayor Michalove opened the public hearing at 4:35 p.m.

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

Don Sherrill, Urban Planner in the Planning Department, stated that this group development request is a proposal to construct a new 71,407 square foot store on South Tunnel Road. The proposed store will replace the existing Lowe's in Biltmore. The site is located between the Asheville Mall and the Dreamland Drive-In. The land is 15.58 acres in area and lies within the Commercial Highway zoning district. The site is mostly wooded and contains an historically significant house. A floodplain and wetlands area are located on the site.

Mr. Sherrill stated that the City's parking standards require 198 parking spaces and the developer was proposing 381 spaces, but has since reduced the number of parking spaces by 51. There is water, sewer and fire protection services available to the site. Two driveway entrances are proposed and they will require approval by NC DOT. The landscaping plan submitted exceeds the City's landscaping/buffering requirements. The site plan meets the requirements of the City's floodplain ordinance. A grading plan has been submitted to the City's sedimentation and erosion control staff and they are currently revising the plans for compliance with the City's erosion control ordinance.

Mr. Sherrill stated that a great deal of concern was expressed by the public regarding preservation of existing trees, the amount of impervious surfaces and preservation of the historic house located on the property. The grading plan submitted indicates that the vast majority of existing trees will be removed from the site. Several groups of trees will be retained within the floodway and wetlands area and a few trees will remain along the Asheville Mall side of the property. Currently our ordinances only specifically regulate the removal of trees from within public rights-of-way. Lowe's has donated the historic house to the Asheville-Buncombe Preservation Society and it will be moved.

Mr. Sherrill stated that the staff recommendation to the Planning and Zoning Commission included two contingencies: (1) Approval of a driveway permit by NC DOT; and (2) The proposed parking not exceed the ordinance requirements by more than 25% or a total of 250 spaces.

Mr. Sherrill said at the Planning and Zoning Commission's meeting on October 2, 1991, they voted to recommend approval of the proposed Lowe's to be located on South Tunnel Road subject to approval of a driveway permit by NC DOT for the proposed driveway entrances. He stated that since the October 1, 1991, meeting, that approval of a driveway permit by NC DOT has been obtained.

Mr. Sherrill stated that since the approval of the group development request by the Planning and Zoning Commission, representatives of Lowe's have been working with the Tree and Greenway Commission, City staff, City officials and the Asheville-Buncombe Preservation Society to develop plans sensitive to the community. He stated that Lowe's efforts have included tree preservation, donation of the historic house to the Asheville-Buncombe Preservation Society for relocation to another site, donation of trees to the City for future plantings, reduction in the number of parking spaces and the inclusion of trees within the proposed landscaping plan that substantially exceeds the size requirements included in the City's landscaping ordinance.

Mr. Sherrill stated that the Tree and Greenway Commission and the City's Public Works Department have encouraged the developer to install sidewalks along South Tunnel Road. He said the developer has indicated a willingness to split the cost of the sidewalks with the City. Although the City has no regulation requiring sidewalks to be included within group development projects, typically a developer is required to cover the cost of sidewalk installation if they choose to install sidewalks within the public right-of-way. If the sidewalks are constructed to City standards, the City will then take over maintenance of those sidewalks.

Upon inquiry of Councilman Price about a traffic light at the entrance, Mr. Sherrill explained that NC DOT waits 30 days after the opening of a store and then does a traffic study to see if a traffic light is warranted. He did state, however, that some developers foot the bill upfront and install a traffic light.

Councilman Ellison asked about sidewalks from a safety standpoint.

Councilman Price stated that Council has in the past required developers to install sidewalks in other group developments.

Mr. Dan Pardue, representative of Lowe's, stated that the approximate cost to install sidewalks at that location would be \$4,500-\$5,000.

Ms. Becky Williams, representative of the Chamber of Commerce, spoke in favor of Lowe's from an economic standpoint.

Ms. Susan Roderick, Chairman of the Tree and Greenway Commission, spoke in support of Lowe's.

Mayor Michalove read a letter from Dr. Orbison from the Tree and Greenway Commission expressing his support of the project.

Mr. Chris Johanson commended Lowe's on their progress to date. He was somewhat disturbed that a letter which he sent expressing his comments were not recognized by the Planning and Zoning Commission members.

Ms. Leni Sitnick, member of the Asheville Tree and Greenway Commission, made

positive statements about the growth and development in Asheville and spoke in favor of the Lowe's project. She would like for the Council to strengthen the tree ordinance.

Ms. Hazel Forbes spoke in support of Lowe's and felt that the public helped Lowe's become a member of the society.

Mr. Bob Long Jr., attorney for Joe Pless (who will be a neighbor of Lowe's on S. Tunnel Road), stated that Mr. Pless was in support of Lowe's but just recently found a problem in the storm water drainage plan. He stated that the storm water from the Lowe's project will be running onto Mr. Pless' property. Mr. Long did propose two alternatives to Lowe's: (1) If Lowe's would extend pipe to the creek, Mr. Pless would give them an easement to do so; or (2) If Lowe's would bring pipe to the edge of their property line, Mr. Pless would bring the pipe the rest of the way to the creek.

Mr. Pardue stated that Lowe's has complied with all City regulations concerning storm water regulations but would be willing to work with Mr. Pless and the City Engineering Division to alleviate this problem.

It was then determined, to the satisfaction of Mr. Pless and Mr. Pardue, that Mr. Pless would tell Lowe's where his pipes were to be located underground in order that Lowe's could hook their pipes to his, thereby routing the water underground through Mr. Pless' property to the creek. Mr. Pardue stated that if Mr. Pless provided the pipe, he would have Lowe's contractor put it in.

Mayor Michalove closed the public hearing at 5:36 p.m.

Vice-Mayor Moore moved to approve the site plan submitted to the City Council on this date (Sheet SP11, the revised version - 330 parking spaces) conditioned upon sidewalks installed to City specifications and drainage routed to a point at the border of the Dreamland Drive-In property as designated by Mr. Pless so as to enable Mr. Pless to route the water through the Dreamland Drive-In property. This motion was seconded by Councilman Ellison and carried unanimously.

Councilman Price asked that Lowe's work with NC DOT and Overlook Village regarding the installation of a traffic light at their entrance.

IV. NEW BUSINESS;

A. REPORT RELATIVE TO BRACKETTOWN ROAD

This report was postponed until the meeting of November 19, 1991.

B. RESOLUTION NO. 91-181 - RESOLUTION REAFFIRMING THE RELATIONSHIP BETWEEN THE CITY OF ASHEVILLE AND THE BELE CHERE TRUSTEES AND BOARD OF DIRECTORS

Mr. Jim Daniels, in the absence of Ms. Robin Daniel, read a statement relative to the Bele Chere Festival.

Mr. W. Louis Bissette, Jr., read the resolution being requested.

Councilman Bratton stated that she felt that Bele Chere is a marketing department for the City of Asheville.

Councilman Ellison stated that he supported Bele Chere but had a concern about an item which came up at the City Council retreat which was to look at the relationship of all festivals by a team of three - Mayor Michalove and Councilmen Bratton and Estes. He felt that since the City is ultimately

responsible for the Bele Chere Festival, the City Council should have the right to appoint members to the Board of Trustees. He felt that until the report from Council members is reviewed regarding the Bele Chere Festival, that adopting this resolution would be premature. He stated that this resolution should be tabled.

Mr. Bisette stated that delaying this action would result in postponing the recruiting of a new Festival Chairman and Board members which needs to be done immediately in order to execute effectively the purposes of the festival.

Mayor Michalove stated that since the next Council meeting would not be until November 19, 1991, that a liaison from the City Council be appointed in order that they don't hold up planning and activities for next year's festival.

Councilman Bratton stated that since the City has already had the Goombay Festival, the Greek Festival and Octoberfest Festival without the report requested at the retreat, that the Council should go ahead and adopt this resolution for the Bele Chere Festival. She felt that the people of the Bele Chere Festival are working on the City's behalf and should not be held up until the report is made.

Upon inquiry of Councilman Frank, City Attorney Slawter stated that this resolution could be adopted today and in the future if Council decides to make changes, the resolution can be amended.

Councilman Frank suggested that Councilman Ellison be appointed the liaison from the City Council to the Bele Chere Board of Directors but Councilman Ellison declined.

Vice-Mayor Moore spoke in support of the Bele Chere Festival and stated that they do need a statement of support to continue with their ongoing plans. He stated that adopting this resolution today would in no way preclude the City Council from looking into the relationship of the City and the Bele Chere Festival.

Councilman Bratton moved to adopt Resolution No. 91-181. This motion was seconded by Councilman Frank.

Councilman Price stated that the City Council should be more supportive of all the volunteers and that the need to recruit a Festival Chairman needs to be done and let the planning process continue.

Councilman Ellison felt that if Council passes this resolution today that it would be contrary to what they will be looking at in terms of the relationships between the Council and the festivals. He stated that he was not against Bele Chere, only the process. He stated that there was not one black citizen on the Board of Trustees and because only past Festival Chairmen can serve on the Board, he felt that the Board of Trustees is a private club which controls the Festival.

Councilman Bratton stated that she is now the City Council liaison to the Bele Chere Board of Directors and has, and will continue to meet with Mr. Daniels and Mr. Bisette expressing concerns until her term ends.

Councilman Estes saw no reason why the Council needed to adopt a resolution at all. He felt that at least one or two people, whether they be City Council members or City Council appointees, needed to be appointed to the Board of Trustees.

Mr. Bisette explained the structure of the Bele Chere Festival, stating that

the Board of Trustees are more of an honorary group which meet approximately four times a year. He said that they do select a Festival Chairman but the Board of Directors, which has a broad cross section of people, really run the Festival. He did state, however, that the Board of Trustees is made up of past Festival Chairmen since these people have had the experience of working through a festival year.

Councilman Price stated that this would be the first time the Board of Trustees heard that City Council wanted someone on the Board.

At 6:20 p.m. Mayor Michalove stated that there was a question of liability and asked for a motion to go into executive session for five minutes. Vice-Mayor Moore moved for a five minute executive session. His motion was seconded by Councilman Bratton and carried unanimously.

At 6:25 p.m. Councilman Ellison made a substitute motion indicating City Council's full support of Bele Chere and that Bele Chere is authorized to recruit a Chairman.

Mr. Bisette requested that the resolution be adopted for insurance purposes.

Mr. Charles Worley suggested the resolution be adopted and if there are changes to be made that they be made after the Festival in order not to disrupt the plans for this year.

Mayor Michalove suggested an addendum to the resolution to read as follows: Be it further resolved that the City Council will appoint a liaison from the City Council and two at large members to the Board of Directors (underlining denotes change).

Councilmen Bratton and Frank were opposed to adding that to the motion to adopt the resolution.

Vice-Mayor Moore was somewhat disturbed that at first Councilman Ellison was opposed to the resolution on procedural grounds and now he is opposed to the resolution because he feels the Board of Trustees is racially segregated.

Councilman Ellison stated that he was not saying that anyone on the Board of Trustees is closed, but that the Board of Trustees as a whole is closed because not anyone from the City of Asheville can serve on that Board unless they are a past Festival Chairman. He feels that there is an unwillingness to open up for other representation and that this is a closed club in the City of Asheville.

The earlier motion to adopt Resolution No. 91-181 was adopted on a 5-2 vote, with Councilmen Ellison and Estes voting "no."

Councilman Price stated that she didn't disagree with the possibility of two members being put on the Board and it may very well be appropriate for that to be done for all the City's boards and commissions.

Councilman Estes stated his support for Bele Chere and felt concerned that there is no direct communication between the City Council and the Board of Trustees. He felt the idea of two members appointed by the City Council needs to be cultivated.

Councilman Ellison moved that the Asheville City Council appoint two at large members to the Board of Trustees and a liaison from the City Council to the Bele Chere Board of Directors. This motion was seconded by Councilman Estes.

Councilman Bratton suggested an amendment to the above motion stating that

where there are festivals and monies involved that City Council have representation on the boards.

Councilman Ellison rejected the suggestion by Councilman Bratton.

The motion by Councilman Ellison and seconded by Councilman Estes above was defeated on a 2-5 vote, with Mayor Michalove, Vice-Mayor Moore, Councilmen Bratton, Frank and Price voting "no."

Mr. Eugene C. Ochsenreiter Jr. restated that the Board of Trustees leans on experience and that the Board would be happy to work with the City Council for the good of all citizens of the City of Asheville.

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C. FINAL PLAT APPROVAL - FOREST LAKE SUBDIVISION

Mr. Gerald Green, Senior Planner in the Planning Department, said that on February 14, 1990, the Planning and Zoning Commission granted preliminary plat approval for Forest Lake Subdivision, a 135 lot development located on Rock Hill Road. He said the Commission recommended approval of variances to permit a cul-de-sac right-of-way radius of 45 feet (rather than 50 feet) and to permit street grades in excess of 12%. He said the City Council granted these variances on March 13, 1990.

Mr. Green said that the one year period of validity for the plat and variance approvals has expired and the developers are seeking reaffirmation of the earlier approvals. He said final plats have been approved for two phases (35 lots) and the final plat has been submitted for Phase III.

Mr. Green stated that on October 2, 1991, the Planning and Zoning Commission reaffirmed its February 14, 1990, approval of the preliminary plat and recommended approval of the requested variances/modifications as follows: (1) Permit a right-of-way radius of 45 feet at the cul-de-sac turnaround; and (2) Permit a section of road approximately 150 feet in length to have a grade of 17% and a section of road approximately 130 feet in length to have a grade of 18%.

Councilman Ellison moved to affirm the variances for Forest Lake Subdivision dated February 14, 1990, to permit a cul-de-sac right-of-way radius of 45 feet (rather than 50 feet) and to permit street grades in excess of 12%. He said the City Council granted these variances on March 13, 1990. This motion was seconded by Councilman Price and carried unanimously.

Vice-Mayor Moore moved to approve the final plat (revised September 23, 1991, Job No. 91-163-C), of Forest Lake Subdivision - Phase III - with the following conditions: (1) Permit a right-of-way radius of 45 feet at the cul-de-sac turnaround; and (2) Permit a section of road approximately 150 feet in length to have a grade of 17% and a section of road approximately 130 feet in length to have a grade of 18%. This motion was seconded by Councilman Price and carried unanimously.

C. REPORT RELATIVE TO PATTON AVENUE SIDEWALK PROJECT

Mayor Michalove stated that the City will proceed with bidding this project and asks that bid specifications be prepared with an alternate bid for closing the vaults.

D. ORDINANCE NO. 1952 - AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE (PARKING METER RATES)

City Attorney Slawter stated that this amendment will remove references to specific rates for parking meters in favor of listing the rates in the Fees and Charges Manual.

Mayor Michalove said the ordinance was previously read and would not be read in its entirety.

Vice-Mayor Moore moved for the adoption of Ordinance No. 1952. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1952 passed on first reading.

Vice-Mayor Moore moved to suspend the rules and proceed to the second reading of Ordinance No. 1952. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1952 passed on second reading.

Councilman Price moved to amend the ordinance to be effective upon January 1, 1992, or as soon thereafter as the new mechanisms are in place. This motion was seconded by Councilman Frank and carried unanimously.

Vice-Mayor Moore moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1952, as amended. This motion was seconded by Councilman Frank and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1952 passed on its third and final reading.

Ordinance Book No. 13 at Pages 8-9

F. REPORT OF CITIZENS/POLICE ADVISORY COMMITTEE

Police Chief Gerald Beavers, on behalf of Chairman Andrea Purcell who had to leave the meeting earlier due to a previous commitment, gave a report of the Citizens/Police Advisory Committee.

Chief Beavers said that it was the consensus of the Committee that all Committee members do a ride along with a police officer in order to familiarize themselves with the activities of the Police Department. It was also the consensus of the Committee that they attend the Citizens/Police Academy which meet for four weeks on every Tuesday and Thursday.

Chief Beavers requested Council assistance in replacing one member who has never attended a meeting and one member who has resigned. Councilman Price suggested that the Committee adopt by-laws and Chief Beavers stated that they would look into that at an upcoming meeting.

Chief Beavers welcomed ideas and suggestions from the Council and stressed that the Committee wishes to become a channel of communication.

G. MOTION REJECTING ALL BIDS RECEIVED FOR THE CONTRACT FOR THE WEST CHAPEL CIRCLE STORM DRAINAGE PROJECT.

City Manager Bean stated that sealed bids were rejected at the original bid opening for the West Chapel Circle Storm Drainage Project on October 1, 1991, because only two were submitted. He said in accordance with the Readvertisement for Bids, sealed bids were once again received in the City Engineer's office on October 18, 1991. He said only one bid, responsive to the City of Asheville's Minority Business Plan was received. Therefore, it is staff's recommendation to

reject all bids at this time and readvertise.

Councilman Ellison moved to reject all bids received for the contract for the West Chapel Circle Storm Drainage Project. This motion was seconded by Vice-Mayor Moore and carried unanimously.

V. CONSENT:

A. RESOLUTION NO. 91-182 - RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ASHEVILLE TO EXECUTE AN EASEMENT IN FAVOR OF CAROLINA POWER AND LIGHT COMPANY FOR PROPERTY ON SOUTH CHARLOTTE STREET.

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 South Charlotte Street for underground utilities for the Public Works Complex.

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B. BIDS - DUAL DRIVE DISK TRAY AND LINE II COMPILER FOR FINANCE DEPARTMENT, INFORMATION SERVICES DIVISION.

Recommendation to award to low bidder, Unisys Corporation, Charlotte, North Carolina, in the amount of \$42,541.00 for the purchase of two (2) "Unisys" model M9612-00 disk trays at a unit price of \$21,270.50. A complete set of bid documents are attached hereto and made a part hereof.

C. BIDS - OPEN AREA WORKSTATIONS AND OFFICE FURNITURE FOR THE CITY HALL BUILDING.

Recommendation to award bids as follows: Hoyle Office Supply, Asheville, North Carolina - \$161,512.37; and Office Environments, Asheville, North Carolina - \$8,656.65. These bids fully meet all specifications, terms and conditions of subject bid. A complete set of bid documents are attached hereto and made a part hereof.

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

VI. OTHER BUSINESS:

A. CANCELLATION OF MEETINGS

Mayor Michalove announced that the next meeting of the Asheville City Council will be November 19, 1991. The November 5, 1991, meeting will be cancelled due to it being election day and the November 12, 1991, meeting will be cancelled due to the North Carolina League of Municipalities holding its annual meeting in Charlotte, North Carolina.

B. RESOLUTION NO. 91-183 - RESOLUTION REAPPOINTING MRS. HELEN MITCHELL TO THE ASHEVILLE BOARD OF ALCOHOLIC CONTROL FOR A THREE YEAR TERM, TERM ENDING NOVEMBER 13, 1994

Mayor Michalove read a letter from Russell Martin and Osborne Hart, both of whom are Asheville Board of Alcoholic Board Control members, asking that the City Council reappoint Mrs. Helen Mitchell for another term due to her being a tremendous asset to the Board.

Councilman Bratton moved to reappoint Mrs. Helen Mitchell to the Asheville Board of Alcoholic Control for a three year term, term ending November 13,

1994. This motion was seconded by Councilman Frank and carried unanimously.

Resolution Book No. 19 at Page 27

C. MOTION AUTHORIZING THE MAYOR TO ACCEPT AN EASEMENT TO RELOCATE A STORM DRAIN ON MERRIMON AVENUE - WESTERN STEER PROPERTY

City Manager Bean said that the current owner of the property located on Merrimon Avenue (where the Western Steer was) is in the process of replacing the storm drain. He said it would be to the City's advantage to work out a cooperative arrangement with the current owner and go ahead and put in a large enough storm drain to drain that entire area. He said it would cover about 1/3 of the total cost and it would be a great savings to the City to work out that arrangement. He asked for a motion authorizing the Mayor to accept the easement. After acceptance, the City could then go out for bid and come back with a budget amendment once funds are in hand from the developer.

Vice-Mayor Moore moved to authorize the Mayor to accept an easement to relocate a storm drain on property located on Merrimon Avenue where the Western Steer was. This motion was seconded by Councilman Estes and carried unanimously.

Mayor Michalove asked the City Manager to have staff investigate the sign at the old Western Steer on Merrimon Avenue that is covered by blue plastic. He thought there was some procedure that when places close down, the signs were to be taken down, along with the poles.

D. CLAIMS

The City Manager said claims were received from William Wright (Fire Department), Brenda Ray (Water Department) and Melanie Perry (Water Department).

Mayor Michalove stated that these claims has been referred to the appropriate insurers for investigation.

VII. ADJOURNMENT

Mayor Michalove adjourned the meeting at 7:15 p.m.

City Clerk Mayor
