

Tuesday - August 9, 1994 - 4:00 p.m.

Regular Meeting

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

Absent: Councilman Joseph Carr Swicegood

INVOCATION

Vice-Mayor Peterson gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 94-148 - RESOLUTION IN MEMORY OF REV. LACY T. HAITH

Mayor Martin read the resolution in memory of Rev. Lacy T. Haith and presented it to Mrs. Haith and his family.

Resolution No. 94-148 was adopted by acclamation.

RESOLUTION BOOK NO. 22 - PAGE 1

B. PROCLAMATION PROCLAIMING AUGUST 11, 1994, AS "ASHEVILLE KIWANIS CLUB DAY"

Mayor Martin proclaimed August 11, 1994, as "Asheville Kiwanis Club Day" in the City of Asheville and presented it to Mr. Vassie Cook, President of the Asheville Kiwanis Club.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION

RESOLUTION NO. 94-149 - RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION

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

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

Mr. Carl Ownbey, Urban Planner, said that the City of Asheville annually applies for financial assistance under the Section 9 program to aid in transit operations. The Federal Transit's share is \$644,130 and the City of Asheville's share, which includes State funds, is \$814,870.

Mayor Martin closed the public hearing at 4:16 p.m.

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

Councilwoman Field moved for the adoption of Resolution No. 94-149. This motion was seconded by Councilman McClure and carried unanimously. -2-

RESOLUTION BOOK NO. 22 - PAGE 2

B. PUBLIC HEARING RELATIVE TO VARIANCE REQUEST FOR THE WNC AGRICULTURAL CENTER

Mayor Martin opened the public hearing at 4:17 p.m.

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

Mr. Tony Nicholson, Urban Planner, stated that at the Planning and Zoning Commission's meeting on July 6, 1994, the Commission unanimously recommended approval of the WNC Agricultural Center expansion with four conditions as follows:

1. Confirmation of the water availability;
2. City Council grant a variance to provide for grass parking lots with gravel access aisles instead of paved parking lots, as required by the zoning ordinance;
3. City Council grant a variance in order to waive the 115 required parking lot trees; and
4. Compliance with the watershed protection requirements.

The Commission also recommended that the variance request to provide for grass parking lots be granted and that the variance request to waive the parking lot trees be denied.

He said the condition regarding compliance with the watershed protection requirements has been resolved by the Board of Adjustment and is no longer applicable.

Upon inquiry of Vice-Mayor Peterson of why the developer is requesting a variance to waive the parking lot trees, Mr. Nicholson responded that the developer was worried about the protection of the trees due to the gravel parking lot.

In response to a question by Councilwoman Field about the loss of parking spaces if they put the trees in, Mr. Nicholson said that they would lose some parking spaces, however, the number of spaces required by the zoning ordinance would still be met.

Councilwoman Sitnick said that the Planning and Zoning Commission was very clear in their discussions that the waiving of the parking lot trees should be denied. She stated that there are techniques to protect the trees.

Mr. Mike Calhoun, representative of Vaughn-Melton, consulting engineers for the project, said that they would have no problem in protecting the trees.

Mayor Martin closed the public hearing at 4:24 p.m.

Councilwoman Field moved to approve the variance to provide for grass parking lots with gravel access aisles instead of paved parking lots. This motion was seconded by Councilwoman Sitnick and carried unanimously.

Councilwoman Field moved to deny the variance to waive the requirement for parking lot trees. This motion was seconded by Councilwoman Sitnick and carried unanimously.

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Councilwoman Field moved to approve the site plan subject to the confirmation of water availability. This motion was seconded Councilwoman Sitnick and carried unanimously.

### III. UNFINISHED BUSINESS:

#### A. CONSIDERATION OF RESOLUTION TO CLOSE THE NORTHERNMOST 170 FEET OF SKYVIEW PLACE IN THE CITY OF ASHEVILLE, N.C.

Mayor Martin said that the public hearing on this matter was held on June 21, 1994. He said that on July 19, 1994, the matter was again discussed and continued until this date.

City Manager Farris said that the City has no legal authority over the road, particularly the authority to close the road. In addition, he reminded the Council of some research conducted by the Legal Department, which appeared to indicate that some of the property owners on Skyview Place have deeded rights-of-way to cross the Sutton's property.

City Manager Farris reported that the Engineering Department has done a report on the options (as follows):

Closing of Skyview with dead-end - Closing the northwestern end as requested would necessitate the need for construction of a proper cul-de-sac. This cul-de-sac should have a circular area with an asphalt radius of 35 feet for vehicles including garbage collection and fire fighting equipment to turn around. The steep drop off to Sunset Drive along with the short distance between the drive and the corner of the Sutton's house and adjacent house front will only permit construction of a radius of about 15 feet. A 15 foot radius is not adequate for a turn around. Due to this inadequacy and the objection of two other property owners to the closing, the City Engineer did not recommend a closing of this end to be considered further.

Rerouting of Skyview onto Sunset - Rerouting Skyview onto Sunset near the edge of the Sutton property and closing the existing drive in front of their house were considered. Grades for residential streets should not exceed 15%. The street should also have a proper site distance at its intersection for oncoming traffic. The grade would be over 70% and the sight distance would be marginal. Due to this unacceptable grade, the City Engineer did not recommend a rerouting onto Sunset be considered further.

Earthen Fill Bank - The stabilization problem the Suttons are having results from the recent rains and relatively uncompacted fill material in front of their house trying to be held in place by rotting wooden railroad ties. Adding to the problem is storm water drainage coming off Town Mountain Road via a natural swale into a portion of the fill. The Suttons have recently rerouted some of this storm water away from the bank fill. The fill bank appears somewhat unstable at this time and the continued rains are still a concern. The City Engineer recommended the continued temporary closing of Skyview Place at the west end to allow the Suttons a working area to stabilize their bank and also as a safety precaution.

Recommendations - The City Engineer did not recommend a permanent closing of Skyview Place at the northwestern end or a rerouting of Skyview onto Sunset. As a homeowner's private project, the most cost effective solution may be the use of concrete ties as a "crib wall" arranged somewhat similar to the wooden ties now in use which have

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lasted over 10 years. Also, the City Engineer recommended the Suttons continue their effort to reroute storm water away from the bank fill. The City Engineer did not recommend a detailed design or calculations to be supplied by City Engineering to the Suttons, as this could involve a future City liability.

Mayor Martin asked if Town Mountain Road were a State road, meaning that the City of Asheville has no jurisdiction over it. City Manager Farris confirmed that to be true.

Councilwoman Field asked if Mr. Farris were suggesting that the City of Asheville participate in the cost of shoring up the Suttons' property. He said that he was not recommending that, but he would be willing to treat this as an emergency situation and put some equipment up there to help the Suttons with the rerouting of the stormwater. He said that the would try to get this accomplished as quickly as possible.

Mr. Sutton said that he understood that the City was saying it would not close the road, but wondered about the reconstruction of the retaining wall and what portion of the road could be closed.

City Manager Farris said the City has no right to close the road and may not have the right to prevent it. He said that question is between Mr. Sutton and the other property owners.

Mr. Sutton asked about his right to close the road and said that before any construction is done, he wanted the City to talk to his attorney. Mayor Martin said that his attorney was welcome to contact the City Attorney for information.

Assistant City Attorney Meldrum said that the question seemed to be whether or not the City has any right to go in and make any changes to the road. She explained that it is her understanding that the City couldn't find evidence of its acceptance of Skyview Place and absent that, the City has no responsibility regarding the maintenance, correction nor the closing of the road. It is a deeded right-of-way across the platted lots which the other abutting property owners have an interest in and Mr. Sutton would need to make an agreement with them about what changes would be made, if any.

Councilwoman Field said that she would talk with Gordon Myers on the local Board of Transportation to see what kind of improvements NC DOT can make on Town Mountain Road.

There being no motion to close that portion of the road, the resolution died.

#### IV. NEW BUSINESS:

##### A. FINAL PLAT APPROVAL FOR PHASE 3 OF DEVONSHIRE SUBDIVISION

Mr. Tony Nicholson, Urban Planner, said that Beverly-Grant Inc. has submitted the final plat for Phase 3 of the Devonshire Subdivision, located on Hendersonville Road south of the Blue Ridge Parkway. This phase of the 89 lot subdivision will contain 12 lots which will be assessed by approximately 640 feet of new street.

The plat has been reviewed by the Planning, Legal, and Public Works staff for compliance with the City's requirements. The preliminary plat for the subdivision was approved by the Planning & Zoning Commission in March 1992 and this approval has been reaffirmed annually.

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Councilman McClure moved to approve the final plat for Phase 3 of Devonshire

Subdivision. This motion was seconded by Councilman Watts and carried unanimously.

B. RESOLUTION NO. 94-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AND RELATED DOCUMENTS BY AND BETWEEN THE CITY OF ASHEVILLE AND ORKAND CORPORATION FOR SPACE IN THE WALL STREET PARKING DECK

Assistant City Attorney Meldrum said that on September 1, 1989, the City leased to Wall Street Limited Partnership a portion of the lower level of the Wall Street Parking Garage which was designed for use as retail space or for other alternate uses as approved by the City Manager. That lease, which was amended on October 30, 1991, commenced on September 1, 1989, and ends on August 31, 1999, unless terminated earlier.

One-half of this space has been formerly subleased by Wall Street Limited Partnership to Stewart Cowles for a climbing shop and school. Another tenant is now interested in the remaining space. That tenant is The Orkand Corporation who will use the space as an independent photographic lab for the National Climatic Data Center.

The Orkand Corporation desires a ten-year lease, commencing on September 1, 1994. The City of Asheville would need to approve the sublease of the space from Wall Street Limited Partnership for the remainder of the term of its lease (until August 31, 1999). As the proposed ten-year term would extend after the current term of the Wall Street Limited Partnership lease, the City would need to approve the execution of a separate lease with The Orkand Corporation for a term commencing on September 1, 1999, and ending on September 30, 2003.

Upon inquiry of Councilman McClure about termination of the lease for either privatization or whatever, Assistant City Attorney Meldrum said that this type of lease would require a Memorandum of Lease to be recorded at the Courthouse and if the City sold that property, the subsequent property owner would have to take it over subject to that lease. She felt that part of the negotiations about the sale of the property would include the value of the lease as well as the value of the rest of the real estate.

Councilman McClure questioned what was the City's advantage to going to a 10 year term. He felt it might be limiting on both parts and suggested a five year term with renewal options. Ms. Meldrum responded by stating what Orkand's proposal was.

City Manager Farris noted that one condition of the lease is that they upfit the interior because this is currently only "shell" space and they wanted to be able to amortize their improvements. He said that the lease requires them to put in a minimum to \$60,000, which will include heating, air conditioning, restrooms, interior walls, carpeting, ceiling tiles, etc.

Vice-Mayor Peterson also felt 10 years was a long time for this lease and suggested a 5 year lease with the remainder to be negotiated.

Ms. Meldrum stated that the City can propose Vice-Mayor Peterson's suggestion. She then quoted the termination provisions in the lease as questioned earlier by Councilman McClure.

Councilman McClure suggested language to address the situation if the City no longer takes responsibility for those parking decks by -6-

providing that the lease would need to be renegotiated at that time. Ms. Meldrum reminded Council that the Memorandum of Lease would be recorded so anyone who takes it over by conveyance or contract would take it subject to

that existing lease.

City Manager Farris said that since the City is locked into the lease for the five years, perhaps we could propose, rather than the \$25.00 annual escalation, an annual escalation of 5%, or have the escalation tied to the Consumer Price Index.

Councilman McClure also asked that the lease include a buy-out clause for both parties for early termination of the lease.

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

Councilwoman Field moved for the adoption of Resolution No. 94-150, subject to the change in terms of the lease agreement of an escalation clause fixed to the Consumer Price Index, or a minimum amount of increase, whichever is greater, and the buy-out clause for both parties be added. This motion was seconded by Vice-Mayor Peterson and carried unanimously.

RESOLUTION BOOK NO. 22 - PAGE 4

C. ORDINANCE NO. 2133 - AN ORDINANCE REDUCING THE SPEED ON KEASLER ROAD AND ST. DUNSTANS ROAD TO 20 MPH AND REDUCING THE SPEED ON FULTON STREET AND WOODROW STREET TO 25 MPH

City Manager Farris said that this ordinance will change the speed limit on Keasler Road and St. Dunstans Road to 20 miles per hour and will reduce the speed on Fulton Street and Woodrow Street to 25 miles per hour.

Mr. Rick Crawford, 172 St. Dunstans Road, spoke in support of reducing the speed limit.

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. 2133. This motion was seconded by Councilman McClure.

On a roll call vote of 6-0, Ordinance No. 2133 was adopted on its first and final reading.

ORDINANCE BOOK NO. 14 - PAGE 278

D. ORDINANCE NO. 2134 - ORDINANCE AMENDING CHAPTER 15A REGARDING STORMWATER REGULATIONS

City Manager Farris said that this ordinance will amend Chapter 15A by adding to the exemptions from its coverage any subdivision which received preliminary plat approval prior to July 1, 1994, the effective date of the stormwater ordinance.

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. 2134. This motion was seconded by Councilwoman Field.

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On a roll call vote of 6-0, Ordinance No. 2134 was adopted on its first and

final reading.

ORDINANCE BOOK NO. 14 - PAGE 279

V. CONSENT:

Mr. Ralph Bishop questioned if the August 2, 1994, meeting was properly advertised. Mayor Martin responded that it was.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON JULY 19 AND AUGUST 2, 1994

B. RESOLUTION NO. 94-151 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO SIGN PREAUDIT CERTIFICATES AND EXECUTE CONTRACTS UP TO THE STATUTORY LIMITS REQUIRED FOR FORMAL BIDDING

Summary: This resolution will initiate the process developed by a staff team for centralizing the handling of service contracts in the Purchasing Division. This process will greatly improve the control over as well as streamline the City's contracting procedures.

The process will utilize a new requisition/authorization format. Preaudits will be made in Purchasing through their automated purchasing system that has "on-line" inquiry to expenditure accounts.

RESOLUTION BOOK NO. 22 - PAGE 4

C. RESOLUTION NO. 94-152 - RESOLUTION REQUESTING MSD TO REHABILITATE THE SEWER LINE SERVING NOS. 34, 36, 38, AND 42 AZALEA ROAD

Summary: As part of the MSD Agreement with the City dated November 21, 1989, MSD shall spend up to \$200,000 in any one fiscal year for the take over and rehabilitation of private sewer systems. Projects will be addressed by MSD on a first come, first serve basis each year.

The City has received a request from the homeowners of Nos. 34, 36, 38 and 42 Azalea Road that the City make a formal request to MSD for rehabilitation of the collector sewer system serving their homes.

RESOLUTION BOOK NO. 22 - PAGE 5

D. RESOLUTION NO. 94-153 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND MOTOROLA COMMUNICATIONS AND ELECTRONICS INC.

Summary: This resolution recommends executing an agreement with Motorola Inc. for continuing services on the City's 800 MHz radio communication system. The initial service agreement that has provided coverage to date, was included in the original contract awarded to Motorola in 1990.

New service equipment negotiated with Motorola, covers all fixed and mobile equipment associated with our system, at a cost of \$9,906.80 per month. For cost comparison, staff surveyed other agencies with the 800 MHz system to obtain their cost for this service. Their survey included the City of Salisbury, City of High Point and -8-

Charlotte/Mecklenburg. From this survey it was determined that our cost for service is equal to other agencies cost. Also, when compared to our cost for the initial service agreement with Motorola, the new agreement is competitively priced.

RESOLUTION BOOK NO. 22 - PAGE 6

E. RESOLUTION NO. 94-154 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE SUPPLEMENTAL SCHEDULE ORDERS FOR SOFTWARE LICENSE RENEWAL WITH UNISYS CORPORATION

Summary: This resolution recommends executing agreements with Unisys Corporation to allow continued use of the current hardware and software products for the City's mainframe computers. The initial five year operating software license expired on June 30, 1994, for all of the operating software on the City's Administrative mainframe computer, for nearly all of the operating software on the City's Developmental mainframe computer, and for some of the operating software on the City's Criminal Justice mainframe computer.

The new agreements allow use of the operating software on the City's Administrative and Developmental mainframe computers for three additional years, and use of the operating software on the City's Criminal Justice mainframe computer for one additional year. The reason that the licenses are not recommended for renewal for another five year period is that we may replace the computers before then due to obsolescence of the computer hardware and software. The Criminal Justice mainframe computer may be replaced as soon as 12 to 18 months from now, pending award of bids currently under review.

Unisys Corporation is the sole provider of the operating software. The City is satisfied with the total license renewal cost of \$96,724.90, and the associated hardware and software support contracts in the amount of \$8,938 per month.

RESOLUTION BOOK NO. 22 - PAGE 7

F. MOTION SETTING A PUBLIC HEARING ON AUGUST 23, 1994, TO DESIGNATE ST. MARY'S EPISCOPAL CHURCH, RECTORY AND GROUNDS LOCATED AT 337 CHARLOTTE STREET AS A LOCAL HISTORIC LANDMARK

G. MOTION TO RESCHEDULE PUBLIC HEARING ON PUBLIC HOUSING PROJECT OF THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE AT THE CORNER OF VIRGINIA AND BROTHERTON AVENUES FROM AUGUST 23, 1994, TO SEPTEMBER 20, 1994

H. MOTION SETTING A PUBLIC HEARING FOR AUGUST 23, 1994, FOR THE REVIEW OF THE REVISED CABLE TELEVISION RATE SCHEDULE SUBMITTED BY TCI CABLEVISION OF ASHEVILLE

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

Council asked the City Manager to provide them with information before the August 23 public hearing regarding TCI Cablevision and if their rates are in line with other cities.

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## VI. OTHER BUSINESS:

### A. GROUP DEVELOPMENTS

Mr. Tony Nicholson, Urban Planner, said the City Council adopted a procedure whereby the Planning Director reports final recommendations of

the Planning and Zoning Commission relative to group developments at the next scheduled regular meeting of the City Council. He said, in accordance with this procedure, the action of the Commission shall be final unless the City Council

determines at their meeting to schedule a public hearing on the matter. He said the following actions were taken by the Planning and Zoning Commission on August 3, 1994:

#### Lowe's Addition on South Tunnel Road

Mr. Nicholson said that on August 3, 1994, the Planning and Zoning Commission unanimously recommended approval of the Lowe's addition, with one condition - confirmation of water availability and adequate fire protection. He said that the confirmation of water availability has been received.

Council accepted the report of the Planning and Zoning Commission, thereby approving the project by taking no action.

#### B. ORDINANCE NO. 2135 - BUDGET AMENDMENT FOR WELLINGTON STREET SIDEWALK

Ms. Vicki Heidinger said that this budget amendment, in the amount of \$50,000, sets up the appropriation for the Wellington Street sidewalk project. This project will utilize the existing \$50,000 set aside for sidewalks in the current Street and Sidewalk Improvement Plan.

City Manager Farris said that a neighborhood meeting was held to let the property owners know the specifics of the project.

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. 2135. This motion was seconded by Councilwoman Sitnick.

On a roll call vote of 6-0, Ordinance No. 2135 was adopted on its first and final reading.

#### ORDINANCE BOOK NO. 14 - PAGE

#### C. COMMENTS BY RALPH BISHOP

Mr. Ralph Bishop addressed several questions and comments to the Council as they related to adequate meeting notices and abolishment of State law.

#### D. COMMENTS BY HENRY MITCHELL

Mr. Henry Mitchell, Vice President of the Oakley Homeowners Association, presented Council with a list of 18 items that they feel will alleviate the adverse effects caused by excessive through-traffic in their community.

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Councilwoman Sitnick thanked the Association for the amount of work they put into the list which is good ground work for the Council. She also felt that a Street and Sidewalk Committee, made of up representatives from every neighborhood, was a good idea.

#### E. CLAIMS

City Manager Farris said that the following claims were received by the City of Asheville during the week of July 17-23, 1994: Sandra Sonner (Water), Carol McNeil (Streets), Patricia Swan (Public Works), Mary L. Carney (Streets), Roger Moore (Sanitation), Bruce Greene (Streets) and Wellmon & Floree Eaves (Water).

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

F. LAWSUITS

City Manager Farris said that the following lawsuit was served upon the City of Asheville on July 25, 1994: County of Buncombe v. McDaniel, et ux. and City of Asheville, et al.

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

VII. CONTINUANCE:

At 5:25 p.m., Vice-Mayor Peterson moved to continue this meeting until 2:15 p.m. on Thursday, August 11, 1994. This motion was seconded by Councilwoman Sitnick and carried unanimously.

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CITY CLERK MAYOR

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