

Tuesday - January 7, 1992 - 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 Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: None

INVOCATION

Councilwoman Field read a Christmas card sent out by Earth Guild.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the December 17, 1991, meeting minutes.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JANUARY 1992 AS "CRIME STOPPERS MONTH".

Councilman Worley, member of the Crime Stoppers Committee, read the proclamation. Mayor Michalove then presented the proclamation to Ms. Becky Boyd, Coordinator of Crime Stoppers, who praised the cooperation of the citizens of Asheville working with the Crime Stoppers Program.

B. PRESENTATION OF THE QUARTERLY B*E*S*T AWARD.

City Manager Bean was pleased to present Mr. Charles Carver of the Water Maintenance Division, with an award for being chosen the Third Quarter B*E*S*T employee. He said Mr. Carver is recognized among his peers as always helpful, honest and highly dependable. He said that during this quarter, while walking from work through the tunnel, he came across the contents of a purse. He picked up all the contents, including money, put them in a holder, walked back to the Police Department to turn them in and then returned to walking back through the tunnel.

C. PROCLAMATION PROCLAIMING THE WEEK OF JANUARY 13-20, 1992, AS "DR. MARTIN LUTHER KING JR. WEEK".

Mayor Michalove was pleased to proclaim the week of January 13-20, 1992, as "Dr. Martin Luther King Jr. Week" in -2-

the City of Asheville. He presented the proclamation to Ms. Oralene Simmons who gave some background information about the activities that would be held during that week.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING THREE PARCELS OF PROPERTY ON DAVIDSON STREET FROM COMMERCIAL SERVICE DISTRICT TO CENTRAL BUSINESS DISTRICT.

ORDINANCE NO. 1957 - ORDINANCE AMENDING ZONING OF PROPERTY LOCATED ON DAVIDSON STREET (PETITION OF THE CITY OF ASHEVILLE AND BUNCOMBE COUNTY, OWNERS)

Mayor Michalove opened the public hearing at 4:20 p.m.

City Clerk Wolcott 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, stated that this rezoning is requested because of the Buncombe County jail facility, which group development was approved by Council on December 17, 1991. She said that the Planning and Zoning Commission, at its meeting on December 4, 1991, reviewed and recommended approval of the rezoning of three properties on Davidson Street, two properties owned by Buncombe County and one lot owned by the City of Asheville, to be rezoned from Commercial Service District to Central Business District. She said this property is located directly behind the County Courthouse and consists of 1.78 acres.

Mayor Michalove closed the public hearing at 4:23 p.m.

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

Vice-Mayor Ellison moved for the adoption of Ordinance No. 1957. This motion was seconded by Councilman Moore.

On a roll call vote of 7-0, Ordinance No. 1957 passed on its first reading.

Vice-Mayor Ellison moved to suspend the rules and proceed to the second reading of Ordinance No. 1957. This motion was seconded by Councilman Peterson and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1957 passed on its second reading.

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Vice-Mayor Ellison moved to suspend the rules and proceed to the third and final reading of Ordinance No. 1957. This motion was seconded by Councilman Worley and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1957 passed on its third and final reading.

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B. CONTINUATION OF PUBLIC HEARING RELATIVE TO AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH THE DWELLING KNOWN AS 10 SUNSET SUMMIT, ASHEVILLE, NORTH CAROLINA.

ORDINANCE NO. 1958 - AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS DIVISION TO DEMOLISH THE DWELLING KNOWN AS 10 SUNSET SUMMIT, ASHEVILLE, NORTH CAROLINA.

Mayor Michalove stated that this is a continuation of the public hearing opened on December 17, 1991.

City Manager Bean gave some background information on the reasons for continuing the public hearing. One reason was that only one bid was received and to date the City has received additional bids with varying amount based on the amount of work to be done (those amounts varying from \$30,000 to \$90,000). He said another reason for the continuance was that the Council had several legal questions relative to liens and liability. He said those have been addressed in a memo from City Attorney Slawter to the Council. He stated the

third reason for the continuance was to give individuals interested in purchasing the property an opportunity to contact the owner, Mrs. Brummer. He said that the City would not be privy to any negotiations of that type.

In response to Vice-Mayor Ellison's question relative to the City imposing a lien upon the property for the cost of boarding up the structure, City Attorney Slawter stated that if the owner of property fails to comply with an order from the Chief Building Inspector to "repair, alter or improve or to vacate and close" a dwelling, the City may undertake the action that was ordered and the cost of that undertaking becomes a lien against the property. He said the action that may be taken by the City, which results in the lien, must be that action with the property owner has been ordered to perform and has failed to do so. He said that in this case, the owner was ordered to demolish the -4-

structure rather than to "vacate and close" the structure. He said that a literal reading of the statute would prohibit the imposition of a lien for boarding up the structure at this time. He said that if the Council decided that they wanted to impose a lien upon the property for the cost of boarding up the house, another hearing on the matter would have to be held by the Chief Building Inspector at which time he might order the owner to "repair, alter or improve or to vacate and close" the structure and then if the owner does not comply, that lien could be imposed.

In response to Vice-Mayor Ellison's question about the cost for the City to board up the house, Bob Hixson, Director of Inspections, estimated it would take two people approximately two days, for an estimated amount of \$2,500.

Upon inquiry of Councilman Peterson, City Attorney Slawter stated that he has not heard from John Powell, attorney representing Mrs. Brummer, relative to the questions and concerns the Council had raised at their public hearing on December 17, 1991.

It was discussed that for total demolition with the lowest bidder, the amount would be approximately \$25,000-\$30,000, with the City handling debris hauling, landfilling, site grading and seeding.

Councilwoman Field questioned the reason why the Chief Building Inspector did not order the owner to board up the property instead of demolishing it. Mr. Hixson stated that under the Housing Code, he is directed to order demolition if cost to repair the structure is 60% more than the fair market value.

In response to Councilman Peterson relative to the priority of liens, City Attorney Slawter said that the City would have a lien against the property for the cost of demolition, if the City were to undertake the demolition. He said that by statute, that lien would come ahead of all other liens against the property except liens for federal, state and local taxes. He said there are no liens of record for federal or state taxes, but the City and County property taxes for the years 1989 through 1991 are owned in a total amount of just under \$8,000.

Vice-Mayor Ellison stated that he did not feel comfortable in putting a heavy burden on the City taxpayers to demolish the house.

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Ms. Barbara Pate, President of Sunset Mountain Homeowners Association, stated that the house has created many problems for the neighborhood, i.e. traffic, unsavory characters roaming around in the house, safety concerns, parked cars at all hours, just to name a few. She stated that the problem will not go away if the City just boards up the house.

Vice-Mayor Ellison asked if the Sunset Mountain Homeowners Association would be willing to help the City in the financial part of getting the house demolished. Ms. Pate said that she would address the Association and poll them.

Mr. Harvey Heywood, 12 Sunset Summit, hoped the Council would digest all the information he assembled which was passed out at the Pre-Council meeting. He felt the demolition of the house would earn the respect of many Asheville citizens by showing them that the City of Asheville is a credible government that enforces its own laws and protects the property rights of its citizens.

Mr. Joe McGuire, attorney for the Sunset Mountain Homeowners Association, stated that the City should demolish the house and they would come out better in the long run. He said that since 1984 the house has been in violation of the law and hoped the City would not turn their back on this illegal house year after year. He said the house is a danger to all the people of that community as it attracts the criminal element and feels that boarding up the house would only be a temporary solution. He felt that the City is exposed to liability if someone is injured in the house. He felt it is economically feasible to ask the City to pay for the demolition of the house and felt that over 10 years the cost of demolition would come back to the City.

Mr. Dave Conroy felt that if the City was asking the Homeowners Association to chip in on the cost of demolition, he felt the City was side-stepping its duty since they have let this house violate the laws for so many years.

Mr. Bill Mebane sympathized with the cost of demolishing the house but stated that it is a blight on all the City of Asheville, not just the neighborhood.

Ms. Lola Myers, 4 Crowningway Drive, stated that she did not want the house boarded up and left and wanted the City to enforce its own laws which were violated back in 1984 and continue to this present time.

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Mr. Steve Miller, 3 Sunset Summit, related an incident with the Police Department and asked the Council to do what is right and demolish the house.

A resident at 11 Crowningway Drive said that if the City just boards up the house, it will send a message to all the citizens of Asheville that zoning laws do not matter and they will not be enforced.

Mr. Max Cogburn, attorney who represented the Board of Adjustment in the litigation regarding construction of this house, said that every effort was made to follow procedures and if the City does not tear the house down, all the efforts of the volunteers who serve on the Board of Adjustment (and all other volunteers who serve on City boards) would become meaningless.

A man with Earthworks (potential contractor for the demolition of the house) stated that there was a lot of iron in the house and he saw a creative use for it by constructing a sculpture, if the neighborhood would

purchase it from him.

Mayor Michalove said that the City has already invested a staggering amount of time and money in this matter, i.e. personal lawsuits, attorney time, staff time, etc., He felt that the City needed to support the decision of its volunteers and feels that the property values in the area will come up after the demolition. He, therefore, supports the demolition of the house with the City doing some of the work.

Mayor Michalove closed the public hearing at 5:42 p.m.

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

Councilman Moore moved for the adoption of Ordinance No. 1958. This motion was seconded by Councilman Worley.

On a roll call vote of 5-2 (with Councilmen Peterson and Swicegood voting "no"), Ordinance No. 1958 passed on its first reading.

Councilman Peterson felt it was hard to vote on this item because of the amount of money involved and felt that additional bids should be solicited to trim the price down further.

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City Manager Bean stated that since all bids were sealed, the City would re-advertise and hoped that additional bids would be received.

Vice-Mayor Ellison wanted to give the Homeowners Association time to meet and see if they would be willing to commit some money to the cost of demolition.

Councilmen Worley and Moore supported the demolition of the house and felt that the cost was high, but from a moral standpoint the City needed to demolish it.

Councilwoman Field supported the demolition and hoped that some creative ideas would come up for the materials of the house in the near future.

Upon Council inquiry, City Attorney Slawter said that no further action would be required by the Council to authorize him to institute foreclosure procedures to foreclose on the demolition lien if the house were demolished. He said the City Manager has the authority to direct him in that regard.

Councilman Swicegood stated that he could not support the demolition at this time due to the amount of money involved.

Vice-Mayor Ellison moved that as soon as the City demolishes the structure, that the City Attorney immediately start foreclosure procedures. This motion was seconded by Councilman Moore and carried unanimously.

Mayor Michalove recessed the meeting for five minutes at 5:55 p.m.

III. OLD BUSINESS: None

III. NEW BUSINESS:

A. RESOLUTION NO. 92-1 - RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ASHEVILLE TO AMEND THE SECTION 3 DISCRETIONARY GRANT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, PUBLIC TRANSPORTATION DIVISION.

Ms. Wanda Winslow, member of the Asheville Transit Authority, said that the City of Asheville has the opportunity to revise its currently approved capital grant with the North Carolina Department of Transportation. She said this revision will allow the City to pursue design and construction of the new downtown transit transfer facility as well as purchase shelters and benches for the existing -8-

routes. She said that the Transit Authority is asking the

City Council to request advancement of these two capital projects (which are in the current Transportation Improvement Plan for Fiscal Year 93-94) to Fiscal Year 1991-92. She passed out a booklet entitled "Downtown Transit Needs Assessment" to assist the Council in understanding this procedure.

Vice-Mayor Ellison voiced concerns about whether the Council has actually supported the move of the transit transfer system to Coxe Avenue and the funds that will be involved to the renovation of Pritchard Park (which will be

in the neighborhood of \$300,000 - \$400,000). He said he was considering the amount of time it would take to move the transit system just one block.

City Manager Bean said that there is nothing in the current Capital Improvement Plan (CIP) to improve Pritchard Park, but there are funds in the CIP for benches and shelters which could be used if the transit system were moved. He said that the City is putting together a proposed CIP which is for \$150,000 over a two-year period of time for this improvement.

Councilman Peterson felt that the booklet passed out at today's meeting should have been included in the Council package on Friday in order to give the members ample opportunity to study this issue.

Mayor Michalove explained that the Council has already adopted the Transportation Improvement Plan and all the City is doing here is moving up the dates (from Fiscal Year 1993-94 to Fiscal Year 1991-92) and possibly reducing the cost of the work. He said that the City is only asking the federal government for the money if the City decides to construct the new transfer facility.

Carl Ownbey, Transit Planner, explained the different types of transit grants available to the City and felt that should not pass up this opportunity to ask the federal government to advance the two capital projects.

In response to Vice-Mayor Ellison, Mr. Ownbey said that if the City gets the grant, the City would have to use the \$160,000 for a transfer facility, but the site is not specific.

Councilman Moore supports the moving of the transfer facility because the riders would benefit. He felt that the City should go ahead and request the grant and if the City did not want to move the transfer facility, the City could turn the money down.

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In response to questions of Vice-Mayor Ellison relative to the City's being bound financially if the grant comes through, City Attorney Slawter said that a grant agreement has not been received for review by the legal staff in order to make that determination.

Mr. Ownbey, in response to Councilwoman's inquiry, said that if the City receives the grant, it could be used to upgrade Pritchard Park.

Upon motion of Vice-Mayor Ellison, seconded by Councilman Moore, Resolution No. 92-1 was unanimously adopted, subject to the City Attorney reviewing the documents to make sure that the City is not making any commitment to move the transfer station.

In response to Councilman Peterson's inquiry as to why the buses do not go upon mall property, Mr. Mark Rickards, General Manager of the Transit Authority, said that malls are private property and the property owners will

not allow the buses on their property due to traffic jams and weight of the buses.

Councilman Peterson suggested the City try to convince the mall owners of letting the buses onto their property, which will not only benefit the stores in the malls, but help the senior citizens from having to walk the distance from the bus stops to the mall entrance.

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B. RESOLUTION AUTHORIZING THE MAYOR TO RECONVEY THE ARCHITECTURAL AND CONSERVATION FACADE EASEMENT FOR THE OLD GLOBE FURNITURE BUILDING.

Fire Chief John Rukavina said that in late 1986, the Globe Furniture Building (24 Broadway) was virtually destroyed by fire and all that remained was its facade. He said that starting the day after the fire, efforts were initiated to preserve the facade for historical purposes. These efforts culminated in reinforcement of the facade and acquisition by the City of an easement on the facade from property owner Devere Lentz in October of 1990. The intent of this easement was to provide an opportunity for private parties to raise funds for the restoration of the facade. The City contributed \$3,500 and the Preservation Society raised \$6,500 for this restoration of this facade. On July 11, 1991, the City's Building Inspections Director was advised that there was evidence that the facade had "leaned" several inches and might be in danger of partial or complete collapse. The facade was secured with a scaffolding system (which is still in place today) and notice of a hearing on -10-

repair or demolition was filed, with a hearing held on August 21, 1991.

He said that as a result of that hearing, Bob Hixson ordered the facade either be repaired or demolished by November 29, 1991. His order was based on his observations, on information collected from adjacent property owners, and David Day's (engineer) comments from the August 21 hearing as to the stability of the facade and the need to conduct

repairs to mortar joints and other facade components that would deteriorate further in winter freeze/thaw cycles. Mr. Day estimated that the cost to demolish the facade would be approximately \$9,000 and his estimate to repair/renovate it would be at least \$9,000. The facade has neither been repaired or demolished as of this date.

As of August 21, the Asheville-Buncombe Preservation Society has been trying to raise funds for restoration of the facade and to date they have raised approximately \$600.

The easement agreement between the City and Devere Lentz contained a clause that provided for reconveyance of the easement back to Devere Lentz. Because no repair or demolition action has taken place to date, and based on the recommendation of the City Attorney at the time the easement was first conveyed, it is recommended that the easement be reconveyed to Devere Lentz. He said that if the easement is reconveyed, the next step would be direction to Devere Lentz to demolish the Globe Furniture facade.

Mr. Harry M. Weiss, Executive Director of the Preservation Society, reviewed a statement (passed out during Pre-Council) relative to the Preservation Society's concerns for the preservation of the facade, which are as follows: (1) The Preservation Society reaffirms its position that the Globe Furniture facade is a significant historic resource in Asheville and that it should be preserved; (2) The recent rehabilitation of buildings along both sides of this block of Broadway, and the recent sale of the Jenkins Building for a

rehabilitation project demonstrates a high level of interest in this block and its future economic viability; (3) The Preservation Society is focusing its efforts toward a permanent preservation solution of the Globe Furniture facade; (4) The Preservation Society recognizes that short term measures may be necessary to sustain the facade until a permanent solution can be realized; (5) Efforts to date have focused on short term measures which have successfully sustained the facade without leveraging a permanent preservation solution; and (6) Continued or additional action taken on the Globe Furniture facade should be based on the potential for leveraging a permanent preservation solution.

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Vice-Mayor Ellison felt that the City Council was misled when the City committed \$3,500 for the restoration of the facade in October of 1990. He said it was their understanding that the City's commitment, along with the \$6,500 from the Preservation Society would stabilize the facade permanently. He questioned who gave the Council the \$10,000 figure to stabilize the facade. Mr. Bob Hixson

stated that the estimate of \$10,000 to restore the facade was given by an engineer. Mr. Hixson said that the money has prevented the facade from falling into the street.

Councilwoman Field asked who allowed the owner to fill in the basement area with dirt between two party walls and to use it as a parking lot. Mr. Hixson stated that no one in the City was contacted relative to this matter.

A man who purchased 32 Broadway felt that the restoration of the facade could only increase further downtown development and increase future projects on Broadway Avenue. He felt that other downtown redevelopment projects have had public support. He stressed cooperation between the Preservation Society and the City to stabilize and renovate the facade.

Vice-Mayor Ellison stated that several meetings were held in 1990 relative to the Globe Furniture facade and suggested that minutes be obtained to show how much time and effort the City Council has really put into this matter.

Councilman Worley asked what the City could do, short of putting more money into the facade, to cooperate with the Preservation Society to restore the facade.

Mr. Weiss stated that the Preservation Society is not asking the City for more money, just not to proceed with demolition of the facade.

Mr. Devere Lentz gave some background information relative to his purchase of the building. He said that after the fire, he received bids to demolish the building and bids to demolish the building but leave the facade. He said to demolish the building and leave the facade doubled the earlier bid of total demolition. He said he filled in the basement area with dirt and stone to bring the basement area up to the Broadway Street level and to use it as a parking lot because there is limited parking on North Market Street. He stated that he would like the City to table any action until such time as the Preservation Society can come up with the money to stabilize and restore the facade. He said that he gave the City the easement and does not want the property back just for him to have to demolish it.

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Vice-Mayor Ellison moved to continue this matter until March 31, 1992, to allow the Preservation Society additional time within which to come up with

additional resources. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilman Moore voting "no".

Councilmen Peterson and Swicegood felt that the Council should be better informed on all issues coming before the City Council.

C. RESOLUTION NO. 92-2 - RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ASHEVILLE TO EXECUTE A REVISED EASEMENT IN FAVOR OF THE CAROLINA POWER AND LIGHT COMPANY.

City Manager Bean stated that Carolina Power and Light Company has requested that the City of Asheville execute a revised right-of-way easement on City of Asheville Property (McCormick Place) for an underground electric line that will serve the new fuel pump facility and will also provide electric service to Berlin Tire property.

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

Upon motion of Councilman Moore, seconded by Vice-Mayor Ellison, Resolution No. 92-2 was unanimously adopted.

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D. RESOLUTION NO. 92-3 - RESOLUTION OF THE CITY OF ASHEVILLE, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND RELATED MATTERS.

City Manager Bean stated that the City Council approved refunding of the 1987 Certificates of Participation for the parking garages in December of 1991 and this resolution approves the contract and designates the City Manager to act on behalf of the City in closing the refunding.

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

Upon motion of Councilman Worley, seconded by Councilman Moore, Resolution No. 92-3 was unanimously adopted.

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V. CONSENT: None

VI. OTHER BUSINESS:

A. CITY COUNCIL RETREAT NOTEBOOKS

City Manager Bean passed out to the City Council their notebooks for their retreat.

B. REQUEST BY DAVID JOHNSON, PRESIDENT OF CURBSIDE MANAGEMENT

Mr. David Johnson, President of Curbside Management, requested the City establish a task force to enforce recycling and volunteered his expertise in the matter if such a committee was established.

C. REQUEST BY THE FRATERNAL ORDER OF POLICE

Mr. Bob Emory, Vice-President of the Fraternal Order of Police, requested

\$2,000 for an awards ceremony for the Asheville Police Department's recognition program. He said January 22 is the date for the ceremony and the members of City Council are invited. He said a location site has not yet been determined and that an awards ceremony of some type would be held with or without the City's contribution. He said that the ceremony last year was funded by the Fraternal Order of Police and by the Chief of Police personally.

City Manager Bean said that this matter does not need to come before the City Council. He suggested that the Chief of Police meet with him or Assistant City Manager Charles Penny and make such a request. He felt sure that if the Chief of Police felt the awards program was worthwhile, the City would probably be able to find the money to budget it.

D. ESTABLISHMENT OF A VICTIMS FUND

Mr. Chris Johansen, resident of the City of Asheville, recommended the City establishing a victims fund.

E. CLAIMS

City Manager Bean said that the following claims were received by the City during the week of December 23 - 27, 1991: Patricia Barnes (Water); Mike Smith (Streets); 55 Broadway Corporation (Planning & Inspections); and Terrence Gates (Water).

He also stated that the following claims were received during the week of December 30, 1991 - January 3, 1992: -14-

Bill Hamilton (Inspections); Michael Lunsford (Water); Lettie Polite (Police); and Prosoft, Inc. (Police).

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

VII. ADJOURNMENT.

Mayor Michalove adjourned the meeting at 7:50 p.m.

City Clerk Mayor
