

Tuesday - April 9, 1985 - 4:00 p.m.

Regular Meeting

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

Absent: Councilman Louis Bisette

INVOCATION

The invocation was given by Mayor Larry McDevitt.

APPROVAL OF THE MINUTES - APRIL 2, 1985 MEETING

1. Approval of the minutes of the April 2, 1985 meeting.

Mayor McDevitt announced the approval of the minutes of the April 2, 1985 meeting as submitted.

PROCLAMATION - "BUILDING SAFETY WEEK" - APRIL 14-20, 1985

2. Mayor McDevitt read a proclamation proclaiming the week of April 14-20 as "Building Safety Week" in the City of Asheville.

Mayor McDevitt presented the proclamation to Lem Moore, Director of Inspections.

ORDINANCE NO. 1506 - AN ORDINANCE AMENDING SECTION 1-2 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

3. Consideration was given to the third reading of Ordinance No. 1506, an ordinance amending Section 1-2 of the Code of Ordinances of the City of Asheville.

Mayor McDevitt said the definition of "council" contained in Section 1-2 of the Code of Ordinances of the City of Asheville be amended to read as follows with the underlined portion representing change: "The words the council or city council shall mean the City Council of the City of Asheville, North Carolina, including six council members and the mayor". This ordinance passed on first reading on March 26, 1985 and on second reading April 2, 1985.

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. 1506 passed on third and final reading.

Complete text of Ordinance No. 1506 will be found in Ordinance Book No. 10 at page 257.

RESOLUTION NO. 85-56 - RESOLUTION OF INTENT TO CLOSE A PORTION OF OLD MOUNTAIN STREET AND OLD PINE STREET AND CALLING A PUBLIC HEARING ON THE QUESTION FOR MAY 14, 1985

4. Consideration was given to a resolution of intent to close a portion of Old

Mountain Street and Old Pine Street and scheduling a public hearing for May 14, 1985.

Mayor McDevitt said a petition has been filed by the Housing Authority of the City of Asheville, asking that a portion of Old Mountain Street and Old Pine Street be permanently closed to public use. These streets are under the authority and control of the City and are not under the authority of the N. C. Department of Transportation.

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 Boland, Resolution No. 85-56 was unanimously adopted.

Complete text of Resolution No. 85-56 will be found in Resolution Book No. 15 at page 177.

RESOLUTION NO. 85-57 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A FEDERAL AVIATION GRANT AGREEMENT, PROJECT NO. 3-37-0005-04

5. Consideration was given to a resolution authorizing the Mayor to execute on behalf of the City of Asheville a Federal Aviation Grant Agreement, Project No. 3-37-0005-04.

Mayor McDevitt said the Federal Aviation Administration has offered a grant agreement, dated March 27, 1985, to the Asheville Regional Airport Authority in the amount of \$44,325.00. The City of Asheville and the County of Buncombe are sponsors of the agreement. The FAA requires each sponsor to execute the grant agreement. This agreement provides for a Terminal System Analysis Program.

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

The Associate City Manager said the grant would be funded by the Federal providing 90%, State providing 5%, and the County providing 5% of the total grant funds.

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. 85-57 was unanimously adopted.

Complete text of Resolution No. 85-57 will be found in Resolution Book No. 15 at page 178.

Ralph Bishop spoke in opposition to the resolution stating that the City of Asheville should quit getting funds from the Federal Government which build up the federal deficit.

RESOLUTION NO. 85-58 - RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE DEPARTMENT OF TRANSPORTATION, UNITED STATES OF AMERICA, FOR A GRANT UNDER THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

6. Consideration was given to a resolution authorizing the filing of an application with the Department of Transportation, United States of America, for a grant under the Urban Mass Transportation Act of 1964, as amended.

Mayor McDevitt said this application for funding under Section 8 of the UMTA of 1964 as amended will aid in the financing of planning projects for transportation operations. Funds will come from Federal, State and Local Government. Expenditures for this grant will be a match between Federal, State and City.

Federal (UMTA) 20,000

State (NCDOT) 2,500

Local (City) 2,500

TOTAL 25,000

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. 85-58 was unanimously adopted.

Complete text of Resolution No. 85-58 will be found in Resolution Book No. 15 at page 179.

ORDINANCE NO. 1509 - BUDGET ORDINANCE AMENDMENT TO REIMBURSE THE COMMUNITY DEVELOPMENT FUND

7. Consideration was given to a budget ordinance amendment to reimburse the Community Development Fund.

Mayor McDevitt said this action appropriates General Fund - Contingency funds in the amount of \$8,584 to reimburse the Community Development Fund for costs disallowed as of June 30, 1984. The City exceeded the 20% limitation for administration and planning costs for the program year.

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

Councilman Myers moved for the adoption of Ordinance No. 1509. This motion was seconded by Councilman Frank.

On a roll call vote of 6-0, Ordinance No. 1509 passed on first and final reading.

Complete text of Ordinance No. 1509 will be found in Ordinance Book No. 10 at page 260.

BIDS - HERBICIDE FOR PUBLIC WORKS DEPARTMENT, STREET DIVISION

9. Consideration was given to bids received for herbicide for Public Works Department, Street Division.

Mayor McDevitt said seven (7) sealed bids were received for a term purchase contract to furnish an estimated 440 gallons of herbicide for the Street Division's right-of-way maintenance program. Recommendation is to award this contract to the low bidder, Helena Chemical Company, Enfield, N. C. in the amount of \$34,474.00. Purchases will be made on an as needed basis at the unit price of \$78.35 per gallon. Sufficient funds are available in the Street Division operating budget Account Code 10-427-038.

Clark Brown, Director of Public Works, said the herbicide had been approved by

the EPA and would be sprayed on vegetation along paved areas in the City of Asheville.

Councilman Myers moved to approve the award of this contract to the low bidder, Helena Chemical Company, in the amount of \$34,474. This motion was seconded by Councilman Frank and carried unanimously.

Bid Summary

Bidder Bid

Asheville FCX 34,760.00

Asheville, N. C.

Forshaw Chemicals, Inc. 34,729.20

Charlotte, N. C.

Helena Chemical Company 34,474.00

Enfield, N. C.

Pennington Seed, Inc. 35,195.00

Columbia, S. C.

Porter Brothers, Inc. 39,160.00

Shelby, N. C.

SMCP Bid Rejected/Improper Bid Deposit

Atlanta, Ga.

CLAIMS - JOHN KELLEY (SEWER) - KENNETH GRAHAM (WATER)

The City Manager presented claims received from John Kelley and Kenneth Graham.

Mayor McDevitt referred the claims to the Corporation Counsel for investigation and recommendation.

LAWSUITS - ASHEVILLE HOUSING AUTHORITY/CONDEMNATION OF DEVERE LENTZ, JR. PROPERTY (PACK PLAZA) - ASHEVILLE HOUSING AUTHORITY/CONDEMNATION OF SUSAN LITTLEJOHN - CARSON PROPERTY (PACK PLAZA)

The City Manager said the City was served with summonses in connection with lawsuits involving the Asheville Housing Authority and the condemnation of Devere Lentz, Jr. property (Pack Plaza) and condemnation of Susan Littlejohn - Carson Property (Pack Plaza).

Mayor McDevitt referred the summonses to the Corporation Counsel for investigation and recommendation.

PROCLAMATION - APRIL 21-27, 1985 - "CLEAN UP LITTER WEEK"

Mayor McDevitt presented a proclamation proclaiming the week of April 21-27 as "Clean Up Litter Week".

RALPH BISHOP - COMMENTS RELATIVE TO FORMER POLICE CHIEF J. C. HALL RECEIVING

POLICE PENSION FUNDS

Upon inquiry of Ralph Bishop, Corporation Counsel Slawter said an individual receiving disability police pension benefits can perform other duties, in another state, and still draw disability police pension funds.

Upon further inquiry of Mr. Bishop, Corporation Counsel Slawter said all records relative to former Police Chief J. C. Hall and his disability police pension funds were given to Mr. Bishop.

REQUEST OF CITIZENS (H. M. HEYWOOD, JR. - FOR LOCAL CITIZENS COMMITTEE) - STATE RIDGE LAW REQUIREMENTS

Mr. Harvey Heywood, Jr., highlighted the following letter presented to members of Council:

April 6, 1985

Re: Sunset Point Condominiums

Asheville City Council

Asheville, N. C. 28807

Dear City Council Member:

A recent meeting regarding the above matter was held on April 2, involving representatives from a number of homeowner associations within the City and interested citizens. Sections of the City represented included North Asheville, Grove Park, Sunset Mountain, Redwood Forest, Haw Creek, and West Asheville. The meeting was called on short notice and all areas known to be interested could not be contacted.

A show of hands indicated 23 out of 24 present to be against construction of the Sunset Point Condominiums, for a number of very valid reasons. A suggested petition was presented and approved as to intent even though the suggested remedy may not be appropriate. This is being circulated. An ad hoc committee of 6 was formed to investigate and develop effective strategy. The Committee met at noon on Friday April 5. Several committee members reported that the proposed condominiums were comprised of 4 buildings to include 192 units located between Sunset Ridge Condominiums (old Tiara Apartments) and Seelys Castle. The height is to be 12 stories-plus for a total of 165 feet, a total area of 379,200 feet and about 2800 foot elevation.

Discussion of a proposed strategy followed. This strategy was developed based on a study of the State Ridge Law and discussions with Phillip P. Green and Milton Heath, Institute of Government, Chapel Hill; Ms. Norma Price, Asheville City Council; Rep. Marie Colton and Rep. Martin Nesbitt, N. C. Legislature. We are very appreciative of their counsel.

It appears that there are two options available to the City of Asheville for preventing excessive building heights, such as proposed in the captioned development:

- (a) Enact height restrictions in the local zoning ordinance.
- (b) Pursue an ammendment to the N. C. State Ridge Law.

The second option involves amending the State Ridge Law so as to allow the City of Asheville to elect to eliminate the 3000 foot elevation requirements. The

State Ridge Law would then prohibit construction (under G. S. 113A-209) of any "Tall Buildings" located on a ridge at an elevation 500 feet or more above the valley floor of about 2200 feet elevation. When taking into account the 100 foot buffer this would set the requirement at about 2600 feet. Specifically it would be necessary for the Asheville City Council to request of the local legislative delegation that they consider sponsoring the necessary amendment to the State Ridge Law or any other legislation that would get the job done. Any such legislation would very likely be tagged as a local bill and therefore would have to be filed by April 15 if it is to be considered this year which means the request from City Council would have to be in the hands of our delegation by April 10 or April 11 at the latest for consideration and processing. This request would of course be made to protect this City against any development of "Tall Buildings" on ridges above 2600 feet elevation, not just the captioned project. Until a developer secures a building permit he does not gain a vested right to proceed with construction and either the Local Zoning Ordinance or the State Ridge Law may be amended for the purpose of preventing excessive building heights.

It should be pointed out here that under the State Ridge Law the County does have the authority to eliminate the 3000 foot requirement in connection with ridges not within the City limits. Expert opinion is that the City does not have this authority simply because of word "city" was inadvertently left out when the law was originally written, and the County probably does not have jurisdiction over land use in the City.

Since time is of the essence we would hope that you are already aware of the widespread opposition to such development, and that petitions are being signed. Therefore we respectfully request that you place this matter on the agenda for "pre-council" work session on Tuesday, April 9 for discussion; and request that you subsequently pass a resolution at the regular Council session which follows, requesting the local delegation to consider introducing an amendment to Article 14 of G. S. Chapter 113A which would allow the City of Asheville to eliminate the 3000 foot elevation requirement immediately, or other appropriate legislation; and convey this request in proper form to the local delegation in Raleigh by April 11. A staff member of the N. C. Dept. of Natural Resources and Community Development has offered to be present after 1:30 p.m. Tuesday if desired.

The first option can of course be pursued at a later date. An amendment has already been proposed that would prohibit the construction of "Tall Buildings" located on a ridge above 2300 feet. However the procedures for amending the Local Zoning Ordinance are lengthy and restriction to an elevation of 2300 feet could have considerable opposition.

Therefore we strongly urge the City Council to take the opportunity presently offered in the second option, to amend the State Ridge Law, and act in a timely manner.

Respectfully yours,

H. M. Heywood, Jr. for

Local Citizens Committee

cc: City Council Members

N. C. Rep. Marie Colton

N. C. Rep. Martin Nesbitt

Chmn. P & Z Commission

Rep. North Asheville, West Asheville, Grove Park, Sunset Mountain,
Haw Creek and Redwood Forest

Mr. Heywood said the Committee is concerned about future development projects in the City of Asheville such as Sunset Point Condominiums. He said the group is not, at present, opposing this specific project; however, their particular interest is in height restrictions. He said he felt this request and procedure is the fastest way to deal with a project which has a lot of citizen opposition.

David Long and David Quinn, staff members of the N. C. Department of Natural Resources and Community Development, speaking as citizens of Asheville, said they were concerned about height restrictions in the City of Asheville. They also requested that the City Council endorse an amendment to the State Ridge Law to the Buncombe County Legislative delegation.

Upon inquiry of Councilman Price, Mr. Emrick, Director of Planning, said there were approximately three areas in the City of Asheville that would be affected by the State Ridge Law. He said those areas include Cisco Mountain, Piney Mountain and Patton Mountain.

Upon inquiry of Councilman Boland, Verl Emrick, Director of Planning, said if the State Legislators amend the State Ridge Law, it would also be necessary to adopt a local ordinance to reduce elevation requirements. He said this could be accomplished by an amendment to the Zoning Ordinance.

After discussion, Mayor McDevitt read the following proposed letter to be forwarded to the Buncombe County legislative delegates:

April 9, 1985

The Honorable Gordon H. Greenwood

Legislative Building - Room 632

116 West Jones Street

Raleigh, N. C. 27611

Dear Representative Greenwood:

A group of concerned citizens of the City of Asheville has requested the City Council to take some action to restrict high rise development upon the ridges within the City. As you are aware, the State Ridge Law was enacted in 1983 and that law provides in G. S. 13A-206 (6) that it is applicable to mountain ridges with an elevation of 3,000 feet and in addition whose elevation is 500 or more feet above an adjacent valley floor. Cities and counties were authorized by G. S. 13A-208 to adopt specific regulatory ordinances, but the City of Asheville, as did most if not all cities and counties, opted to operate within the framework of the state law rather than enacting a local ordinance.

G. S. 13A-206 (6) provides that "a county may elect to terminate" the 3,000 foot requirement. That provision does not grant a city the same authority, and we also had some question as to whether the authority to eliminate the 3,000 foot requirement would include the authority to reduce that requirement to a lesser height. In addition, we had concern that such action might not be authorized after January 1, 1984, since the state law appears to contemplate

having everything finalized by that date. G. S. 13A-212, in fact, requires that a map of the protected ridges "be permanently filed" in the Register of Deeds in each county by January 1, 1984.

In order for City Council to have the same authority as Buncombe County in this area, we request that you and the other members of the local delegation introduce either special legislation or an amendment to Article 14 of Chapter 13A of the North Carolina General Statutes to authorize the City of Asheville to reduce or eliminate by ordinance or resolution the 3,000 foot requirement of G. S. 13A-206 (6) and to provide that the recording of the map required by G. S. 13A-212 be within a reasonable time after enactment of the ordinance or resolution rather

than by January 1, 1984, as currently required.

On behalf of the entire Council I would like to thank you and other members of the delegation again for your efforts on our behalf. We look forward to seeing you in the near future.

Very truly yours,

ASHEVILLE CITY COUNCIL

By: Larry McDevitt

Mayor

LMcD:msb

cc: Senator Robert S. Swain

Senator Dennis J. Winner

Representative Marie W. Colton

Representative Narvel J. Crawford

Representative Martin L. Nesbitt

Mayor McDevitt noted that his law firm represents the developer proposing to develop the Sunset Point Condominiums. He said his position in voting on the request to the local delegation relative to amending the State Ridge Law is not tied to or aimed at any particular project.

After discussion, Councilman Boland moved that Mayor McDevitt be authorized to forward the proposed letter to the local legislative delegation. This motion was seconded by Councilman Price and carried unanimously.

ANNOUNCEMENT OF LEGISLATIVE BREAKFAST

Mayor McDevitt announced that members of Council would be meeting with several members of the Buncombe County Legislative Delegation on Monday, April 15, 1985, at 7:15 a.m. to discuss several legislative requests.

ADJOURNMENT

Upon motion of Councilman Boland, seconded by Councilman Price, the meeting adjourned at 5:10 p.m.

MAYOR CITY CLERK
