

Tuesday - November 13, 1984 - 4:00 p.m.

Regular Meeting

Present: Mayor Larry McDevitt, Presiding; Vice-Mayor Wilhelmina Bratton; Councilmen Mary Lloyd Frank, Norma T. Price, Walter R. Boland, and Louis Bisette; Corporation Counsel William F. Slawter; City Manager Neal Creighton; Associate City Manager/City Clerk William F. Wolcott, Jr.

Absent: Councilman Gordan Myers.

INVOCATION

The invocation was given by Councilman Norma Price.

APPROVAL OF THE MINUTES - NOVEMBER 6, 1984

1. Approval of the minutes of the November 6, 1984, meeting.

Mayor McDevitt announced the approval of the minutes of the November 6, 1984, meeting as submitted.

PROCLAMATION - "ALZHEIMER'S DISEASE MONTH" - NOVEMBER, 1984

2. Mayor McDevitt read a proclamation proclaiming the month of November, 1984, as "Alzheimer's Disease Month."

PROCLAMATION - "SERVICE CORPS OF RETIRED EXECUTIVES MONTH" - NOVEMBER, 1984

2a. Mayor McDevitt read a proclamation proclaiming the month of November, 1984, as "Service Corps of Retired Executives Month."

Mayor McDevitt presented the proclamation to Joseph Hewitt.

PUBLIC HEARING - SITE PLAN OF "WIND IN THE OAKS CONDOMINIUMS" - WINDSWEPT DRIVE

3. A public hearing was held relative to the site plan of the proposed "Wind in the Oaks Condominiums" to be located off Windswept Drive.

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

Mayor McDevitt said the Asheville Planning and Zoning Commission at a meeting held October 17, 1984, reviewed the site plan of the proposed Wind in the Oaks Condominiums to be located off Windswept Drive. The plan was prepared by Ken Pankow, Engineer, for Roger Jones and Marshall Kanner, Developers, and submitted in accordance with the Group Development Section of the Asheville Zoning Ordinance. After review and discussion, the Commission voted to recommend approval of the site plan to City Council subject to compliance with the Erosion Control Ordinance.

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

Verl Emrick, Director of Planning, said this project would consist of 48 units, in two phases, on five acres located off Windswept Drive.

By the use of a map, Mr. Emrick showed the location of the proposed project. He said the Planning and Zoning Commission expressed interest in erosion control of the project. He said they recommended approval of the project subject to compliance with the Erosion Control Ordinance. He said the Fire Department had requested that water supply for the project be provided by an eight-inch line and that an additional fire hydrant be provided. He said the

Commission also addressed access to the project. He said it was recommended that Windswept Road from the new road to the paved portion be paved. He said at present the City does not have a right-of-way for this road. He said Grover Redmond, owner of the property, said he would dedicate the property and would grant a right-of-way for the opening of this road. He said the developers have requested that the City share in the cost of opening this road.

Upon inquiry of Mayor McDevitt, Mr. Emrick said the approval of the site plan for the Wind in the Oaks Condominiums project is not contingent upon this right-of-way being granted or the road being opened. He said the staff felt the area could accommodate additional units. However, it would be preferable to have two entrances to the project. Mr. Emrick, in addressing erosion control, said the developer plans to have water run-off come off of the internal system to the northern portion of the property.

Mr. Tom West, a resident in the area, said the residents would prefer an entrance at the existing intersection.

David Matney, Attorney for the developer, spoke in support of the project and also addressed the entrance at the existing intersection.

Mayor McDevitt noted that if Council approves the site plan, the developer should not in any way assume that Council will participate in any road construction in the area.

After discussion, Mayor McDevitt closed the public hearing at 4:33 p.m.

Councilman Boland moved to approve the site plan of the proposed "Wind in the Oaks Condominiums" to be located off Windswept Drive subject to compliance with the Erosion Control Ordinance. This motion was seconded by Councilman Frank and carried unanimously.

PUBLIC HEARING - AMENDING ZONING ORDINANCE RELATIVE TO KENNELS

ORDINANCE NUMBER 1482 - AN ORDINANCE AMENDING APPENDIX A (ZONING) OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

4. A public hearing was held relative to amending the Zoning Ordinance known as "An ordinance providing for the zoning for the City of Asheville, as amended, relative to kennels."

Mayor McDevitt said this amendment will add the definition of a kennel to Section 30-2-1 and prohibit kennels in R-1 through R-5 Residential District.

Mayor McDevitt opened the public hearing at 4:34 p.m.

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

Corporation Counsel Slawter said it had become necessary to include the definition of kennels in several ordinances that are presently in affect.

Mayor McDevitt read the proposed ordinance.

After discussion, Mayor McDevitt closed the public hearing at 4:37 p.m.

Councilman Price moved for the adoption of Ordinance No. 1472. This motion was seconded by Vice-Mayor Bratton.

On a roll call vote of 6-0, Ordinance No. 1482 passed on first reading.

RESOLUTION NO. 84-208 - RESOLUTION APPOINTING MEMBER TO THE RECREATION BOARD FOR ASHEVILLE (LUCILLE CALDWELL)

6. Consideration was given to a resolution appointing Lucille Caldwell as a member of the Recreation Board.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Vice-Mayor Bratton, seconded by Councilman Boland, Resolution No. 84-208 was unanimously adopted.

Complete text of Resolution No. 84-208 will be found in Resolution Book No. **15** at page **77**.

RESOLUTION NO. 84-209 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE INSURANCE ADVISORY COMMITTEE (MRS. SUSIE FARNAM)

7. Consideration was given to a resolution appointing Mrs. Susie Farnam as a member of the Asheville-Buncombe Insurance Advisory Committee

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Bisette, seconded by Councilman Frank, Resolution No. 84-209 was unanimously adopted.

Complete text of Resolution No. 84-209 will be found in Resolution Book No. **15** at page **78**.

RESOLUTION NO. 84-210 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE INSURANCE ADVISORY COMMITTEE (MR. DON PATTON)

7a. Consideration was given to a resolution appointing Mr. Don Patton as a member of the Asheville-Buncombe Insurance advisory committee.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Bisette, seconded by Councilman Frank, Resolution No. 84-210 was unanimously adopted.

Complete text of Resolution No. 84-210 will be found in Resolution Book No. **15** at page **79**.

RESOLUTION NO. 84-211 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE INSURANCE ADVISORY COMMITTEE (MRS. BARBARA JONES)

6b. Consideration was given to a resolution appointing Mrs. Barbara Jones as a member of the Asheville-Buncombe Insurance Advisory Committee.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Bisette, seconded by Councilman Frank, Resolution No. 84-211 was unanimously adopted.

Complete text of Resolution No. 84-211 will be found in Resolution Book No. **15** at page **80**.

RESOLUTION NO. 84-212 - RESOLUTION OF INTENT TO CLOSE A PORTION OF ALTA AVENUE AND SCHEDULING A PUBLIC HEARING FOR DECEMBER 11, 1984

7. Consideration was given to a resolution of Intent to close a portion of Alta Avenue and scheduling a public hearing for December 11, 1984.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Boland, seconded by Councilman Price, Resolution No. 84-212 was unanimously adopted.

Complete text of Resolution No. 84-212 will be found in Resolution Book No. **15** at page **81**.

RESOLUTION NO. 84-213 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH C & W VENDING COMPANY CONCERNING THE CONSTRUCTION OF A BUILDING WITHIN THE LIMITS OF A 20' RIGHT-OF-WAY FOR A SEWER LINE OWNED AND MAINTAINED BY THE CITY OF ASHEVILLE

8. Consideration was given to a resolution authorizing the Mayor to execute an agreement with C & W Vending Company concerning the construction of a building within the limits of a 20' right-of-way for a sewer line owned and maintained by the City of Asheville.

Mayor McDevitt said C * W Vending Company desires to encroach upon the twenty foot right-of-way for a sewer line that is owned and maintained by the City of Asheville with the construction of a building. C & W Vending Company agrees to release the City of Asheville from any responsibility and/or liability for damage which might be occasioned to the building as a result of any repairs and/or maintenance for this sewer line. Due to the fact that this building has already been constructed, the City of Asheville is of the opinion that it would be to the best interest of the City of Asheville to enter into such an agreement. This property is located on Sweeten Creek Road.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Price, seconded by Councilman Frank, Resolution No. 84-213 was unanimously adopted.

Complete text of Resolution No. 84-213 will be found in Resolution Book No. **15** at page **82**.

RESOLUTION NO. 84-214 - RESOLUTION ABANDONING SOUTH CHARLOTTE STREET AS A CITY SYSTEM STREET PURSUANT TO A REQUEST BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

9. Consideration was given to a resolution abandoning South Charlotte Street as a City System Street pursuant to a request by the North Carolina Department of Transportation.

Mayor McDevitt said South Charlotte Street was formerly Valley Street. The North Carolina Department of Transportation has officially completed the Valley Street Project. That portion of Old Valley Street which is now known as South Charlotte Street should become a state system street. There will be a reduction in expenditures for street maintenance as well as a reduction in revenues from Powell Bill. The reductions will be near the same so no positive or negative effect should occur.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Frank, seconded by Councilman Price, Resolution No. 84-214 was unanimously adopted.

Complete text of Resolution No. 84-214 will be found in Resolution Book No. **15** at page **83**.

RESOLUTION NO. 84-215 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NOTICE OF INTENT WITH THE NORTH CAROLINA DEPARTMENT OF ADMINISTRATION, A STATE DIVISION OF PURCHASE AND CONTRACT, FOR PARTICIPATION IN THE NORTH CAROLINA STATE

CONTRACT FOR TIRES AND TUBES

10. Consideration was given to a resolution authorizing the Mayor the execute a Notice of Intent with the North Carolina Department of Administration, a State Division of Purchase and Contract, for participation in the North Carolina State Contract for tires and tubes.

Mayor McDevitt said the North Carolina Department of Administration makes the services of the State Division of Purchase and Contract available to non-state agencies by allowing these agencies to participate in state purchase contracts on an elective basis. The State Division of Purchase and Contract has notified the City that they will be taking bids for tires and tubes (Certification No. 863) for a two year contract to begin on or about July 1, 1985. The City's annual tire and tube purchases are approximately \$65,000. The City has been a participant of the current North Carolina State Contract since April, 1983. The Purchasing Director and Motor Transport Superintendent recommend that the City continue to participate in this state purchase contract. The contract provides discounts of 15% to 60% on manufacturers list prices.

Mayor McDevitt said members of Council were furnished copies of the resolution and it would not be read in its entirety.

Upon motion of Councilman Boland, seconded by Councilman Frank, Resolution No. 84-215 was unanimously adopted.

Complete text of Resolution No. 84-215 will be found in Resolution Book No. **15** at page **84**.

ORDINANCE NO. 1481 - AN ORDINANCE AMENDING CHAPTER 5 (ANIMALS AND FOWLS) OF THE CODE ORDINANCES OF THE CITY OF ASHEVILLE

11. Consideration was given to the third reading of Ordinance No. 1481, an ordinance amending Chapter 5 (Animals and Fowls) of the Code of Ordinances of the City of Asheville.

Mayor McDevitt said this ordinance was previously read on first and second reading and would not be reread in its entirety unless there was a specific request to do so.

On a roll call vote of 6-0, Ordinance No. 1481 passed on third and final reading.

Complete text of Ordinance No. 1481 will be found in Ordinance Book No. **10** at page **232-240**.

APPEAL HEARING - MELVIN C. WALSH, JR. - REQUEST FOR LINE-OF-DUTY DISABILITY RETIREMENT

12. An appeal hearing was held in the matter of Melvin C. Walsh, Jr.'s request for line-of-duty disability retirement.

Mayor McDevitt said Melvin C. Walsh, Jr. is appealing the decision of the Board of Examiners and the decision of the Board of Trustees of the Asheville Policemen's Pension and Disability Fund to the Asheville City Council for in-line-of-duty disability retirement. At the October 16, 1984 Council meeting this appeal hearing was rescheduled until November 13, 1984 at the request of Mr. Walsh and with the consent of his attorney, Mr. Max Cogburn.

Mayor McDevitt explained the procedure to be held during the appeal hearing.

Max Cogburn, Attorney for Mr. Melvin C. Walsh, Jr., offered the following as evidence in the hearing:

Mr. Melvin C. Walsh, Jr. was sworn in by affirmation by Mayor McDevitt.

In summary, Mr. Walsh stated that he was employed by the City of Asheville as a Police Officer since April 1, 1970, and had ceased employment on October 5, 1983, due to a heart attack on that day. He said on October 5, 1983, he was working with another officer, Mr. Ross Robinson, on the evening shift, being 5:00 p.m. until 1:00 a.m. He said they had not worked together that night, but were together later in the evening on Merrimon Avenue on a rape/felony case.

He said earlier in the evening he had chest pains in his arm and didn't feel right. He said when arriving on Merrimon Avenue, at the rape/felony case, Mr. Robinson insisted that he go home due to his pains in the chest and arm. He said he went home shortly after midnight and laid down, went to sleep, and woke up with more severe pain in the chest, arm, and legs. He said his wife took him to the emergency room at the hospital where he was seen by Dr. Fowler. He said he was admitted to the intensive care unit and remained there for treatment for two or three days. He said he then remained in the hospital for more than two weeks. He said during his hospital stay, he was examined by Dr. Robert S. Byron, a psychiatrist who was recommended by Dr. Fowler. He said after being discharged from the hospital he continued to see Dr. Fowler and is taking medication prescribed by Dr. Fowler for an acute myocardial infarction. He said he then applied to the City for disability in the line of duty. He said Dr. Byron had recommended that he not return to work.

Mr. Walsh was then cross-examined by Corporation Counsel Slawter.

In summary, Mr. Slawter questioned Mr. Walsh relative to his routine examinations in 1976 by the City Infirmary Nurse, particularly relative to his high blood pressure problems. Mr. Walsh indicated he had never been told that he had high blood pressure prior to his heart attack on October 5, 1983. A discussion was held relative to Dr. Fowler's letter of May 7, 1984, indicating that Mr. Walsh had completely recovered from a recent myocardial infarction and could be re-employed in any occupation that is devoid of strenuous physical and/or emotional stress.

Several members of Council questioned Mr. Walsh about his previous high blood pressure and his unusual amount of stress. In this discussion, Mr. Walsh indicated that he was highly stressed over one particular case involving two elderly people that had a large amount of money taken from them.

At the request of Mr. Cogburn, Mr. Walsh detailed the larceny case involving the two elderly people.

Mr. Ross Robinson was sworn in by affirmation by Mayor McDevitt.

In summary, upon questioning by Mr. Cogburn, Mr. Robinson said he was working with Mr. Walsh on the night of October 5, 1983. He said he saw him close to midnight, approximately 11:40 p.m. He said at that time Mr. Walsh was pushing upward around his diaphragm, changing colors, grayish, and Mr. Walsh told him he did not know what it was. He said he advised Mr. Walsh to go home. He said he finally did go home approximately a little after midnight. He said Mr. Walsh had never returned to work after that date. He said, in his opinion, Mr. Walsh takes everything very seriously. He said he knew about the larceny case referred to by Mr. Walsh, and knew that it was upsetting to Mr. Walsh.

Corporation Counsel Slawter cross-examined Mr. Ross Robinson.

In summary, Mr. Robinson told Mr. Slawter that he did not work all evening with Mr. Walsh. He said in his opinion he was not considered as a sick person and he was always at work.

Dr. Robert Byron was sworn in, by affirmation, by Mayor McDevitt.

In summary, upon questioning of Mr. Cogburn, Dr. Byron was presented as an expert witness in psychiatry. He said he first saw Mr. Walsh at the request of Dr. Fowler on October 19, 1983. He said his diagnosis is a psychological factor affecting physical condition. He said it would be impossible for a physician to recommend Mr. Walsh go back to work in police surroundings. He said even thinking about police work would be detrimental to his health and would be very likely to another body system injury. He said, in his opinion, Mr. Walsh can no longer manage the daily stress and his former ability to manage stress is diminished.

Corporation Counsel Slawter cross-examined Dr. Robert Byron.

In summary, Dr. Byron said while it was his understanding from Dr. Fowler that Mr. Walsh had recovered from his myocardial infarction, it would be his opinion that Mr. Walsh is permanently and totally disabled from working in the law enforcement field. He said Mr. Walsh's ability to handle stress is an indication that he could not return to work.

Dr. Byron was questioned by several members of Council. At which time Dr. Byron said Mr. Walsh could go to work in some other employment, however, he would still be vulnerable to psychological stress.

After further discussion, it was mutually agreed by Council and Mr. Cogburn, Mr. Walsh's attorney, that Council deliberate the appeal in executive session and render their decision in an open session at a later date. It was agreed that Mr. Cogburn's closing arguments would be heard at the meeting of November 20, 1984.

Mr. Cogburn said he would request a copy of the minutes in 1979 of those retired by disability in the line of duty due to a heart attack.

Corporation Counsel Slawter requested that the following records be offered in the appeal hearing. "Infirmary records of a 1684.

Sam Graves, Director of Management Services, was sworn in, by affirmation, by Mayor McDevitt. Upon questioning by Mr. Cogburn, Mr. Graves said that Lynn Hollifield had been employed by the City of Asheville since June, 1984.

The hearing was recessed until November 20, 1984.

ORDINANCE NO. 1483 - AN ORDINANCE AMENDING ORDINANCE NO. 1027 REGARDING KENNEL LICENSE TAXES

13. Consideration was given to an ordinance amending amending Ordinance No. 1027 regarding kennel license taxes.

Mayor McDevitt said this ordinance would include the new definition of a kennel in the Revenue Ordinance.

Mayor McDevitt said members of Council were furnished copies of the ordinance and it would not be read in its entirety.

Councilman Price moved for the adoption of Ordinance No. 1483. This motion was seconded by Councilman Frank.

On a roll call vote of 6-0, Ordinance No. 1483 passed on first reading.
