

Tuesday - December 22, 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

Councilman Swicegood gave the invocation.

APPROVAL OF THE MINUTES

Mayor Michalove announced the approval of the December 22, 1992, City Council minutes as submitted.

I. PROCLAMATION:

A. RESOLUTION NO. 92-190 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE HENRY FREDRICK MOELLER IV

Mayor Michalove read the resolution stating that Fred Moeller has been with the City for 19 years and has requested retirement from his position as Systems Analyst Sr. in the Information Services Division of the Finance Department. He expressed the City Council's appreciation to Fred for meritorious service, loyalty and dedication to the City of Asheville and its citizens.

Resolution No. 92-190 was adopted by acclamation.

RESOLUTION BOOK NO. 20 AT PAGE 9

B. RESOLUTION NO. 92-191 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE BOBBIE G. LOVIN

Mayor Michalove read the resolution stating that Bobby Lovin has been with the City for 19 years and has requested retirement from his position as Captain in the Fire Department. He expressed the City Council's appreciation to Bobbie for meritorious service, loyalty and dedication to the City of Asheville and its citizens.

Resolution No. 92-191 was adopted by acclamation.

RESOLUTION BOOK NO. 20 AT PAGE 10

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II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO A VARIANCE FOR A REDUCTION IN THE CUL-DE-SAC RIGHT-OF-WAY IN FOREST LAKE SUBDIVISION AND APPROVAL OF THE PRELIMINARY PLAT.

Mayor Michalove opened the public hearing at 4:14 p.m.

City Clerk Wolcott presented the notice to the public setting the time and date

of the public hearing.

Mr. Gerald Green, Senior Planner, said that the Asheville Planning and Zoning Commission on November 4, 1992, reviewed and voted to reaffirm their approval of the preliminary plat for Forest Lake Subdivision with one contingency - approval by City Council of a variance to permit a right-of-way radius of 45 ft. at the end of the

cul-de-sac streets.

He said the preliminary plat for the 135 lot subdivision was originally approved by the Planning and Zoning Commission on February 14, 1990, with contingencies that variances regarding road construction be granted by City Council. These variances were granted by City Council on March 16, 1990.

He said that construction of the subdivision has proceeded in phases, with final plats for four phases having been accepted by City Council. Preliminary plat approval is valid for one year only and the original approval was reaffirmed by the Planning and Zoning Commission and the City Council in October, 1991. The developers are again seeking reaffirmation in order to maintain the approval of the project.

Mayor Michalove closed the public hearing at 4:15 p.m.

Councilman Worley moved to grant the variance to permit a right-of-way radius of 45 feet at the end of the cul-de-sac streets in Forest Lake Subdivision and also to approve the preliminary plat. This motion was seconded by Councilman Moore and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AN ORDINANCE AMENDMENT TO THE MEMBERSHIP AND POWERS OF THE BOARD OF ADJUSTMENT

ORDINANCE NO. 2006 - ORDINANCE AMENDING SECTION 30-8-2 OF THE CODE OF ORDINANCES REGARDING MEMBERSHIP AND POWERS OF THE BOARD OF ADJUSTMENT

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Mayor Michalove opened the public hearing at 4:16 p.m.

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

Mrs. Julia Cogburn, Planning Director, explained that this amendment will allow the members of the Board of Adjustment who are appointed by the Board of County Commissioners to have equal rights, privileges and duties with the other members of the Board of Adjustment, regardless of whether the issues arise within the City or within the extraterritorial zoning jurisdiction.

Upon inquiry of Councilwoman Field on how the County could appoint members who are not residents of the extra- territorial area, City Attorney Slawter explained that law reads as follows: ". . . (p)rovided, however, if there is an insufficient number of qualified residents of the extraterritorial area who meet the number of members who are to be appointed by the Board of County Commissioners, the Board of County Commissioners may appoint as many other residents of the County as necessary to make up the requisite number."

Councilman Moore felt strongly that only City residents should be allowed to vote on City issues and that the County's extraterritorial members should be only allowed to vote on extraterritorial matters.

There was discussion which resulted in the realization that the majority of the Board membership is made up of City residents.

Councilman Worley spoke in favor of the ordinance, as proposed, stating that if City appointments voted for City matters and County appointments voted for extraterritorial matters, there would be a different board for each area.

Councilman Swicegood felt that County appointees might own property or a business in the City and should be allowed to vote on City matters.

Councilman Peterson felt that this ordinance, as proposed, is needed in order to let the Board run smoothly.

Upon inquiry of Councilwoman Field on what recourse the City would have if the County appointed members outside the extraterritorial area, City Attorney Slawter said that the only recourse the City would have would be to contact the Board of Commissioners and suggest possible appointments -4-

inside the extraterritorial area. He stated that the law gives the County Commissioners the judgment call to determine whether there is an insufficient number of qualified residents of the extraterritorial area - and if not, they may appoint other members outside the extraterritorial area.

Mayor Michalove closed the public hearing at 4:29 p.m.

Mayor Michalove said that members of Council have been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2006. This motion was seconded by Councilman Peterson.

On a roll call vote of 6-1, Ordinance No. 2006 passed on its first reading, with Councilman Moore voting "no".

Vice-Mayor Ellison moved to suspend the rules and proceed to the second reading of Ordinance No. 2006. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Moore voting "no".

On a roll call vote of 6-1, Ordinance No. 2006 passed on its second reading, with Councilman Moore voting "no".

Vice-Mayor Ellison moved to suspend the rules and proceed to the third and final reading of Ordinance No. 2006. This motion was seconded by Councilman Moore and carried unanimously.

On a roll call vote of 6-1, Ordinance No. 2006 passed on its third and final reading, with Councilman Moore voting "no".

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C. PUBLIC HEARING RELATIVE TO AN ORDINANCE AMENDMENT PROVIDING FOR THE CONSTITUENCY OF THE PLANNING AND ZONING COMMISSION

ORDINANCE NO. 2007 - ORDINANCE AMENDING CHAPTER 30 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE BY SETTING FORTH A NEW ARTICLE XVI TO PROVIDE FOR THE CONSTITUENCY OF THE PLANNING AND ZONING COMMISSION

Mayor Michalove opened the public hearing at 4:32 p.m.

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

Mrs. Julia Cogburn, Planning Director, explained that this amendment will provide for technical changes to comply with State law and will also expand the term of appointment of the Planning and Zoning Commission members from two to three years.

There was some discussion about three members constituting a majority vote on the Planning and Zoning Commission, thus having the possibility of County appointees having the majority vote on City issues.

Vice-Mayor Ellison stated that because all Planning and Zoning decisions have to be reviewed by the City Council, he felt comfortable with the possibility of County appointees having the majority vote on City issues.

Mayor Michalove closed the public hearing at 4:43 p.m.

Mayor Michalove said that members of Council have been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2007. This motion was seconded by Councilman Swicegood.

On a roll call vote of 5-2, Ordinance No. 2007 passed on its first reading, with Councilwoman Field and Councilman Moore voting "no".

Councilman Peterson moved to suspend the rules and proceed to the second reading of Ordinance No. 2007. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Moore voting "no".

On a roll call vote of 5-2, Ordinance No. 2007 passed on its second reading, with Councilwoman Field and Councilman Moore voting "no".

Councilwoman Field asked that the third and final reading not be voted on at this meeting, in order to give her time to look at the ordinance closer.

III. OLD BUSINESS: None

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IV. NEW BUSINESS:

A. ANNUAL REPORT OF THE MINORITY BUSINESS PROGRAM

Dr. Charles Lawrence, Chairman of the Minority Business Commission, gave the annual report of the Minority Business Commission stating that 89 minority firms are currently certified of which 52 are ethnic and 37 are women owned. He said these constitute 32 construction, 21 procurement and 36 professional service firms.

B. FINAL PLAT APPROVAL FOR THE TACO BELL SUBDIVISION

Mr. Gerald Green, Senior Planner, said that the Asheville Planning and Zoning Commission on November 4, 1992, reviewed and recommended approval of the preliminary plat.

He said the proposed subdivision is located at 1897 Hendersonville Road. The site is on 11 acres and the subdivided portions are .54 and .42 acres on sloping terrain. The site is tri-zoned and includes Commercial Highway, Office

Institutional, and Residential-2 Zoning Districts. Surrounding zones include these same districts. All utilities are available to the site.

He said the proposed development will be two restaurants along Hendersonville Road. Access will be off of Hendersonville Road. The developer has requested a variance for the width of the right-of-way that extends to the rear of the property, which was approved at the December 8, 1992, City Council meeting. The Planning and Zoning Commission, at their November 4, 1992, meeting voted to recommend approval of the preliminary plat.

Councilman Moore moved for the approval of the final plat for Taco Bell Subdivision. This motion was seconded by Councilman Worley and carried unanimously.

C. RESOLUTION NO. 92-192 - RESOLUTION ADOPTING THE AMENDED CITY COUNCIL RULES OF PROCEDURE

City Manager Bean said that these rules were drafted using a format of a Suggested Rules of Procedure for a City Council published by the Institute of Government. He said the existing rules which the City Council has in place are very similar to the revised rules. The substantive changes are as follows:

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Rule 11. The former rule simply provided for the Mayor to designate another Council member to preside if the Mayor is engaged in active debate on an issue. This rule specifies that the Vice-Mayor be called upon unless the Vice-Mayor is also in active debate.

Rule 20. The former rule did not include the proviso that a motion may not be renewed where prohibited by a specific provision of law such as in the instance of rezonings.

Rule 22. The existing rule does not provide for the order of voting during roll call votes. This rule establishes that to be in alphabetical order.

Rule 23. This rule incorporates into the Rules of Procedure a resolution adopted separately by the City Council in 1988 regulating signs in the Council Chamber.

Rule 34. This provision has been added to the Rules of Procedure for the purpose of complying with the Americans with Disabilities Act.

He said that in addition, the former City Council rule governing settlements in litigation and workers' compensation cases has been deleted from the Rules of Procedure, and the identical provisions will be presented to the City Council by separate resolution. He said although these provisions have been included with the Council Rules of Procedure for some time, they should more appropriately be set forth separately.

It was the consensus of the Council to put in the legislative package and item that would reduce the votes needed on ordinances from three to two.

Mayor Michalove said that members of Council have been furnished with a copy of the resolution and it will not be read.

Vice-Mayor Ellison moved for the adoption of Resolution No. 92-192. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 20 AT PAGE 11

D. RESOLUTION NO. 92-193 - RESOLUTION REVISING THE POLICY GOVERNING CITY COUNCIL APPOINTMENTS

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City Manager Bean said that the City Council Committee on Boards and Commissions have incorporated comments from the City Council into a revised policy. One important item that the Council needs to make a decision on is the requirement that an individual should or must live in the City (or own property in the City) to be considered for an appointment. He said the other important item is regarding the requirement for attendance of City Council members who are appointed to boards and commissions while omitting attendance provisions for City Council liaison members.

Councilman Moore moved that an individual must be a City resident or own property in the City to be considered for an appointment. This motion was seconded by Councilwoman Field.

Vice-Mayor Ellison made a substitute motion that an individual should be a City resident or own property in the City to be considered for an appointment. This motion was seconded by Councilman Worley and carried on a 5-2 vote with Councilman Moore and Councilwoman Field voting "no".

Mayor Michalove said that members of Council have been furnished with a copy of the resolution and it will not be read.

Councilman Worley moved for the adoption of Resolution No. 92-193. This motion was seconded by Councilman Moore and carried unanimously.

RESOLUTION BOOK NO. 20 AT PAGE 25

E. BUDGET ORDINANCE NO. 2008 - BUDGET AMENDMENT TO APPROPRIATE FEDERAL FUNDS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT THROUGH THE FAIR HOUSING ASSISTANCE PROGRAM

City Manager Bean said that the City has received funding approval of \$65,000 for the Fair Housing Assistance Program. The Program is administered by the Asheville-Buncombe Community Relations Council under contract with the City. This action will appropriate the grant funds into the City budget.

Mayor Michalove stated that members of Council have been furnished with a copy of the ordinance and it would not be read.

Councilman Moore moved for the adoption of Ordinance No. 2008. This motion was seconded by Councilman Worley.

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On a roll call vote of 7-0, Ordinance No. 2008 passed on its first and final reading.

ORDINANCE BOOK NO. 13 AT PAGE 178

V. CONSENT AGENDA:

A. RESOLUTION NO. 92-194 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL FOR THE FAIR HOUSING ASSISTANCE PROGRAM.

Summary: The City has received funding approval of \$65,000 for the Fair Housing

Assistance Program. The Program is administered by the Asheville-Buncombe Community Relations Council under contract with the City. This will be the 6th year of funding under this program.

RESOLUTION BOOK NO. 20 - PAGE 29

B. RESOLUTION NO. 92-195 - RESOLUTION AUTHORIZING THE CITY MANAGER TO FILE A GRANT APPLICATION WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION OFFICE OF BICYCLE AND PEDESTRIAN TRANSPORTATION IN SUPPORT OF A BICYCLE SAFETY AND BICYCLE HELMET CAMPAIGN

Summary: The Police Department is seeking funding to support a Bicycle Safety Program to be managed by the Community Relations Unit of the Department. Funding in the amount of \$3,500 is requested through the grant. Program elements include fourth grade student lectures, meetings with parents, distribution of safety materials, a bicycle rodeo and procurement and distribution of helmets.

RESOLUTION BOOK NO. 20 - PAGE 30

C. RESOLUTION NO. 92-196 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENTS TO THE FIRE PROTECTION CONTRACT BETWEEN THE CITY OF ASHEVILLE AND THE SKYLAND FIRE DISTRICT

Summary: In 1988 the City of Asheville and Skyland Fire District entered into a contract in connection with annexation of part of the Skyland Fire District. This contract was renewed in connection with another annexation in 1991. The City and Skyland representatives have been working on amendments to this contract to update it and to provide for more flexibility in fire protection service delivery.

RESOLUTION BOOK NO. 20 - PAGE 32

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D. RESOLUTION NO. 92-197 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT WITH CORT ARCHITECTURAL GROUP, P.A., FOR RENOVATIONS AT THE CIVIC CENTER

Summary: The space formerly occupied by the Asheville Art Museum in the Asheville Civic Center is now available for other uses. The employment of an architect is necessary to review the feasibility of renovations of the space formerly occupied by the Asheville Art Museum. Cort Architectural Group, P.A., has presented a proposal for a feasibility study, along with a contract for the feasibility study and for other services which might arise out of the feasibility study and result in the need for additional architectural services for renovations of the space.

RESOLUTION BOOK NO. 20 - PAGE 36

E. RESOLUTION NO. 92-198 - RESOLUTION ADOPTING A MINIMUM FIRE INSPECTION SCHEDULE FOR THE CITY OF ASHEVILLE TO BE EFFECTIVE JANUARY 1, 1993

Summary: Section 107 of Volume 5 of the State Building Code sets forth a minimum mandatory fire inspection schedule that applies throughout North Carolina. Section 107 also requires that local governments formally adopt a mandatory fire inspection schedule that "shall be approved by the local governing body."

RESOLUTION BOOK NO. 20 - PAGE 37

F. RESOLUTION NO. 92-199 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Summary: The terms of Bernadette Thompson and Edward Schell expire on December 31, 1992. Ms. Hazel Turner has also resigned from the Council. This resolution will reappoint Ms. Bernadette Thompson for an additional three year term, term expiring December 31, 1995; appoint Mr. Edward C. Hay to serve a three year term, term expiring December 31, 1995; and appoint Mrs. Charlotte Tell to serve the unexpired term of Hazel Turner, term to expire December 31, 1993. All appointments are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 20 - PAGE 39

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G. RESOLUTION NO. 92-200 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Summary: The terms of Don Martell, Chairman; Barry Olen and Victor Trantham expire on December 31, 1992. This resolution will reappoint Don Martell for an additional two year term, term expiring December 31, 1994; reappoint Barry Olen for an additional two year term, term expiring December 31, 1994; reappoint Victor Trantham for an additional two year term, term expiring December 31, 1994; and will appoint Brady Blackburn as Chairman for the remainder of his term, term expiring December 31, 1993. All appointments are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 20 - PAGE 40

H. RESOLUTION NO. 92-201 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE TRANSIT AUTHORITY

Summary: The terms of Grace Dorn and Tom Tomlin will expire on December 31, 1992. This resolution will reappoint Grace Dorn to serve an additional four year term, term expiring December 31, 1996; and will reappoint Tom Tomlin to serve an additional four year term, term expiring December 31, 1996. Both appointments are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 20 - PAGE 41

I. RESOLUTION NO. 92-202 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Webb E. Ellis will expire on January 1, 1993. This resolution will appoint M. Jerry Vehaun to serve a two year term, term expiring January 1, 1995, or until his successor has been duly appointed and qualified.

RESOLUTION BOOK NO. 20 - PAGE 42

J. RESOLUTION NO. 92-203 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Summary: The terms of Edward Schell, Edward Hay and Joyce Harrison expire on December 31, 1992. This resolution will appoint Jim Drummond to serve a three year term, term expiring December 31, 1995; will appoint Jim Barrett to serve a three year term, term expiring December 31, 1995; -12-

and will reappoint Joyce Harrison to serve an additional three year term, term expiring December 31, 1995. All appointments are until their successors have been duly appointed and qualified.

RESOLUTION BOOK NO. 20 - PAGE 43

Councilwoman Field moved for the adoption of the consent agenda. This motion was seconded by Councilman Worley and carried unanimously.

VI. OTHER BUSINESS:

A. CLAIMS

City Manager Bean stated that the following claims have been received by the City during the week of December 14 - 18, 1992: Karen Fedder (Streets), Sylvia Clement (Streets), Mildred Burts (Water), Tripp Hughes (Streets), Kathleen Lasher (Water), and Rosebud McCoy (Public Works).

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

B. COMMENT REGARDING BICYCLE SAFETY PROGRAM

Mr. Chris Johansen thanked the Council for their support of the bicycle safety and bicycle helmet campaign.

C. RALPH BISHOP

Mr. Ralph Bishop wished the members of Council merry Christmas.

VII. ADJOURNMENT.

Mayor Michalove adjourned the meeting at 5:30 p.m.

CITY CLERK MAYOR
