

Tuesday - February 4, 1992 - 4:00 p.m.

Asheville Civic Center - Banquet Room

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

Councilman Peterson gave the invocation.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the January 21, 1992, meeting minutes and the minutes of the January 28, 1992, worksession.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF FEBRUARY 9 - 15, 1992, AS "NATIONAL SALUTE TO HOSPITALIZED VETERANS WEEK."

Mayor Michalove read the proclamation proclaiming February 9-15, 1992, as "National Salute to Hospitalized Veterans Week" and presented it to Chief of Voluntary Services Darlene Kirstein and Associate Director Marion Humphries.

B. PROCLAMATION PROCLAIMING THE WEEK OF FEBRUARY 3 - 7, 1992, AS "TRAVEL AGENT APPRECIATION WEEK."

Mayor Michalove proclaimed the week of February 3-7, 1992, as "Travel Agent Appreciation Week."

II. PUBLIC HEARINGS: None

III. OLD BUSINESS:

A. RESOLUTION NO. 92-7 - RESOLUTION AWARDING BIDS FOR THE MONTFORD AVENUE REHABILITATION PROJECT (STREET AND SIDEWALK IMPROVEMENT CONTRACT NO. 5) AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL RELATED AGREEMENTS

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City Manager Bean said that in 1987 the citizens of Asheville passed a \$20,000,000 Bond Program of which \$17,000,000 was earmarked for street and sidewalk improvements within the City of Asheville. The project will result in a reconstruction of brick sidewalks in the Montford Historic District. He said that the project was originally budgeted for \$1 Million, but the lowest bid is for \$643,792. He recommended awarding the bid to Paving Enterprises in the amount of \$643,792.

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

Councilwoman Field moved for the adoption of Resolution No. 92-7. This motion was seconded by Councilman Moore and carried unanimously.

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B. REPORT FROM CITY ATTORNEY RELATIVE TO THE FORECLOSURE PROCEEDINGS OF 10 SUNSET SUMMIT.

City Attorney Slawter said that at the January 21, 1992, City Council meeting, the Council discussed the possibility of proceeding with a tax foreclosure in connection with the property located at 10 Sunset Summit, instead of proceeding at this time with the third reading of the ordinance for demolition. Since that meeting, he has talked with numerous people regarding how best to proceed, including the attorney for the neighbors, the County Attorney's Office, the Tax Collector's Office, the attorney for Mrs. Brummer, and others.

The investigation into the possibility of proceeding with a tax foreclosure first came about as a result of Mr. Hurst's inquiry as to how he might acquire the property and not completely demolish it. Mr. Slawter said that he had suggested the possibility of a tax foreclosure proceeding as an alternative to the demolition ordinance under consideration, since the demolition ordinance would have to require complete demolition, whereas a purchaser at a tax foreclosure sale would actually acquire title to the property and might have other options. As Mr. Slawter mentioned at the January 21 meeting, even if Mr. Hurst or someone with similar intentions were to purchase at a tax foreclosure sale, they would have additional considerations that must be addressed. Those would include the fact that the house is already the subject of a demolition order -3-

entered by Bob Hixson, zoning considerations and building code considerations. If anyone is going to proceed with construction of a house on that site other than in compliance with the R-1 zoning restrictions, they will have to obtain a new variance from the Board of Adjustment. A purchaser at a tax foreclosure sale could not very well have obtained such a variance from the Board of Adjustment prior to even acquiring ownership of the property. It would not appear, therefore, that someone with Mr. Hurst's intentions could purchase the property at a tax foreclosure sale with any sort of assurance that he would be able to complete the structure where it now stands.

City Attorney Slawter said even so, there is still good reason for the City Council to proceed with a tax foreclosure rather than adopting the ordinance on third reading at this time. The ordinance, if adopted upon the third reading, would provide for the demolition of the structure by the City. Although the City would obtain a lien upon the property for the cost of demolition, the City would have the upfront cost of demolition that would have to be paid. The City would hopefully recoup this expense through a sale of the property following demolition.

By proceeding with the tax foreclosure, instead of the third reading of the ordinance, there is a substantial possibility that the City would never have to incur the upfront expense of demolition. There is still some possibility that the City would have to incur that expense. That would occur if there were no other bidders at the tax foreclosure sale, in which case the City would end up owning the property. Although the City would then be in a position of having to pay for the demolition, the City would already own the property, and we would not have to be concerned with a judicial sale of the property in order to recover payment, as would be required in the case of a demolition lien. If the City became the owner of the property following the tax foreclosure sale and then demolished the structure, the City could sell the property through normal means, which would be simpler and less expensive. In effect, the City would be accomplishing through the tax foreclosure sale prior to the demolition what would have otherwise been accomplished through a judicial sale to collect the demolition lien following demolition.

Hopefully, someone else would bid higher than the City at the tax foreclosure sale and would become the owner of the property. The City would bid only the amount of the outstanding taxes (approximately \$8,000). Anyone bidding -4-

more than that amount would become the owner. There are persons who have expressed interest in bidding higher than the City at a foreclosure sale. Those persons would be interested in demolishing the structure and owning the property for the cost of demolition plus the price paid at the foreclosure sale. If this were to occur, the City would of course not have to pay the cost of demolition.

The filing of a tax foreclosure proceeding is not totally without potential for problems. If everything went smoothly, and there were no difficulty with obtaining proper service upon all parties, the tax foreclosure sale could be completed in approximately 90 days. Additional time may be required due to difficulty in obtaining the necessary service. Since Mrs. Brummer has previously expressed an interest in getting rid of the property, so long as she could also get rid of the liens against her, he said that he had discussed with her attorney the possibility of her being more cooperative in being available for service. That may or may not work out.

An additional potential for delay exists with the possibility that one of the parties in interest might contest the proceeding or file a counter-claim against the City once the tax foreclosure proceeding is initiated. Such a case would have statutory priority for consideration on the trial court calendar, however, and could hopefully be resolved without undue delay. An additional element that could cause delay is the possibility of upset bids. Following the sale of the property for taxes, the high bid remains open for 10 days and that bid can be upset by anyone depositing additional money with the Clerk of Court within the 10 day period. Any such deposit requires that the property be resold, thereby resulting in a delay of approximately 30 days.

A final potential for delay arises if the high bidder were someone other than either the City or someone interested in the demolition of the structure. Such a person might challenge the existing order to demolish the structure. He said that he does not believe that such a challenge would be successful, but that would not necessarily prevent it from being raised.

Most of these potential problems would also exist if the City were to proceed with the demolition and then proceed with a sale of the property to collect the demolition lien. The difference is that if the Council proceeds with demolition first, any such complicating factors would more likely arise in connection with the -5-

actions taken by the City to recover the cost of the demolition. In proceeding with the tax foreclosure, the complications would likely arise prior to the demolition, rather than afterwards.

If the City does proceed with the tax foreclosure, the third reading of the ordinance providing for demolition could be continued until a later date. If undue complications should arise in connection with the tax foreclosure, so that the Council felt compelled to proceed with the demolition rather than wait until the tax foreclosure could be completed, the Council could then go ahead with the third reading of the demolition ordinance and the demolition itself.

In summary, while proceeding with a tax foreclosure will almost certainly mean that the house will not be demolished as quickly as it might otherwise be, the sale of the property by tax foreclosure and the ensuing demolition should not take much more time, if any, than the total time that would be required for the City to both demolish the structure and collect on its demolition lien. In addition, the tax foreclosure provides the distinct possibility that the City will never have to make the investment of the cost of demolition.

Councilman Moore moved that the City Attorney be directed to proceed with the foreclosure sale and that the third reading of Ordinance No. 1958 be postponed until May 5, 1992. This motion was seconded by Vice-Mayor Ellison and carried unanimously.

IV. NEW BUSINESS:

A. MONITORING REPORT OF THE 2010 PLAN

Mr. Wayne Kinser, Chairman of the Planning and Zoning Commission, said that the Planning Department monitors and updates the 2010 Plan every six months and produces a summary report. He then proceeded to highlight the report.

B. REPORT RELATIVE TO THE NORTH ASHEVILLE PARK

Mayor Michalove said that not long ago the City adopted an ordinance relative to permitting parks in R-1 Residential Districts. He said that the adoption of that ordinance was in no way related to the proposed North Asheville Park. He stressed that the City does not own the property on which the park is proposed

and that the School Board (owner of the -6-

property) could have built the park at any time themselves without having to come before the City Council. He did say that money has been set aside for a park in north Asheville but a specific location has not been found yet. He said that the City Council would not be making any decisions on proceeding with this proposed park at the meeting today but would be happy to listen to comments from the audience.

Carolyn Tingle, Chairman of the Asheville Parks and Recreation Advisory Board, said that the original proposal included a regulation soccer field with two softball/Little League ballfields, an off-street parking lot of 65 spaces, and room for the expansion of the existing Jones School buildings. She said that after lengthy discussions the Citizens' Committee for Proposed Park in North Asheville agreed to present the following two proposals to the Council:

Plan A: Development of this area as a nature/environmental study area with walking paths and a better equipped playground. This plan would not include the development of any ballfields or athletic areas.

Plan B: Create a 200' ballfield/soccer area for children ages 5-12, a walking/jogging path, a playground for grades K-3, a picnic area, a nature trail, and the preservation of the trees wherever possible. This proposal would also request that parking be permitted on one side of Kimberly Avenue immediately adjacent to the proposed school park area.

Mayor Michalove said that it was his understanding that other locations were looked at as possible parks but for one reason or another those fell through.

In response to Vice-Mayor Ellison's question if there had been any presentation to the School Board about this, Ms. Tingle replied that there had not been any formal presentation, but that the School Board did send representatives to the meetings held.

Mr. Tom McClellan, 86 Edgelawn Road, presented a petition to the Council containing 971 signatures supporting Plan B. Of those 971 signatures, Mr. McClellan said that 80% of the people live within 1 mile of the proposed park. He spoke in support of the ballfield.

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Mr. Bob Pitts, Vice-President of the North Asheville Youth League, stated that it was hard to find an available field for the kids to practice and spoke in favor of the ballfield.

Dr. Joe Sulock, 18 Beaverdam Knoll, passed out information relative to the number of children in various census tracts for 1980 and 1990 and spoke in support of the ballfield.

Dr. Lisa Friedenber, from UNC-A, passed out information relative to important features of the North Asheville Park proposal and spoke in favor of the ballfield.

Mr. Larry Kimel, 861 Lakeshore Drive, spoke about the inadequacy of the number of ballfields in the North Asheville area and stated that the City needed to have an adequate number of parks to service the kids of the North Asheville community.

Mr. Keith Campbell, 651 Kimberly Avenue, felt that due to the topography of the site and the number of trees that would be destroyed, the ballfield should not

be built. He felt that the nature/environmental study center should be built in this area. He mentioned that the Council was presented with a petition of 200 names not in support of the ballfield. He said that it was his understanding that diagrams were not to be used at the meeting and objected to the supporters of the North Asheville Park using them.

Mr. Gregory Walker, 35 Dogwood Road, President of the Community Association of North Asheville, spoke against the ballfield and felt that the integrity of the site would be lost if the ballfield was built.

Mr. George Simpson, 117 Norwood Avenue, said that there are large gullies in the proposed site and would not be in favor of the ballfield.

Ms. Leni Sitnick, 96 Gertrude Place, spoke against the ballfield and felt that the area is a totally unique forest and should not be destroyed. She felt that a nature/environmental study center might be more appropriate for the area.

Mr. Mike Lewis, 48 Gracelyn Road, spoke against the ballfield and felt that it would not be cost effective.

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Ms. Riley, Secretary of the Beaverdam Community Council, said that the property is not suitable for a ballfield and that Beaverdam Road already has traffic problems and the addition of a ballfield would only worsen the problem.

Mr. Jim Brazell, 2202 Timber Place, President of Timbers Condominiums Homeowners Association, was sympathetic to the supporters of the ballfield, but felt that the area should be left as it is.

Mr. Dean Cochran, 28 Robinhood Road, representative of the Asheville Catholic School, spoke against the location of the ballfield and stated that Asheville Catholic School is happy to let groups use their field as long as it does not interfere with their activities and as long as they do not lose control of the church property.

Mr. Tom Wilson, 4 Fernbrook Place, spoke in favor of the ballfield and felt that North Asheville has needed the ballfield for a long time.

Mr. Raphael Chambers, felt that a little league ballfield was needed.

Ms. Susan Roderick, Chairman of the Tree/Greenway Commission, asked that Council take their time and look at the ballfield proposal thoroughly before making any decisions.

Ms. Meg McCloud, asked that Council consider the nature/environmental study center as a proposed use for the property.

Mr. E. C. James, 20 Northwood Road, spoke against the ballfield.

A resident of 2 Horizon Hill Road, asked the Council to request more factual information on grading specifications, traffic counts, etc.

Mr. George Groome, 430 Midland Drive, felt that a ballfield was badly need in the north part of town and spoke in support of the ballfield.

Mr. Jesse Carr, 6 Sandon Circle, said that Ray Kisiah, Director of Parks, Recreation and Public Facilities, has looked for a site in North Asheville for 12 years now and -9-

felt that this proposed site would be a good site for a ballfield. He said that traffic counts have been done and that the ballfield would not adversely affect the traffic flow in the area.

Mr. Dan Lazar, 25 Kalmia Drive, felt that the City already has a nature/environmental center and felt the site would be used for a ballfield.

Mr. Michael Lazar, spoke in favor of the ballfield.

At 5:50 p.m., Council took at five minute recess.

Ms. Rebecca Sulock, 18 Beaverdam Knoll, spoke in favor of the ballfield and that it might make available more space for girl softball games.

Ms. Dot Sulock, 18 Beaverdam Knoll, spoke in favor of the ballfield.

Mr. Hugh McCollum, Co-President of the Jones School PTA, spoke in favor of a multi-purpose park be developed in the area.

Mr. Michael Sulock spoke in support of the ballfield.

Mr. Scott Forbes, 53 Brookwood Road, spoke in support of the ballfield.

Mr. Don McCearry, 25 Beaver Valley Road, felt a ballfield was needed, but not at this proposed location. He felt that senior citizens might benefit from a park area for them to walk in.

A resident of 2 Kimberly Knoll Road, felt the area should be developed as a nature/environmental center.

A resident at 659 Kimberly Avenue, felt that area was not appropriate for the ballfield.

Mr. Joseph Kowal, felt that must be a better spot and what is proposed for a ballfield. He mentioned several species of trees that would be destroyed if a ballfield were built.

Mr. David Gochenour, 927 Country Club Road, felt that since the City has been looking for a site for a ballfield in North Asheville for 12 years now that perhaps they might go to a Realtor to help them look. He spoke against the ballfield in the proposed area.

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Ms. Ann Thorne, 400 Country Club Road, said that she was not opposed to organized sports, but felt that a nature/environmental center would be better for the area.

Mr. Harold Garland, 88 Fenner, spoke against the ballfield stating that drainage of the area would be a problem and damage to tombstones bordering the area might be damaged.

Ms. Francis Swanson, 16 Lorraine Avenue, spoke about poor drainage in the area and erosion control problems. She spoke against the ballfield.

A resident of 2701 Timber Trail, felt that the area is not suitable for a ballfield and suggested looking at other areas. She felt that traffic on Beaverdam Road, after all the construction of the new homes in the area, would be greatly increased.

Ms. Janet Cantwell, 111 Griffin Circle, spoke in opposition of the ballfield and felt the area should be left as is.

Mr. Ted Forbes, 53 Brookwood Road, felt that the traffic in the area would not be increased significantly and felt that a ballfield could be constructed with the cutting of very few trees.

Councilman Swicegood stated that he would look at all the information available and the comments made at this meeting before making a decision. He felt that if a ballfield is built is going to be built, he felt that lighting should be a factor considered.

Councilman Peterson felt that the neighborhood should not be divided over this issue and that he would digest all the information presented today to make the best decision he could.

Vice-Mayor Ellison felt the Council needed cost figures on all that was discussed today and felt that the Council needed to look at the overall City capital improvement plan for all recreation areas in the City. He also felt that the Asheville School Board should be contacted about their potential use of the property, as they are the owners of the property.

Councilwoman Field stated that not everyone was going to be pleased no matter what decision was reached and said she would study the information presented.

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Councilman Moore said that he was concerned about how much environmental damage would be done to put in the ballfield and will that damage be outweighed by the need of more recreational facilities in the North Asheville area. He felt the Council needed more information on precisely what is proposed for the area. He had several questions about storm water runoff, how much dirt would have to be moved, test borings, etc. He felt the proposal as presented is very vague.

Councilman Worley stated that more detailed information was needed, i.e., site plan, grading specifications, other facilities in conjunction with the ballfield, etc.

It was the consensus of Council to requested the City Manager prepare a report to the Council to include, but not be limited to, a detailed site plan, grading specifications, other amenities if a ballfield is built.

Mayor Michalove stated that he would be using the 2010 Plan as a guide for his decision and that he would be looking at the environmental issues also.

C. BIDS FOR BITUMINOUS CONCRETE MATERIALS (ASPHALT)

City Manager Bean recommended awarding the bid to the only bidder, APAC-Carolina, Inc., Asheville, North Carolina, in the amount of \$176,375, to furnish the City's annual requirement for bituminous concrete materials (asphalt). He said that purchases will be made on as needed basis only.

Councilman Moore moved to award the bid to the only bidder, APAC-Carolina, Inc., Asheville, North Carolina, in the amount of \$176,375. This motion was seconded by Councilwoman Field and carried unanimously.

A copy of the Bid Summary is attached as Exhibit "A".

D. BIDS FOR 31 VEHICLES CONSISTING OF 15 POLICE VEHICLES, 4 SEDANS AND 12 TRUCKS

Due to some legal concerns of Vice-Mayor Ellison relative to pending litigation involving anti-lock brakes, it was the consensus of Council to postpone this bid action until February 18, 1992.

E. MOTION SCHEDULING A PUBLIC HEARING RELATIVE TO THE REZONING OF 750 BILTMORE AVENUE, 762 BILTMORE AVENUE, 760 BILTMORE AVENUE, 6 BRYSON STREET, 10 -12-

BRYSON STREET, AND THE WESTERN PORTION OF 766 BILTMORE AVENUE FROM HI HEAVY INDUSTRIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT; AND REZONING OF THE EASTERN PORTION OF 766 BILTMORE AVENUE FROM R-3 RESIDENTIAL DISTRICT TO CH COMMERCIAL HIGHWAY DISTRICT FOR MARCH 3, 1992.

Councilman Worley moved to schedule a public hearing relative to the rezoning of 750 Biltmore Avenue, 762 Biltmore Avenue, 760 Biltmore Avenue, 6 Bryson Street, 10 Bryson Street, and the western portion of 766 Biltmore Avenue from HI Heavy Industrial District to CH Commercial Highway District; and rezoning of the eastern portion of 766 Biltmore Avenue from R-3 Residential District to CH Commercial Highway District for March 3, 1992. This motion was seconded by Councilman Moore and carried unanimously.

V. CONSENT: None

VI. OTHER BUSINESS:

A. CLAIMS

City Manager Bean presented the following claims which were received by the City for the week of January 13-17, 1992: Donna Parham (Water); Melissa Garrison (Water); Helen Payne (Water); Betty Lytle (Streets); and Virginia Moss (Water).

He presented the following claims which were received by the City for the week of January 20-24, 1992: Season's Florist (Streets); Wayne Erbson (Water); Harvey Haywood (Water); Joe Vaughn (Fire); Prof. Opth. Lab. (Fire); and Jena Dockery (Water).

He presented the following claims which were received by the City for the week of January 27-31, 1992: Vicki Godfrey (Water); Rod Brockwell (Water); Marian McAdams (Water); Daryl Fox (Water); N.C. DOT (Water); Wilbur Biggs (Downtown Development); and Carl Baldasaro (Parks).

City Manager Bean said that these claims have been referred to the appropriate insurers for investigation.

B. LAWSUIT

City Manager Bean said that the City was served with a lawsuit on January 31, 1992, in which Carroll Williams was -13-

the Plaintiff. The nature of the suit is an appeal from a Civil Service Board decision. This lawsuit has been referred to the appropriate legal counsel for action.

VII. ADJOURNMENT

Mayor Michalove adjourned the meeting at approximately 7:00 p.m.

CITY CLERK MAYOR

2/4/92 Pre-Council

Councilman Worley moved to reappoint Ernest Melin and Ellen Lyda to the Board of Adjustment for three year terms each. This motion was seconded by Councilman Moore and carried unanimously.

Councilman Moore moved to appoint Gary Ashburn to the Community Relations Council for a term of three years. This motion was seconded by Councilman Swicegood and carried unanimously.

_____ moved to reappoint Barbara Field to the Downtown Commission for a term of two years. This motion was seconded by _____ and carried unanimously.

Vice-Mayor Ellison moved to appoint Dee Williams to the Downtown Commission for a term of two years. This motion was seconded by Councilman Swicegood and carried unanimously.

Councilman Moore moved to acknowledge the Albert Sneed incubator proposal along with the Micro_____ proposal and to process them both through the established procedure for application of City funds; instructed the City Manager to continue with the program he is doing relative to meeting with other agencies that deal with economic development and then report back to the Council at a worksession by April 1, 1992; instruct the City Manager to draft some requests for proposals. This motion was seconded by Vice-Mayor Ellison and carried unanimously.
