

Tuesday - December 17, 1991 - 4:00 p.m.

Regular Meeting

Present: Mayor Kenneth M. Michalove, Presiding; Vice-Mayor Eugene W. Ellison; Councilwoman Barbara Field; Councilmen William G. Moore, Chris J. Peterson, Joseph Carr Swicegood and Charles R. Worley; City Attorney William F. Slawter; City Manager Douglas O. Bean; and Deputy City Clerk Charles W. Penny.

Absent: Associate City Manager/City Clerk William F. Wolcott Jr.

INVOCATION

The invocation as given by Councilman Moore.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the December 10, 1991, meeting minutes.

I. PROCLAMATIONS:

A. RESOLUTION NO. 91-200 - RESOLUTION SUPPORTING DRUNK DRIVING PREVENTION PROGRAMS

Mayor Michalove read the resolution and stated that at the National League of Cities meeting held in Las Vegas, Nevada, last week, Councilman Peterson did a video supporting drunk driving prevention programs.

Upon motion of Councilwoman Field, seconded by Vice-Mayor Ellison, Resolution No. 91-200 was unanimously adopted.

RESOLUTION BOOK NO. 19 AT PAGE 57

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE DESIGNATION OF PROPERTY KNOWN AS THE VON RUCK HOUSE AND LOCATED AT 52 ALBEMARLE PLACE AS A LOCAL HISTORIC LANDMARK.

ORDINANCE NO. 1955 - AN ORDINANCE DESIGNATING PROPERTY KNOWN AS THE VON RUCK HOUSE AND LOCATED AT 52 ALBEMARLE PLACE AS A LOCAL HISTORIC LANDMARK.

Mayor Michalove opened the public hearing at 4:09 p.m.

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

Mr. Kent Newell, Director of the Historic Resources Commission, said that the Karl Von Ruck House is a contributing property to the Chestnut-Hill National Register and represents significant high-style architectural forms constructed at the turn of the 20th Century. It was the home of a nationally and internationally known pioneer in pulmonary medicine who aided in the establishment of Asheville as a haven for those stricken with tuberculosis.

He stated that the Karl Von Ruck House is composed of two dwellings connected by a two-story music room. The original house, constructed circa 1900, represents the transitional Victorian architecture with classical ornamentation

and detailing. A second structure was built to the south of the original residence in 1912 and was used as Von Ruck's laboratory, housing facilities for researchers and a pharmacy. This structure reflects the Colonial revival and English cottage architectural styles.

He said historically, Karl Von Ruck was among the first of a line of Asheville pulmonary disease specialists who achieved national and international notoriety for their contribution to the treatment of tuberculosis. Due to Von Ruck's efforts in developing tuberculosis vaccines in the 1910's, Asheville became the mecca for the treatment of this disease. Von Ruck came to Asheville in 1888 and opened the Winyah Sanitarium where he began treating patients for one of this nation's foremost killers. By 1900, Von Ruck had relocated the Winyah Sanitarium to Spears and Mt. Claron Avenues between Merrimon Avenue and Broadway. By 1914 he presented before an international conference in London, his findings for the successful immunization of children against tuberculosis. Karl Von Ruck lived and worked out of the present mansion until his death in 1922.

He said that the Historic Resources Commission, at the request of Dr. John Killian, owner of the property, has studied the Survey and Research Report as submitted by Dr. Killian's consultant and determine the building to be eligible for designation as a Local Historic Landmark. The North Carolina Department of Cultural Resources concurs with the Historic Resource Commission's nomination.

Upon inquiry of Councilman Swicegood, Mr. William C. Bass, contractor representing the property owner, John Killian, said that the building currently has 23 apartments and when the rehabilitation is finished, it will remain an - 3-

apartment building. He said that when the rehabilitation first started only 60% of the apartments were occupied and the other 40% were not livable.

Mr. Bass said that the property owner will be spending approximately \$600,000 to rehabilitate the house over a two year period of time.

Upon inquiry of Vice-Mayor Ellison, Mr. Newell explained that the Historic Resources Commission is primarily concerned with the exterior of the house but in this case, the interior has a significant amount of historical value too.

Upon inquiry of Vice-Mayor Ellison, Mr. Newell said that the taxes on this property for 1991 is \$2,436 and the tax valuation is \$258,700. Mr. Newell felt that the rehabilitation of this house will far outweigh the tax loss.

Mayor Michalove closed the public hearing at 4:22 p.m.

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

Councilman Moore moved for the adoption of Ordinance No. 1955. This motion was seconded by Councilman Worley.

On a roll call vote of 5-2, with Councilmen Peterson and Swicegood voting "no", Ordinance No. 1955 passed on its first reading.

Councilman Moore moved to suspend the rules and proceed to the second reading of Ordinance No. 1955. This motion was seconded by Councilwoman Field and carried unanimously.

On a roll call vote of 5-2, with Councilmen Peterson and Swicegood voting "no",

Ordinance No. 1955 passed on its second reading.

Councilman Moore moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1955. This motion was seconded by Councilman Worley and carried unanimously.

On a roll call vote of 5-2, with Councilmen Peterson and Swicegood voting "no", Ordinance No. 1955 passed on its third and final reading.

ORDINANCE BOOK NO. 13 AT PAGE 14

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B. PUBLIC HEARING RELATIVE TO THE FINAL APPROVAL OF THE SITE PLAN FOR THE BUNCOMBE COUNTY DETENTION FACILITY/JAIL COMPLEX

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

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

Ms. Carol Alberice, Urban Planner II, said that this group development request is a proposal to construct a new 145,000 square foot detention center/jail facility in downtown Asheville. The applicant is Buncombe County and the plans have been prepared by Obrien Atkins Associates of Research Triangle Park.

She said the proposed site is located directly behind the Buncombe County Courthouse between Davidson Street and Valley Street. The site is currently used for parking and contains a building occupied by the County Engineering staff. The site is 1.12 acres in size and is located within the Commercial Service Zoning District and the Downtown Design Review area. Due to the development standards for the Commercial Service Zoning District, the project as proposed will require variances for the following standards: front and rear setbacks, the required 10 foot wide landscaping strip for street trees, the required parking and an off-street loading requirement that does not allow access or egress from public streets only by backing into or from the proposed loading area.

She said water and sewer services are available to the site. Fire protection is adequate to serve the proposed building. City Driveway Entrance Permits will be required for the two entrances proposed.

She said that at their November 6, 1991, meeting, the Asheville Planning and Zoning Commission voted to recommend approval of the group development request subject to the following contingencies:

1. Variances be granted on the front setback from 35 feet

to 1 foot and the rear setback from 8 feet to 3 feet;

2. Variance be granted for the required 10 foot wide

landscaping strip for street trees;

3. Variance be granted for the reduction of required parking spaces from the 121 spaces to 6 spaces;

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4. A variance be granted from the requirement in the parking and loading

standards that states "No access or egress driveway, except for single and two family houses, shall be so arranged that vehicles can enter and leave only by backing on or across any sidewalk or to or from any street."; and

5. This area be rezoned from CS to CBD and that the rezoning process be carried out concurrently with the group development process going on to City Council in the anticipation that by the time the rezoning process has been approved that this would coincide with the letting of bids in March, 1992.

She said the Commission also voted to approve the project for Downtown Design Review.

She said the reason for the rezoning would be to eliminate the need for the variances. Within the Central Business District, the parking and loading requirements are not applicable, the 10 feet wide landscaping strip is not required for the street trees and building setbacks are not required.

Mr. Steve Metcalf, County Manager, gave a brief report of the history and planning process that went into this group development. He said that the project will be a 288 bed facility with an approximate cost of \$18 Million.

Mr. Roger Cannon with Obrien Atkins Associates of Research Triangle Park, said that safety, security, keeping the project within budget and having the building be architecturally compatible were main objectives in preparing the site plan. He stated that maintaining the height was the highest priority. He then gave a brief description of the building.

Upon inquiry of Vice-Mayor Ellison relative to the variance of 121 spaces to 6 spaces, Ms. Alberice explained a "jail" was not specifically denoted in the zoning ordinance. Therefore, Planning and Legal staff determined that the clause referring to sanitariums, rest homes and similar institutions was the closest related use, which requires one space for each three beds plus one space for each four employees.

Mr. Metcalf explained that the 6 spaces will only be for the use of arresting officers who are dropping off prisoners. He said that the Courthouse has only one space for that purpose now. He said the parking area will -6-

accommodate a bus plus the 6 spaces and there is on-street parking should the 6 spaces be filled. He felt that the move of the Department of Social Services and the Sheriff's Department from the Courthouse has freed up additional parking and felt that parking should not be a problem since visitation rights are only on the weekends.

Upon inquiry of Councilwoman Field, Mr. Metcalf stated that the County has planned for the growth of beds in 20 years.

Councilman Moore felt that if anyone else came before the Council with as many variances as this site plan, he hoped it would be rejected summarily. However, because of the overriding necessity to upgrade the living conditions of human beings, he felt the Council should not delay in approving this site plan.

Mayor Michalove closed the public hearing at 5:09 p.m.

Vice-Mayor Ellison moved to approve the site plan subject to the conditions imposed by the Planning and Zoning Commission, including the granting of the variances which are set forth above. This motion was seconded by Councilman Moore and carried unanimously.

C. PUBLIC HEARING RELATIVE TO THE DEMOLITION OF THE DWELLING KNOWN AS 10 SUNSET

SUMMIT

Mayor Michalove opened the public hearing at 5:10 p.m.

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

Mr. Bob Hixson, Director of Building Inspections said that proceedings have been instituted in accordance with the provisions of the City of Asheville Housing Code, Section 8-29 (B) (2), as authorized by N. C. Gen. Stat. sec. 160A-443 (2). A hearing was held on September 24, 1990, and the dwelling at 10 Sunset Summit was found unfit for human habitation, and a Findings of Fact and Order was issued finding the dwelling, in its present condition, an imminent threat to life and property. The owner was given 30 days to demolish the dwelling. The owner has not complied with said Order in any respect and the time for doing so has expired.

Mr. Hixson said that out of 14 bids for demolition, only one was responsive, Buncombe Construction. He said the cost for demolition was approximately \$95,000. He felt that if we lowered the amount of the house to be demolished (down -7-

to grade), he felt we could get the demolition price lowered.

Upon inquiry of Mayor Michalove on the reason for such a high figure for demolition (since they normally run under \$10,000), Mr. Hixson said that the location of the house being on the top of a mountain makes it hard for trucks to get up and down the steep grade; the house is on a very steep lot; there is approximately 240 cubic yards of concrete to blast out and there is a lot of steel in the building.

In response to Vice-Mayor Ellison, Mr. Hixson said the appraised value of the house in its present condition is \$155,000 and the land is appraised at \$75,000. He said the tax valuation is \$109,800.

Vice-Mayor Ellison asked what the amount would be to securely board up the house until the owner could sell it and Mr. Hixson replied that it would cost approximately \$10,000.

Upon inquiry of Vice-Mayor Ellison relative to the use of eminent domain, City Attorney Slawter said that under the eminent domain law, the City would have to use the house for some public use. He said that the City is using the proper procedure in accordance with the provisions of the City of Asheville Housing Code, Section 8-29 (B) (2), as authorized by N. C. Gen. Stat. sec. 160A-443 (2).

Councilman Peterson asked who would be liable if someone got hurt in the house. Mr. Hixson said that even though the City has posted numerous signs on the house, they disappear all the time.

John Powell, attorney representing Mrs. Florence Brummer, said that Mrs. Brummer is not financially able at the present time to pay for the boarding up of the house. He said that Mrs. Brummer is not looking for any profit from the house, just to get out from under it. He said he would recommend to Mrs. Brummer that she sign any documents necessary for the City to make the house safe and secure.

At the request of Councilwoman Field, Mr. Hixson explained the structural damage to the house.

Councilman Moore felt the City needed more information before he would feel comfortable in spending \$95,000 to tear the house down.

Councilman Worley questioned that if the City boarded up the house, would the City have a lien on the property. -8-

Or, if the City boarded up the house, would Mrs. Brummer repay the City when the house was sold.

Upon inquiry of Councilwoman Field, Mr. Powell felt that there was probably no homeowners insurance.

After City Attorney Slawter said that the property taxes have not been paid for the past three years, Vice-Mayor Ellison asked if the County could sell the property for unpaid taxes.

Ms. Barbara Pate, President of Sunset Mountain Homeowners Association, also felt that \$95,000 to demolish the house was too high a figure to demolish the house. She stated that if the City had made some timely decisions seven years ago when the neighbors said violations of the variance were occurring, the City would not be in the mess it is today trying to demolish the house. She said the property values of the surrounding neighbors have been greatly diminished and the City may not be held legally liable, but morally they would be liable. She stressed the City to make a timely decision on the demolition.

Mr. Harvey Heywood, Treasurer of the Sunset Mountain Homeowners Association, agreed that the house needed to be boarded up and echoed Ms. Pate's comments. He said that he has talked with two contractors who felt they could demolish the house for between \$23,000-\$66,000. Mayor Michalove suggested that he give Mr. Hixson the names of those contractors in order that Mr. Hixson would get in touch with them.

Mayor Michalove asked City Attorney Slawter for a report relative to Section 30-10-1 of the Code of Ordinances relating to zoning administrator's responsibilities to enforce the zoning ordinance.

Mrs. Lola Myers, 4 Crowningway Drive, felt that the property owners should not have had to hire attorneys to enforce the zoning ordinance.

It was the consensus of Council to have Mr. Powell contact Mrs. Brummer and let her know the questions and concerns the City Council has expressed and let the Council know her responses at the next Council meeting, January 7, 1992.

Councilman Swicegood stated that the City needed to beef up the police protection in the area around the house to discourage vandalism and possible injury.

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Vice-Mayor Ellison suggested posting more conspicuous "No Trespassing" signs around the house so that any child that can read will know not to go around the house.

Councilwoman Field moved to continue the public hearing until January 7, 1992, without further advertisement. This motion was seconded by Councilman Moore and carried unanimously.

D. PUBLIC HEARING RELATIVE TO THE APPROVAL OF REFUNDING THE PARKING GARAGES CERTIFICATES OF PARTICIPATION.

RESOLUTION NO. 91-201 - RESOLUTION OF THE CITY OF ASHEVILLE, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND RELATED MATTERS

Mayor Michalove opened the public hearing at 5:57 p.m.

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

City Manager Bean stated that the City has been monitoring interest rates and refinancing the parking garages Certificates of Participation at this time will save the City approximately \$1 Million over the life of the bond, which was a 15 year bond.

In response to Councilman Swicegood, City Manager Bean said the City could refinance again in the future if interest rates drop into the 4% range.

Mayor Michalove closed the public hearing at 6:02 p.m.

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

Upon motion of Councilman Moore, seconded by Councilman Worley, Resolution No. 91-201 passed unanimously.

RESOLUTION BOOK NO. 19 - PAGE 58

IV. NEW BUSINESS:

A. REPORT RELATIVE TO PROPERTY ADJACENT TO THE ASHEVILLE REGIONAL AIRPORT

City Attorney Slawter gave a brief report relative to the proposed exchange of land with Murphy-Wilson Investments for property adjacent to the Asheville Regional Airport. He -10-

said that he wrote to the attorney with Council's proposal and to date he had not had a reply.

It was the consensus of Council to have the City Manager and/or City Attorney contact Murphy-Wilson Investments' attorney and ask them to vacate the property.

B. RESOLUTION NO. 91-202 - RESOLUTION REQUESTING MSD TO REHABILITATE THE SEWER LINE SERVING HAWTHORNE VILLAS

City Manager Bean said that Section 19 of the agreement by and between the City and MSD provides that MSD will rehabilitate collector sewer systems in residential subdivisions upon a formal request to do so by the political subdivision in which the collector sewer system is located and in the event that such collector sewer system is determined by MSD to be a hazard to the public health and welfare within the district. He said the City has received a request from the homeowners of Hawthorne Villas that the City make a formal request to MSD for rehabilitation of the collector sewer system serving Hawthorne Villas. He said this resolution requests MSD to rehabilitate the sewer system serving Hawthorne Villas in accordance with Section 19 of the agreement between the City and MSD dated 11/21/89.

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

Upon motion of Vice-Mayor Ellison, seconded by Councilwoman Field, Resolution No. 91-202 was unanimously adopted.

RESOLUTION BOOK NO. 19 AT PAGE 62

C. FINAL PLAT APPROVAL FOR LINDSEY SUBDIVISION LOCATED ON BARNARD AVENUE AND FENNER ROAD

Mr. Gerald Green, Senior Planner, said that this subdivision of property involves the division of a 3.5 acre parcel into two lots. The property abuts Barnard Avenue and Fenner Road in north Asheville. One of the lots is 2.75 acres in area and fronts on Barnard Avenue. This lot is currently vacant and wooded. The second lot is .72 acre and contains eight existing apartments which were approved through the group development process in 1986. This new lot would continue to meet the group development standards as proposed.

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Mr. Green said that water, sewer and fire protection services are available to the proposed lots. No new streets are required because both lots abut existing public roads.

He said the Planning Department received a number of calls regarding this subdivision of property. Their concern has not been directed at the division of the property into two lots but rather with the future development of 2.75 acres of undeveloped land. Any residential development of this property larger than a single duplex would require group development review. Also, any further division of the undeveloped land into separate parcels would require further subdivision review by the Planning and Zoning Commission and City Council.

Councilwoman Field moved to approve the final plat for Lindsey Subdivision located on Barnard Avenue and Fenner Road. This motion was seconded by Councilman Moore and carried unanimously.

D. ORDINANCE NO. 1956 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FOR A MICROWAVE LINK WITH WHITE FAWN MOUNTAIN

City Manager Bean said that this budget amendment is an appropriation in the amount of \$73,000 to allow the purchase of a microwave link between the Municipal Building and White Fawn. He said this link is required to replace the link originally planned, which used the Sheriff's Department link on the Courthouse. He said the Courthouse link was lost in the move of the Sheriff's Department to Biltmore.

Upon inquiry of Councilwoman Field relative to a possible acoustical problem in the Pack Plaza Theater, John Miall, Director of Risk Management, said there would be no problem due to the smaller sized dish.

In response to Councilman Swicegood's question relative to the amount of money the City is spending on cellular services, City Manager Bean stated that he has put together a report on that issue which was handed out earlier that day in a packet of materials to the Council.

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

Councilman Worley moved for the adoption of Ordinance No. 1956. This motion was seconded by Councilman Moore.



On a roll call vote of 7-0, Ordinance No. 1956 was unanimously adopted.

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ORDINANCE BOOK NO. 13 AT PAGE 18

V. CONSENT:

A. RESOLUTION NO. 91-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE INDEMNIFICATION LETTERS FOR CITY-SPONSORED FESTIVALS.

This resolution will authorize the City Manager to execute letters which will indemnify property owners when their property is used for City-sponsored or co-sponsored festivals when the letters are requested by the property owners. The indemnification provided in those letters will be limited to the specific portion of the property used by the City of Asheville for the festival, to the specific days and hours the property is used by the City of Asheville for the festival, to actions taken by employees, officers or authorized agents of the City of Asheville and to the amount of coverage in the City's comprehensive general liability policy.

RESOLUTION BOOK NO. 19 AT PAGE 63

B. RESOLUTION NO. 91-204 - RESOLUTION AMENDING RULE 24 OF THE RULES OF PROCEDURES FOR THE ASHEVILLE CITY COUNCIL

Rule 34.A currently provides that the Employee Services Manager shall have the authority, upon the written approval from the City Manager and the Corporation Counsel, to authorize settlements of claims against the City pertaining to workers' compensation. Since there no longer exists a position with the title "Employee Services Manager" and since the responsibilities of that former position have now been assumed by a position with the title "Director of Risk Management", it is necessary to amend the provisions of Rule 34.A. to reflect that change.

RESOLUTION BOOK NO. 19 AT PAGE 64

C. RESOLUTION NO. 91-205 - RESOLUTION REAPPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

The term of the Chief of Police, as a member of the Asheville-Buncombe Community Relations Council, expires on December 31, 1991. This resolution will reappoint the Chief of Police for a three year term, term expiring December 31, 1994.

RESOLUTION BOOK NO. 19 AT PAGE 65

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D. RESOLUTION NO. 91-206 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

The terms of Brady Blackburn and Donald Harrison, as members of the Asheville Downtown Commission, expire on December 31, 1991. This resolution will reappoint Mr. Blackburn and Mr. Harrison for additional two year terms, terms to expire on December 31, 1993.

RESOLUTION BOOK NO. 19 AT PAGE 66

E. RESOLUTION NO. 91-207 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE

TREE/GREENWAY COMMISSION

Sandra Byrd has resigned as a member of the Asheville Tree/Greenway Commission. This resolution will appoint Joey Moore, Community Arts Council, to fill the unexpired term of Ms. Byrd, term to expire on August 1, 1993.

RESOLUTION BOOK NO. 19 AT PAGE 67

F. MOTION SCHEDULING A PUBLIC HEARING FOR JANUARY 7, 1992, RELATIVE TO REZONING THREE PARCELS OF PROPERTY ON DAVIDSON STREET FROM COMMERCIAL SERVICE DISTRICT TO CENTRAL BUSINESS DISTRICT.

Upon motion of Vice-Mayor Ellison, seconded by Councilwoman Field, the consent agenda was unanimously adopted.

VI. OTHER BUSINESS:

A. REMINDER - NO CITY COUNCIL MEETING ON DECEMBER

24, 1991, OR DECEMBER 31, 1991

B. CLAIMS

The following claims were received by the Office of Risk Management during the week of December 2 - 6, 1991: Pam West (Water); Michelle Hedgepath (Water); Jerry Harmon (Water); Mary Horvath (Water); W.O. Hodges (Water); Kathy Spake (Water); Thomas F. Price (Water); Betty Sanders (Water); Kathryn Stead (Police); and Fonda Ownbey (Parks).

He said the following claims were received during the week of December 9 - 13, 1991: Thomas Cook (Parks); Kari Simensen (Water); Matthew Massengill (Water) and Jess R. Shyder (Street).

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

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VII. ADJOURNMENT

Mayor Michalove adjourned the meeting at 6:30 p.m.

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CITY CLERK MAYOR

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