

Tuesday - July 23, 1985 - 4:00 p.m.

Regular Meeting

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

Absent: Mayor Larry McDevitt, Councilman Gordon Myers.

INVOCATION

The invocation was given by Councilman Mary Lloyd Frank.

APPROVAL OF THE MINUTES - JULY 16, 1985 MEETING

1. Approval of the minutes of the July 16, 1985 meeting.

Vice-Mayor Bratton announced the approval of the minutes as submitted.

PUBLIC HEARING - SITE PLAN OF PROPOSED RIVER RIDGE APARTMENTS - 800 FAIRVIEW ROAD

2. A public hearing was held relative to the site plan of the proposed River Ridge Apartments to be located at 800 Fairview Road.

Vice Mayor Bratton said the Asheville Planning and Zoning Commission at a meeting held June 12, 1985, reviewed the site plan of the proposed River Ridge Apartments to be located at 800 Fairview Road. The site plan was prepared by Carrol Hughes, Architect, for Bob Hughes and Associates, Raleigh, N.C., Developer, 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 and the Flood Plain Ordinance.

Vice-Mayor Bratton opened the public hearing at 4:04 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.

Verl Emrick, Director of Planning, said the Asheville Planning and Zoning Commission had recommended approval of the site plan subject to compliance with the Erosion Control Ordinance and the Flood Plain Ordinance. He said the project would consist of 230 units in three phases. He said five units would be constructed in the flood plain area, and there would be no construction in the floodway area. He said the units to be constructed in the flood plain must be submitted to the Engineering Department and the Board of Adjustments for approval to assure compliance with the Flood Plain Ordinance. He said the roads in the project would remain private, but would be constructed according to City standards.

A discussion was held relative to the traffic in this particular area.

Mr. Emrick said that the City staff and the developer for the project would monitor internal traffic.

Vice-Mayor Bratton closed the public hearing at 4:17 p.m.

Councilman Boland moved to approve the site plan of the proposed River Ridge Apartments to be located at 800 Fairview Road subject to the Planning and Zoning Commission's recommendation. This motion was seconded by Councilman Frank and carried unanimously.

ORDINANCE NO. 1526 - AN ORDINANCE AMENDING SECTION 28-81.3 OF ARTICLE IV, SPEED REGULATIONS, OF CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

3. Consideration was given to the second reading of Ordinance No. 1526, an ordinance amending Section 28-81.3 of Article IV, speed regulations, of Chapter 28 of the Code of Ordinances of the City of Asheville.

Vice-Mayor Bratton said the Traffic Engineering Division of the Public Works Department has received a request from the Ballantree Homeowners Association to establish a 25 mile per hour speed limit on all streets within the Ballantree Development. The streets affected by this proposed ordinance are: 1) Ballantree Drive (between Sweeten Creek Road and Elmwood Lane; 2) Braddock Way; 3) Campbell Circle; 4) Aspen Way; 5) Gardenwood Drive; 6) Gardenwood Lane; and 7) Elmwood Lane. This ordinance was read on first reading at the June 16, 1985 meeting.

Vice-Mayor Bratton said this ordinance was previously read on first reading and would not be reread unless there was a specific request to do so.

On a roll call vote of 5-0, Ordinance No. 1526 passed on second reading.

RESOLUTION NO. 85-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE BY AND BETWEEN THE CITY OF ASHEVILLE AND THE FRATERNAL ORDER OF POLICE

4. Consideration was given to a resolution authorizing the City Manager to execute a lease by and between the City of Asheville and the Fraternal Order of Police.

Vice-Mayor Bratton said the City owns the property at the Asheville Airport which is not necessary for the operation of the Airport. In the interest of developing training and efficiency in the Asheville Police Department, the City desires to lease this property to the Fraternal Order of Police. Both have agreed to the terms and conditions of the lease. The fiscal impact would be twenty dollars (\$20.00) - one dollar (\$1.00) per year beginning April 15, 1985, and ending April 14, 2005. This item is budgeted in the 1985-86 budget.

Vice-Mayor Bratton 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 Bissette, Resolution No. 85-123 was unanimously adopted.

Complete text of Resolution No. 85-123 will be found in Resolution Book No. **15** at page **266**.

ORDINANCE NO. 1527 - BUDGET ORDINANCE AMENDMENT TO PROVIDE FUNDING FOR THE 1985-86 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM PROJECTS

5. Consideration was given to a budget ordinance amendment to provide funding for the 1985-86 Community Development Block Grant program projects.

Vice-Mayor Bratton said consideration was given to provide funding for the 1985-86 Community Development Block Grant program projects. The entitlement for 1985-86 of the City of Asheville in the amount of \$1,382,000.

Vice-Mayor Bratton 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. 1527. This motion was seconded by Councilman Boland.

On a roll call vote of 5-0, Ordinance No. 1527 passed on first and final reading.

Complete text of Ordinance No. 1527 will be found in Ordinance Book No. **10** at page **289**.

SCHEDULING PUBLIC HEARING - SITE PLAN OF PROPOSED BELVEDERE CONDOMINIUMS - BEAVERDAM ROAD

6. Consideration was given to a motion scheduling a public hearing for August 6, 1985, relative to the site plan of the proposed Belvedere Condominiums to be located on Beaverdam Road.

Vice-Mayor Bratton said the Asheville Planning and Zoning Commission at a meeting held July 10, 1985, reviewed the site plan of the proposed "Belvedere Condominiums" to be located on Beaverdam Road. The site plan was prepared by McGill Associates, Engineers, for Condominium Builders, Inc., Winston-Salem, N.C., Developer, 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 final approval of the driveway cut by the North Carolina Department of Transportation, compliance with the Erosion Control Ordinance, and contingency that water and sewer are available to the site.

Councilman Bissette moved to schedule a public hearing relative to the site plan of the proposed Belvedere Condominiums to be located on Beaverdam Road for August 6, 1985. This motion was seconded by Councilman Price and carried unanimously.

A discussion was held, initiated by Councilman Boland, relative to requiring developers to have drawings available for Council on site plans and group developments.

SCHEDULING PUBLIC HEARING - SITE PLAN OF PROPOSED "HAZELWOOD MOBILE HOME COURT" - NORTH LOUISIANA AVENUE

7. Consideration was given to a motion scheduling a public hearing relative to the site plan of the proposed "Hazelwood Mobile Home Court" to be located on North Louisiana Avenue for August 6, 1985.

Vice-Mayor Bratton said the Asheville Planning and Zoning Commission at a meeting held April 3, 1985, reviewed the site plan of the proposed "Hazelwood Mobile Home Court" to be located on North Louisiana Avenue. The site plan was prepared by Associated Land Technologies, Engineer, for Walter Weiss and Frank McGahren (W&M Investment), 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 the 6-inch water line being extended to fire hydrant, buffering along adjacent subdivision lots, no extension of roads into subdivision, and compliance with Erosion Control Ordinance.

Councilman Price moved to schedule a public hearing relative to the site plan for the proposed "Hazelwood Mobile Home Court" to be located on North Louisiana Avenue for August 6, 1985. This motion was seconded by Councilman Bissette and carried unanimously.

SCHEDULING OF PUBLIC HEARING - FINAL PLAT OF PHASE TWO OF THE HAZELWOOD SUBDIVISION TO BE LOCATED ON NORTH LOUISIANA AVENUE

8. Consideration was given to a motion scheduling a public hearing relative to the final plat of Phase Two of the Hazelwood Subdivision to be located on North Louisiana Avenue for August 6, 1985.

Vice-Mayor Bratton said the Asheville Planning and Zoning Commission at a meeting held April 3, 1985, approved the preliminary plat subject to buffering on Lots 36 through 47 and compliance with the Erosion Control Ordinance. Phase Two of the Hazelwood Subdivision is to be located on North Louisiana Avenue. This plat was prepared by S. V. Griffith, R.L.S. for Frank McGahren and Walter Weiss, Developers, and submitted in accordance with Ordinance 424, as amended.

Councilman Frank moved to schedule a public hearing relative to the final plat of Phase Two of the Hazelwood Subdivision to be located on North Louisiana Avenue for August 6, 1985. This motion was seconded by Councilman Price and carried unanimously.

RESOLUTION NO. 85-124 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE NECESSARY CONTRACTS FOR THE PURCHASE, INSTALLATION, AND MAINTENANCE OF A MICRO-

COMPUTER SYSTEM AND OPERATING SYSTEM FOR THE ASHEVILLE POLICE DEPARTMENT

9. Consideration was given to a resolution authorizing the City Manager to sign the necessary documents for the purchase, installation, and maintenance of a microcomputer system and operating system for the Asheville Police Department.

Vice-Mayor Bratton said sealed bids were invited to furnish computer equipment for use by the Asheville Police Department. One (1) bid was received. It is recommended to award a contract to Burroughs Corporation, Asheville, N.C. for the purchase, installation and maintenance of this equipment. This bid has been reviewed by the City's Data Processing Division and was found to be in compliance with the bid specifications. The cost of equipment, hardware and software totals \$39,223.00. Funds for this purchase will come from FY 84-85 appropriations account code 50-460-0740 and 10-460-

0740. Funds for the maintenance of this equipment will come from FY 85-86 appropriations.

Vice-Mayor Bratton 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 85-124 was unanimously adopted.

Complete text of Resolution No. 85-124 will be found in Resolution Book No. **15** at page **267**.

**AUTHORIZING CITY MANAGER TO SIGN LETTER OF INDEMNIFICATION - BELE CHERE HEAD-
QUARTERS - LEGAL BUILDING**

10. Councilman Bissette moved that the City Manager be authorized to execute a letter of indemnification to be given to Pack Plaza Associates, Limited Partnership, in order that the City may be able to use the Legal Building as headquarters for the Bele Chere festival for July 26-28, 1985.

This motion was seconded by Councilman Boland and carried unanimously.

WILLIAM DARDEN - SPRINGSIDE DRIVE - PROBLEMS IN RECEIVING A PERMIT TO KEEP CATS.

11. Mr. Darden of Springside Drive spoke to Council relative to his problem in obtaining a permit to keep more than six cats on his property. He said several animal control officers had been to his house to investigate whether or not he could obtain a permit. He said all of the animal control officers had indicated that they would approve him obtaining a permit. He said he was told that the City Manager's office had informed the Police Department not to issue the permit. He asked members of Council why his permit had not been issued.

Councilman Price said she had received a number of complaints relative to the cats at the Springside Drive residence.

Upon inquiry of Councilman Price, Mr. Darden said he presently has thirty-six cats.

Vice-Mayor Bratton requested that Mr. Darden make an appointment with the City Manager relative to his problem in obtaining a permit to keep the cats.

RALPH BISHOP - OBTAINING RECORDS RELATIVE TO THE POLICE PENSION BOARD

12. Mr. Bishop again spoke to members of Council relative to his difficulty in obtaining Police Pension Board Records.

PETITION - RESURFACING AND MAINTENANCE OF STEEP SECTION OF KILLIAN ROAD

13. Mrs. Betty Nelon, 32 Killian Road, read the following petition requesting the resurfacing and maintenance of the upper portion of Killian Road.

TO: HONORABLE MEMBERS OF ASHEVILLE CITY COUNCIL

SUBJECT: RE-SURFACING AND MAINTENANCE OF STEEP SECTION OF KILLIAN ROAD

Dear Sir:

We, the signers of this petition are residents and/or property owners of the steep section of Killian Road. We wish that officials in charge of our tax money had heeded our pleas to fix the road and not the bridge. As it now seems, we are going to end up with an expensive bridge (\$67,372) and a pot hole road. The money probably can be replaced by taxpayers, but the approximately 1/2 acre of rich, loam farmland that is covered with dirt and stone is ruined permanently. Possibly, some of you have been reading about the concern of destroying farmland in North Carolina.

In a letter from Mr. Larry Ward, PRD Director of Public Works, to Mr. T. Clark Brown, Director of Public Works, dated March 2, 1984, quote "Killian Road was state maintained up to the second road turning left which I believe is named Killian Lane. This is the only portion that became a city street. City standards would mean that there would have to be minimum of 20 feet of right-

of-way with a minimum of 16 feet of paved road." The black-top of Killian Lane is 14 feet at the widest point and narrows down to 10 feet at narrow point. Killian Lane was re-surfaced in 1982 by the city. This was when officials refused to re-surface the 353 feet of steep end of Killian Road.

We say that city officials who say the end of Killian Road is a private drive are wrong. We don't believe that city maps shows private drives. As you can see on the attached map, it shows all of Killian Road. This steep part of Killian Road was paved by city in about 1972 or 1973. Since then the city has installed a street light and patching of the road. We understand that it is city's obligation to continue maintenance of a street unless requested to discontinue by petition of residents.

We respectfully request that city council order the re-surfacing of subject street (as is) in the warm months of 1985.

Respectfully,

Residents of Killian Road

Stanley Masters

Martha Masters

Betty M. Nelon

George A. Nelon, Jr.

Bobby L. Troutman

Carmen Troutman

Hershal D. Effler

Ada M. Effler

Gary A. Reinhardt

Bill & Debbie Stamy

Jean M. Lure

Meredith S. Wanes

Mrs. Harold H. Wanes

Vice-Mayor Bratton informed Mrs. Nelon that the staff would be researching the request, and Council would be back in touch relative to the petition.

CLAIMS - BILLIE MONTEATH (WATER) - ED PULLIAM (WATER) - LES NOWINSKI (STREETS) - BELINDA WHITE (POLICE)

14. The City Manager presented claims received from Billie Monteath (Water), Ed Pulliam (Water), Les Nowinski (Streets), and Belinda White (Police).

Vice-Mayor Bratton referred the claims to the Corporation Counsel for investigation and recommendation.

COUNCIL RECESS

Vice-Mayor Bratton declared a five minute recess of Council.

APPEAL HEARING - H. R. KUYKENDALL - REQUEST FOR LINE OF DUTY DISABILITY RETIREMENT

15. An appeal hearing was held in the matter of H. R. Kuykendall's request for line of duty disability retirement.

Vice-Mayor Bratton said H. R. Kuykendall is appealing the decision of the Board of Examiners and the decision of the Board of Trustees of the Asheville Policeman's Pension and Disability Fund to the Asheville City Council for in line of duty disability retirement.

Vice-Mayor Bratton explained the procedure to be followed during the appeal hearing.

Mr. H. R. Kuykendall was sworn in by Vice-Mayor Bratton.

Scott Jarvis, attorney for H. R. Kuykendall, offered the following as evidence in the hearing;

1. Letter from Dr. Joe Burleson dated July 20, 1970.
2. Report from Dr. William Wilson - Memorial Mission Hospital - 11/30/79.
3. Report from Dr. Wilson - 2/12/80 - 2/25/80 - 3/4/80 - 3/11/80 - 4/8/80 - 5/7/80.
4. Letter from Dr. Louis Waller - November 17, 1980.
5. Letter from Dr. Louis Waller dated November 19, 1980.
6. Letter from Dr. William Wilson to Dr. Louis Waller dated June 29, 1981.

7. Letter from Dr. David Jarrett dated March 25, 1982.
8. Memorandum from Dr. William Wilson to Whom It May Concern dated May 20, 1982.
9. Letter from Dr. Louis Waller to Attorney Scott Jarvis dated June 18, 1984.
10. Copy of Worker's Compensation Report dated March 18, 1980.
11. Opinion and award - North Carolina Industrial Commission dated December 2, 1980.
12. Opinion and award from North Carolina Industrial Commission dated May 12, 1982.
13. Affidavit of James Hadden dated April 9, 1980.

(Note: A copies of all documents are attached to the original minutes of this meeting.)

In summary, Mr. Jarvis, Attorney for Mr. Kuykendall, stated that Mr.

Kuykendall was employed by the City of Asheville as a Police Officer in 1960, and was first injured in a traffic accident in 1969 on Tunnel Road where he was hit by an automobile and sustained injuries. He said Mr. Kuykendall had never fully recovered from that accident, however, after the accident in 1969, Mr. Kuykendall was put back to work in the Police Department doing light duty which continued for 10 years. He said on July 20, 1979, Mr. Kuykendall had been assigned to maintenance in the Police Department and was removing a counter to lay tile. He said in removing the counter Mr. Kuykendall found resistance and hurt his back which caused immediate acute problems. He said Mr. Kuykendall had been treated by his family physician, Dr. Waller, and had been examined by the North Carolina Baptist Hospital, Dr. Jarrett, and an orthopedic doctor, Dr. Capiello, at the request of the City of Asheville, and Dr. Wilson. He said in the end result, Dr. Wilson had identified a chronic inflammation of the muscle and connecting tissues which is called HLA-B 27. He said Mr. Kuykendall cannot stand or sit for any length of time without acute pain. He said the illness arose from the two incidences while working with the Asheville Police Department. He said Mr. Kuykendall is permanently and totally disabled.

Mr. Jarvis detailed each document presented to members of Council.

Mr. Kuykendall, upon questioning by Mr. Jarvis, detailed the injuries occurring while working at the Asheville Police Department in 1969 and in 1979 and his treatments by several doctors since that time.

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

In summary, Mr. Slawter questioned Mr. Kuykendall relative to his current treatment by Dr. Waller and the medications being taken by Mr. Kuykendall. Mr. Kuykendall indicated that he was unable to do any work at all. He said his only source of income was from Police Pension Benefits and his wife's income. Mr. Kuykendall said he was in the hospital the last time in December, 1980, for his back problems at which time Dr. Wilson had diagnosed his HLA-B- 27. Mr. Slawter asked Mr. Kuykendall to identify some pictures of Mr. Kuykendall's house and yard. Mr. Kuykendall identified such pictures, and indicated that Tuesdays and Wednesday are his best days since he receives a weekly shot from Dr. Waller for his condition, and that when he was seen working in his yard was probably on a Tuesday or Wednesday.

Corporation Counsel Slawter requested that he and Mr. Jarvis be allowed to make a list of all the documents presented

to the Council as evidence and any other documents that they wish to make a part of the record, and make the list and documents a part of the minutes of this meeting.

In his closing statement, Mr. Jarvis said that Mr. Kuykendall had been injured twice while working with the Asheville Police Department and continues to receive medical attention; has continual pain and is permanently disabled for reasons of work being done for the City of Asheville. He requested that Council award Mr. Kuykendall in line of duty disability benefits.

Vice-Mayor Bratton closed the hearing at 6:40 p.m.

After discussion, it was mutually agreed by Council and Mr. Jarvis, Mr. Kuykendall's attorney, that Council would deliberate the appeal in executive session on July 30, 1985, and render their decision in an open meeting on August 6, 1985.

(A tape recording of the hearing is available in the office of the City Clerk).

ADJOURNMENT

Upon motion of Councilman Price, seconded by Councilman Bissette, the meeting adjourned at 6:50 p.m.

MAYOR CITY CLERK
