

Tuesday - May 3, 1994 - 4:00 p.m.

Room 623 - City Hall Building

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Chris Peterson; Councilwoman Barbara Field, Councilman Gary McClure, Councilwoman Leni Sitnick, Councilman Joseph Carr Swicegood and Councilman Herbert J. Watts; City Attorney William F. Slawter; Interim City Manager William B. Farris; and Associate City Manager/City Clerk William F. Wolcott Jr.

Absent: None

INVOCATION

Councilman Swicegood gave the invocation.

I. PROCLAMATIONS:

A. SISTER CITY

Mr. Ken Shapiro, President of the Asheville Sister Cities, announced that Asheville's new Sister City is San Cristobal de Las Casas, Chiapas, Mexico, and appreciated Council's support of the Sister City Program.

B. PROCLAMATION PROCLAIMING MAY 14, 1994, AS "YOUTH UNITY DAY"

Mayor Martin proclaimed May 14, 1994, as "Youth Unity Day" in the City of Asheville. He presented it to Ms. Oralene Simmons who briefed the Council on activities that would take place.

C. PROCLAMATION PROCLAIMING MAY, 1994, AS "EDUCATOR APPRECIATION MONTH"

Mayor Martin proclaimed May, 1994, as "Educator Appreciation Month" in the City of Asheville.

D. RESOLUTION NO. 94-79 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE IRENE TALBOT

City Manager Farris read the resolution stating that Irene Talbot has been an employee for 15 years and has requested retirement from her position as a Personnel Clerk. He expressed City Council's appreciation to Irene for her service to the City of Asheville and its citizens.

Resolution No. 94-79 was adopted by acclamation.

RESOLUTION BOOK NO. 21 - PAGE 309

E. RESOLUTION NO. 94-80 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE TROY CALLOWAY

City Manager Farris read the resolution stating that Troy Calloway has been an employee for 30 years and has requested retirement from his position as a Fire Captain. He expressed City Council's appreciation to Troy for his service to the City of Asheville and its citizens.

Resolution No. 94-80 was adopted by acclamation.

RESOLUTION BOOK NO. 21 - PAGE 310 -2-

F. RESOLUTION NO. 94-81 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE CHARLES WHITTEN

City Manager Farris read the resolution stating that Charles Whitten has been an employee for 22 years and has requested retirement from his position as a Fire Captain. He expressed City Council's appreciation to Charles for his service to the City of Asheville and its citizens.

Resolution No. 94-81 was adopted by acclamation.

RESOLUTION BOOK NO. 21 - PAGE 311

ANNOUNCEMENT- SHILOH CONCESSION STAND

City Manager Farris announced that the City would provide money on a one time basis for the payment for umpires to South Asheville and allow the Shiloh community to continue the concession stand.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE DEMOLITION OF 17 KENDALL STREET

ORDINANCE NO. 2102 - AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY TO DEMOLISH THE DWELLING LOCATED AT 17 KENDALL STREET

Mayor Martin opened the public hearing at 4:10 p.m.

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

Mr. Jeff Trantham, Assistant Director of Inspections, said that on May 25, August 4, and August 28, 1994, the Building Safety Division inspected 17 Kendall Street and found that it was unfit for human habitation. Inspection revealed that the dwelling is damaged by structurally unsound walls and floors, no second exit, infestation of rats and roaches, broken window panes, leaking roof, inadequate heating and no electrical and plumbing systems.

A resident on Kendall Street spoke in support of the demolition and asked that prior to it being torn down, could it be fumigated first to kill the rats.

When Vice-Mayor Peterson asked if the City had a fumigation policy, Mr. Trantham said that the City did not, however, they would hire an exterminator for the fumigation.

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

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2102. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 7-0, Ordinance No. 2101 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 189 -3-

B. PUBLIC HEARING RELATIVE TO THE REZONING OF 10 LOTS ON CLINGMAN AND JEFFERSON

Mayor Martin 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.

Mr. Paul Benson, Urban Planner, said that Clarence and Barbara Birmingham, Angela Dotsikas and W.S. Harrison requested a change from R-3 Medium Density Residential to CS Commercial Service for ten contiguous lots totaling 1.49 acres located between Clingman Avenue and Jefferson Drive. Those lots are identified as PIN Nos. 9648-05-08-4174, 9648-05-08-5346, 9648-05-08-4287, 9648-05-08-5223, 9648-05-08-5127, 9648-05-08-4179, 9648-05-08-4311, 9648-05-08-3186, 9648-05-08-4069, and 9648-05-08-3292.

The City Planning staff has recommended that this rezoning be denied for the following reasons:

1. There is strong support for medium to high density residential development at this location in both the 2010 Plan and the Riverfront Plan.
2. Development directly across Clingman Avenue from this property is a continuous front of single family homes.
3. The uses permitted by CS Commercial Service zoning would not be compatible with adjacent small scale moderate traffic-carrying deficiency by the year 2020. May uses permitted in CS would generate more traffic than medium density residential development.
4. This property serves as a gateway to the riverfront. Many uses permitted within the CS district would not enhance this gateway.

The Planning and Zoning Commission has considered this request at two public hearings and has recommended, by unanimous vote, that the requested rezoning be denied. Considerable opposition has been expressed to the requested rezoning by adjacent property owners and the general public.

Ms. Elizabeth Graham, member of the Planning & Zoning Commission, explained the reasoning why the Planning & Zoning Commission denied the requested rezoning. She personally felt that the zoning needed to be changed at some point. Soon the City will have the UDO and some comprehensive rezoning and perhaps whole area may be looked at with an entirely different zoning classification.

Ms. Jean Webb, Chairperson for RiverLink, urged Council not to rezone these lots and spoke about the revitalization of the entire area.

Mr. Dennis Hodgson, Board member for RiverLink, spoke in opposition of the rezoning. He stated, among other things, that Clingman is and always have been a residential neighborhood. He cited a letter from MSD that said there was a sewer line in the ravine and if the applicant would want to fill it over, they believed it is in such poor condition that it would not be able to support the fill. -4-

Ms. Julia Daniels, speaking on behalf of her uncle James Glenn who is the owner of three homes on Clingman Avenue, spoke in opposition of the rezoning. She said her uncle has just had one home renovated with aluminum siding and he did not want to have a radiator shop across the street. She felt that the residents on Clingman are elderly and live on fixed incomes and when they can afford to upgrade their homes, they do not want an eyesore in their neighborhood.

Mr. Howard Hanger spoke against the rezoning and felt that the neighborhood is developing slowly but in a good direction.

Ms. Jessie Mae Jones, 104 Clingman Avenue, spoke in opposition of the rezoning.

Mr. Ron Payne, attorney representing the petitioners, urged Council to rezone the property. He felt that in order for the property to be utilized, it will require substantial expenditures and no one will spend that kind of money required to utilize the lots under the current R-3 zoning classification. He said Mr. Birmingham intends to build a retail and wholesale establishment of radiators, not a service shop as he currently operates on Eagle Street. He said this property is not riverfront property and passed out pictures showing the terrain and the heavy industrial uses in the area. He stressed that R-3 district is not the highest and best use of the property.

Upon inquiry of Councilwoman Field regarding Council's goal of providing affordable housing, Mr. Larry Holt, Deputy Executive Director of the Housing Authority, said that the Housing Authority does not own any property in the area but felt that these homes are just a few of the remaining affordable residences in the downtown area. He said the Housing Authority would like to see the area remain residential.

Ms. Frances Owens, owner of two houses on Clingman, spoke in opposition of the rezoning.

Mr. Clyde Leeson suggested that perhaps the City or the Housing Authority might trade some of their property for the Birmingham's property.

Mr. Benson stated that he did not know the status or type of inventory the City had.

Mr. Payne clarified statements surrounding Mr. Birmingham's purchase of more property in that area and the reasoning behind the purchase.

Rev. Lynwood Leverette also felt that a trade of City property might be in order.

Mayor Martin closed the public hearing at 4:54 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

The matter died for lack of a motion.

III. UNFINISHED BUSINESS:

-5-

A. FIRST READING OF AN ORDINANCE REGULATING CONTROL OF STORMWATER

Councilwoman Sitnick moved to continue this matter until May 17, 1994. This motion was seconded by Councilwoman Field and carried unanimously.

B. ORDINANCE AMENDING ARTICLE II (ABANDONED VEHICLES) OF CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

Vice-Mayor Peterson moved to continue this matter until May 17, 1994. This motion was seconded by Councilwoman Field and carried unanimously.

IV. NEW BUSINESS:

A. ORDINANCE NO. 2103 - AN ORDINANCE ESTABLISHING A POLICY OF NON-DISCRIMINATION WITHIN THE CITY OF ASHEVILLE

Councilwoman Sitnick read the ordinance which would establish a policy of the City of Asheville to oppose any discrimination on account of race, gender, age, color, ethnic visage (Native American, Hispanic, Asian, etc.), sexual orientation, duration in the community, heritage, national origin, student status, religion, citizenship, veteran status, political affiliation, physical manifestation, physical disability or mental disability. It would direct the City Manager to establish an administrative policy in order to prohibit the aforesaid discriminatory practices within the employment practices of the City of Asheville, except to the extent that said factors might constitute bonafide occupational qualifications for the relevant job classification. All citizens of the City, individual and corporate, are requested and urged to use their power and influence to the end that this City shall be one of equal opportunity for all citizens.

The ordinance would be implemented by the establishment of an administrative policy as the City Manager is directed to adopt. Violation of the policy would thus be enforced through normal City disciplinary measures. The ordinance imposes no obligation upon persons outside City employment, but does encourage a community-wide commitment to equal rights.

Vice-Mayor Peterson moved to amend the ordinance by inserting "marital status" after veteran status in the classifications. This motion was seconded by Councilwoman Sitnick and carried on a 5-2 vote, with Councilmen McClure and Swicegood voting "no".

Councilman McClure felt that lawsuits are filed against the City because of ambiguity and adoption of this ordinance possibly might give rise to more of these type suits being filed against the City. He questioned the definitions of "physical manifestation" and "sexual orientation". He stated his concerns of the liability issue.

When Councilman McClure asked if the City discriminates under any of these categories, City Manager Farris said that to his knowledge, there is no institutionalized policy, ordinance or procedure in the City.

-6-

Councilman McClure stated several sections under the Constitution which he felt already covered this ordinance and he felt that because the Constitution is supreme to all other laws in the land, there is no need for the City to adopt this ordinance. He stated that discrimination will not be tolerated.

Councilwoman Sitnick felt that since the Constitution already covers discrimination, there is no harm in going beyond the general statement that equal protection shall be provided for all and to specifically state different areas of life in which there shall be specifically no discrimination. She mentioned several civil rights acts that have the Constitution.

Upon inquiry of Mayor Martin, City Attorney Slawter said that numerous cities in North Carolina have a similar provision of the law. He said that our ordinance follows largely what Raleigh has adopted, except our ordinance is significantly narrowed the scope in that this ordinance is totally internal within the City's personnel policy.

Councilwoman Sitnick stated that not only did several cities in North Carolina have non-discrimination ordinance, but over 85 cities in the country had them.

Councilman Watts said that he personally would like to research this matter further and commended Councilwoman Sitnick's thorough research into the matter.

Councilwoman Sitnick found it difficult to understand how the issue of discrimination and fairness to our fellow humans needed more study. She said that she was assured that a section in the ordinance covers the City on liability issues. She stressed that this ordinance is not granting rights to anyone and not condoning anything - only an ordinance against discrimination.

The following persons spoke in support of the ordinance:

Bob Smith, Asheville-Buncombe Community Relations Council

Monroe Gilmore, WNC Citizens for an End to Institutional Bigotry

Father Andrew Gentry, Priest in Charge of St. Seraphim

Orthodox Catholic Church

Betsy Mayer, representing Women Outdoors and also representing Visiting Health Professionals

Joe Webster, representative of the NAACP

Andy Reed, Secretary of Social Concerns Committee

at the Unitarian Universalist Church of

Asheville

Rusty Person, resident of the City of Asheville

Joan Marshall, one of the clergy of All Souls Episcopal Church, representing Asheville Area Religious Network for Gay and Lesbian Equality and representing Parents and Friends of Lesbians and Gays

Anna Holleman, citizen of City of Asheville

Dr. Carol Horn, member of the Unitarian Universalist Church of Asheville

Jean Inglard

Jewish Community Relations Council of the WNC Jewish Federation - letter read by Councilwoman Sitnick

-7-

The following persons spoke in opposition to the ordinance:

Rev. Wendall Runion, Pastor of the Asheville Baptist Tabernacle

Bill Horton

Dotty Stickney

Carol Collins

Tim Brady

At 6:00 p.m. Mayor Martin stopped taking comments and thanked everyone for their opinions.

Councilwoman Sitnick read a prepared statement stating again that this is not a

gay rights ordinance. Among other things, she felt it is our patriotic duty to eliminate discrimination from our government and from our community. This Council must speak out about the collective character of our City and if we, as elected leaders, don't take a stand against discrimination then we are responsible for the consequences of it. A Spring 1993 Gallup Poll showed that 80% of Americans support an all inclusive nondiscrimination ordinance.

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

Councilwoman Sitnick moved for the adoption of Ordinance No. 2103. This motion was seconded by Councilwoman Field.

On a roll call vote of 4-3, with Councilmen McClure, Swicegood and Watts voting "no", Ordinance No. 2103 passed on its first reading

B. ORDINANCE NO. 2104 - ORDINANCE AMENDING ARTICLE 6 OF CHAPTER 9 OF THE CODE OF ORDINANCES REGULATING ELECTRICIANS AND MOTION PICTURE OPERATORS

City Manager Farris said that over recent years, the Motion Picture Operators Board of Examiners has become inactive. The primary reason for this inactivity is technological change - movie film is now plastic, rather than extremely combustible cellulose, and motion picture projectors have become simpler to operate over the years.

Based on this inactivity, deletion of references of motion picture operators is recommended.

This ordinance also includes minor changes to provides regulating electricians. For example, reference is made in the present ordinance to a "superintendent of electrical affairs," a position which has not existed for a number of years. The proposed ordinance changes the reference to the "superintendent of electrical affairs" to the "director of building safety".

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

Councilwoman Field moved for the adoption of Ordinance No. 2104. This motion was seconded by Vice-Mayor Peterson.

On a roll call vote of 7-0, Ordinance No. 2104 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 192

-8-

C. ORDINANCE NO. 2105 - ORDINANCE REDUCING THE SPEED ON LOGAN AVENUE, KENDALL STREET, BRUCEMONT CIRCLE, CROWN STREET, WESTCHESTER DRIVE, CHATHAM ROAD, AND ROSE STREET FROM 35 MPH TO 20 MPH AND ON CROCKETT AVENUE FROM 30 MPH TO 20 MPH

City Manager Farris said that the traffic engineer has investigated the following streets for possible reduction in their speed limits: Logan Avenue, Kendall Street, Bruceмонт Circle, Crown Street, Westchester Drive, Chatham Road and Rose Street. He has determined that the speed limits on those street be reduced from 35 mph to 20 mph.

Councilman Watts moved to amend the ordinance to also reduce the speed limit on Crockett Avenue from 30 mph to 20 mph. This motion was seconded by Councilman McClure and carried unanimously.

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

Councilman McClure moved for the adoption of Ordinance No. 2105. This motion was seconded by Councilwoman Field.

On a roll call vote of 7-0, Ordinance No. 2105 passed on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 197

D. RESOLUTION APPROVING INTERLOCAL AGREEMENT ON REGIONAL AIR POLLUTION CONTROL PROGRAM

At the request of the City Manager, Councilman Swicegood moved to continue this matter until May 17, 1994. This motion was seconded by Councilwoman Field and carried unanimously.

V. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON APRIL 19, 1994, APRIL 20, 1994, AND APRIL 26, 1994

B. RESOLUTION NO. 94-82 - RESOLUTION ENDORSING APPOINTMENTS OF MEMBERS TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

Summary: This resolution will endorse the Mayor's reappointment of Mabel O. Hoskins and Cleatus B. Tate as members of the Housing Authority of the City of Asheville. Their terms will expire June 11, 1999.

RESOLUTION BOOK NO. 21 - PAGE 312

C. RESOLUTION NO. 94-83 - RESOLUTION AUTHORIZING THE HOUSING AUTHORITY TO ACCEPT A BID TO PURCHASE 143 BLANTON STREET

Summary: The Housing Authority has tentatively accepted the bid of Mountain Housing Opportunities in the amount of \$19,000 to purchase 143 Blanton Street. The bid is equal to the established fair reuse value. 143 Blanton Street is a house and lot which was acquired by the Housing Authority in accordance with a resolution of City Council for the purpose of preserving the vacant structure for rehabilitation. The redeveloper proposes to rehabilitate the structure to be offered to a low income home buyer under the redeveloper's Affordable Home Ownership Program.

RESOLUTION BOOK NO. 21 - PAGE 313 -9-

D. RESOLUTION NO. 94-84 - RESOLUTION AUTHORIZING SUBMISSION OF A FINAL STATEMENT OF COMMUNITY DEVELOPMENT OBJECTIVES AND PROJECTED USE OF FUNDS TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT FUNDS FOR 1994-95

Summary: A public hearing on this matter was held on April 19, 1994.

RESOLUTION BOOK NO. 21 - PAGE 314

E. RESOLUTION NO. 94-85 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP, HUGHES & COMPANY FOR AUDITING SERVICES FOR FISCAL YEAR 1993-94

Summary: This will authorize the Mayor to execute a contract, the form of which

shall be approved by the Local Government Commission, with Crisp, Hughes & Company, Certified Public Accountants, in the amount of \$40,800 for auditing services for fiscal year 1993/94.

RESOLUTION BOOK NO. 21 - PAGE 315

F. RESOLUTION NO. 94-86 - RESOLUTION TO AWARD ONE MINI-VAN FOR THE ENGINEERING DEPARTMENT

Summary: The City Manager deleted this seven passenger mini-van from the bid request on February 15, 1994. Subsequently, approval has been given the Engineering Department to proceed with this recommendation. Two bids were received. Bids were opened on January 21, 1994, and have been extended through May 6 1994. Staff recommends awarding the contract to the low bidder, Matthews Ford, Inc., Asheville, North Carolina, for one 1994 Ford Aerostar in the amount of \$13,649. A complete copy of the bid summary is attached hereto as Exhibit "A".

RESOLUTION BOOK NO. 21 - PAGE 316

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Watts and carried unanimously.

VI. OTHER BUSINESS:

A. BLUE RIDGE CENTER

City Manager Farris requested authorization by Council for the City to share in the cost for improving storm drain problems associated with an expansion of the Blue Ridge Center. He said that total project would be approximately \$16,000 and Blue Ridge Center will be requested to contribute \$7,500 for materials and the City will contribute \$8,500 in force account work.

Councilwoman Sitnick moved to authorize the City Manager to proceed with the cost-sharing in the Blue Ridge Center storm drainage problem as specified in the above paragraph. This motion was seconded by Councilman Watts and carried on a 6-1 vote, with Councilman Swicegood voting "no".

B. BILTMORE DAIRY FARMS INC.

City Attorney Slawter briefed the Council on the Biltmore Dairy Farms development.

-10-

Councilwoman Field moved to authorize the Mayor to execute an agreement with Buncombe County and a separate agreement with both Buncombe County and Biltmore Dairy Farms Inc., providing for participation by the City in the cost of construction of a sewer interceptor line across property of Biltmore Dairy Farms Inc.; provided that the cost to the City shall not exceed \$185,000. This motion was seconded by Councilman McClure and carried unanimously.

C. COMMENT BY GREG KELLER

Upon inquiry of Mr. Greg Keller, City Manager Farris stated that the City Council has received a full report regarding the investigation performed by the Police Chief regarding recent activities.

D. CLAIMS

City Manager Farris said that the following claims were received by the City of Asheville from April 9 through May 5, 1994: April Ellis (Civic Center), Forest Fox (Water), William Haynes (Water), Kenneth Burnette (Water), Pine Ridge Apartments (Sanitation), Kathy Ledford (Water), Buddy Gaither/Milco (Water), Darrell Chapman (Fire), Ed Sikorski (Water), Gregory Armento (Downtown Development), Phillip Nix (Water), Shirley Dozier (Inspections/Planning), Ashley Brewer (Police), Betty Smith (Water), Kenny Pipe and Supply (Water), Southern Bell (Water), Vicki Patton (Meter Services), Mark Brown (Parks), Terry Morrow (Water), and Wallace Boston (Police).

He said that these claims would be referred to the appropriate insurers for investigation.

E. LAWSUIT

City Manager Farris said that the City was served with the following lawsuit on April 26, 1994: Janet A. Frommer v. Sayer and City of Asheville (personal injury/auto accident).

He said that this lawsuit has been referred to the appropriate legal counsel for action.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:22 p.m.

CITY CLERK MAYOR
