

REGULAR MEETING CITY COUNCIL
May 5, 2008

The City Council of the City of Albemarle met in a regular session on Monday, May 5, 2008, at 7:00 p.m. in the City Hall Annex. Mayor Elbert L. "Whit" Whitley, Jr. presided, and the following Councilmembers were present, to-wit: Troy E. Alexander, Martha Sue Hall, Judy Holcomb, Jeanette M. Napier, Jack F. Neel, T. Ed Underwood and T. E. White. Absent, none.

The Reverend Jim Tucker was not present to deliver the invocation. Mayor Whitley delivered the invocation in his absence.

Upon a motion by Councilmember Holcomb, seconded by Councilmember Napier and unanimously carried, the minutes of the April 21 regular session, April 21 closed session, April 22 adjourned morning session, and the April 22 adjourned evening session were approved as submitted.

A public hearing was held to consider the request of Mr. Eston West to rezone 19.1 acres east of Heathwood Drive from R10/Single Family Residential to R8A/Multi-Family Residential. The request is being made for the construction of an apartment complex. This is the complex that had originally been proposed on Fox Run Drive, but abandoned by the developers after they discovered the site preparation would be too costly due to the rock on the property. Mr. West indicated 44 units are planned for construction.

Upon a motion by Councilmember White, seconded by Councilmember Hall and unanimously carried, the public hearing was closed.

Upon a motion by Councilmember Hall, seconded by Councilmember White and unanimously carried, the following Resolution was duly approved:

(Resolution 08-16, To rezone 19.1 acres off of Heathwood Drive from R10/Single Family Residential to R8A/Multi-Family Residential District.)

Upon a motion by Councilmember White, seconded by Councilmember Hall and unanimously carried, an Ordinance entitled (Ordinance 08-16) “AN ORDINANCE OF THE CITY OF ALBEMARLE, NORTH CAROLINA TO AMEND THE ZONING ORDINANCE OF THE CITY OF ALBEMARLE, NORTH CAROLINA” passed first reading.

A public hearing was held to consider the recommendation of the Planning and Zoning Board to amend the Zoning Ordinance concerning the regulation of above ground pools. No one from the public spoke for or against the proposal.

Councilmember Neel asked about the current fencing requirements for pools. Director of Planning and Community Development Bob Sasser said the fencing requirement currently only applies to in-ground pools. There is less of a hazard with above ground pools and a fence is not economically practical given the lower cost of some above-ground pools. He did note that the proposal is for ladders on above-ground pools to be raised when the pool is not in use. Councilmember Neel said it was his feeling that ladders should be required to be removed from above-ground pools when they are not in use and that he has no problem requiring fencing around above-ground pools to ensure child safety. Councilmember Hall agreed children need to be kept safe. Councilmember Holcomb said she too is concerned about safety, but it is not practical to require fencing around above-ground pools. She also felt the City can only do so much and parents must take some responsibility in the matter.

Councilmember Neel said the word "should" in the proposed Ordinance should be replaced with "shall", as shall is a legal term meaning required. Councilmember White stated he believed the word "must" should be used since it is clearer to the average person of what is being required.

Councilmember Hall asked if pool covers should also be required when a pool is not in use. Councilmember Neel said pool covers are dangerous for children and animal, as they can drown in the rainwater that has collected on the cover.

Upon a motion by Councilmember White, seconded by Councilmember Alexander and unanimously carried, the public hearing was closed.

Upon a motion by Councilmember White, seconded by Councilmember Alexander and unanimously carried, the following Resolution was duly approved:

(Resolution 08-17, To require above ground pools to be located in the rear yards in all residential zones and to establish safety requirements.)

Upon a motion by Councilmember Neel, seconded by Councilmember Hall and unanimously carried, an Ordinance entitled (Ordinance 08-17) “AN ORDINANCE OF THE CITY OF THE CITY OF ALBEMARLE, NORTH CAROLINA AMENDING THE CODE OF ORDINANCES OF THE CITY OF ALBEMARLE, NORTH CAROLINA BY REVISING SECTION 92.074, OF THE ZONING ORDINANCE RELATING TO PERMITTED USES IN R-10 SINGLE FAMILY RESIDENTIAL DISTRICTS IN THE CITY OF ALBEMARLE, NORTH CAROLINA” passed first reading as amended to list all instances of “shall” or “must” as “shall (must)”, to require ladders be removed on above-ground pools when the pools are not in use and to eliminate any reference to pool covers.

Ms. Sandy Burris, Cruisin’ Downtown Albemarle Committee, appeared as an announced delegate to discuss the event. She said two events have been held with great success. They have received a great deal of positive comments and the Committee continues to work on making it even better. The next event will be held on Friday, May 16. The feature will be a specialty ice cream truck.

Council thanked Ms. Burris and the Committee for their work on making the event a success.

The City Council considered the request of Mr. Joe Calloway for the utilization of the assessment fees to pave Rotary Drive between Lynway Drive and the Northeast Connector. A memorandum from Assistant City Manager Michael Ferris explained that when Mr. Calloway first approached the City about this issue, it was strictly for residential paving. Since that initial contact, property adjoining Rotary Drive is proposed for commercial development and the City’s commercial development policy would require paving of Rotary Drive from the commercial driveway to the Northeast Connector at private cost. Mr. Calloway requested he

be allowed to pay the City an amount equal to the assessment for the City to pave Rotary Drive.

Councilmember Neel asked how wide the street would be paved. Public Works Director Michael Lambert indicated Council's policy does not allow a street less than 20-feet wide.

Upon a motion by Councilmember Neel, seconded by Councilmember Napier and unanimously carried, the City Council agreed to pave Rotary Drive if the full amount of \$12,858.75 is paid prior to the implementation of the construction project.

Mr. Stephen Chambers, Lillian Mills Partners, appeared before the Mayor and City Council to discuss revisions to the agreement with the City for a Rural Center grant. He said accountants have advised him the grant would be considered taxable income, and they would therefore lose some of the benefit of the grant funds. He said the revised agreement transforms the grant into a no interest loan that would not have to be repaid until 2040.

Mr. Chambers indicated that ARC Services would be responsible for the required job creation. Councilmember Holcomb asked who would be responsible if the jobs were not created as promised. The City Manager said that Arc Services and the Lillian Mills Partners would be responsible. He said the Rural Center has never required a local government in the past to be responsible for a loan repayment in the case when the job promise was not fulfilled, but there is no guarantee they would not in the future.

Councilmember Holcomb moved for a revised agreement between the City and the Lillian Mills Partners for a Rural Center Grant. The motion was seconded by Councilmember Underwood.

Councilmember Neel said he wanted the public to understand the City is talking about a \$150,000 grant and it is different from the Urban Redevelopment Grant the City received and provided a loan of \$800,000 for this same project. Mayor Whitley said he thought it was important for the public to be aware these were all grants received by the City and no direct local money was being provided.

Mr. Chambers indicated the ribbon cutting for the project will be Friday, May 9 at 1:00 p.m.

Councilmember Alexander asked about the plan for the sidewalk on Pee Dee Avenue. He noted it was not in good shape. The City Manager said the sidewalk will be replaced by the City as part of its grant contribution after other infrastructure improvements are made.

Mr. Chambers thanked the City for its participation in the project and noted it could not have been accomplished without all the help from the City.

Upon a vote on the motion to approve the revised agreement, the motion was unanimously carried.

The Mayor and City Council considered Ordinance 08-15 on second reading. Councilmember Holcomb said she would vote against the Ordinance because of the payment of the former Wiscassett property recently purchased by the City.

Upon a motion by Councilmember White, seconded by Councilmember Hall, the following Ordinance passed second reading and was duly adopted:

(Ordinance 08-15, To appropriate fund balance and retained earning for the City Hall Project and Wiscassett property purchase.)

Voting in favor of the motion were Councilmembers Alexander, Hall, Neel Underwood and White. Voting in opposition to the motion were Councilmembers Holcomb and Napier.

The Mayor and City Council continued their discussion to make City voting districts coincide with precinct boundaries. Mayor Whitley said the meeting with the Board of Elections was very helpful and informative. Councilmember White said he hoped the Board of Elections would follow-up on their commitment to better educate voters about their polling place.

Councilmember Hall felt the City should respond to the Board of Elections after the primary elections. Councilmember Neel said the City needs to let the Board know they agree with their offer to make one polling place per City

electoral district for municipal elections only. Councilmember Hall said this would save money by reducing the number of polling places during municipal elections.

Upon a motion by Councilmember Alexander, seconded by Councilmember Underwood and unanimously carried, the City Council voted to request the Board of Elections create one polling place in each City voting district during City elections.

The Mayor and City Council continued their discussion of a proposed agreement with the North Carolina Department of Transportation for utility relocation costs associated with the relocation of US Highway 52. Mayor Whitley indicated the City feels the NCDOT policy of only requiring cities over 5,500 in population to pay this cost is unfair. City Attorney indicated that he did not draft a letter to the NCDOT as requested because a lawsuit cannot be brought for discrimination because it does not fall under a situation where discrimination can legally apply. He did note that he is not an expert on Constitutional law and said he would have no problem if the City wanted to seek outside counsel on this matter.

Upon a motion by Councilmember Hall, seconded by Councilmember Neel and unanimously carried, the City Council held over further discussion to the closed session in order to consult further with the City Attorney.

The Mayor and City Council discussed the status of the City Hall project. The City Manager said the grading portion is going well. Demolition of the addition on the back of the temporary Finance building has begun.

The general contractor for the project has requested the City utilize the NCDOT index for paving costs because these prices are changing rapidly and the paving will not take place for several more months.

Upon a motion by Councilmember Alexander, seconded by Councilmember Hall and unanimously carried, the City Council approved allowing the use of the NCDOT index for paving costs.

Councilmember Alexander asked about the Confederate soldier statue and where it will be moved. The City Manager said the statue will be moved southeast toward the front of the building.

The Mayor and City Council were reminded updates to the Code of Ordinances were now available and they should bring their books in for updating.

Upon a motion by Councilmember Holcomb, seconded by Councilmember Hall and unanimously carried, the City Council set a public hearing for June 2 to consider the recommendation of the Planning and Zoning Board to amend the Zoning Ordinance to allow winery operations and tasting rooms in a GHBD/General Highway Business District.

The City Manager presented the City's proposed FY 2008/2009 Budget. He indicated that for the fifth consecutive year the Budget does not include a property tax increase. He noted there are no new positions in the budget, but there are a number of capital expenditures and City Departments will be able to operate as usual.

He did note there are water and sewer increases of 5% each for usage over 300 cubic feet per month. There is also a proposed 1.4% electric rate increase to offset a wholesale increase to the City.

Upon a motion by Councilmember White, seconded by Councilmember Hall and unanimously carried, the City Council set a public hearing for May 19 to consider the proposed Fiscal Year 2008/2009 City of Albemarle Budget.

Councilmember White commended the City Manager and his staff for putting together a balanced budget of this magnitude. He noted that in 2001, the City of Albemarle was the only jurisdiction in Stanly County to lower its tax rate after a recent property revaluation.

Councilmember Neel said he has been reading recently about units of government in Arkansas and California declaring bankruptcy. He said the City

has been well managed during difficult economic times to provide a high level of services.

Councilmember Hall asked Public Works Director Michael Lambert about the increase in fuel prices. Mr. Lambert said he is budgeting for a 25% increase over the current year's usage.

Mayor Whitley commended the City Manager on his work to develop the budget, noting he often sees Mr. Allen in the office working on Saturday and Sunday mornings.

Upon a motion by Councilmember Hall, seconded by Councilmember Underwood and unanimously carried, the following Resolution was duly adopted:

(Resolution 08-18, To thank Stanly County Commissioners for adopting a downtown investment program as requested by the City of Albemarle.)

Upon a motion by Councilmember Holcomb, seconded by Councilmember Hall and unanimously carried, the City Council approved a letter to the Stanly County Board of Commissioners requesting that a portion of the revenues provided from the Albemarle ABC System for alcohol rehab be provided for improvements at the AA building.

The Mayor and City Council considered an agreement with US Tire for tire recycling services.

Upon a motion by Councilmember Alexander, seconded by Councilmember Underwood and unanimously carried, the City Council approved an agreement with US Tire for tire recycling services.

The Mayor and City Council reviewed information concerning recycling options and landfill costs. Director of Public Works Michael Lambert

was available to discuss the options and costs. He reviewed the cost of curbside recycling and a drop off site.

Councilmember Alexander asked if Mr. Lambert knew what the value of the extended life of the landfill would be if all the potential recyclable materials were actually recycled. Mr. Lambert said he did not know and there was no way of knowing what the potential recycled volume was. He said he has been advised that a municipality the size of Albemarle could expect about 1,000 pounds of recyclable materials a year to be collected in a curbside program. The City Manager asked Mr. Lambert if he would take the 1,000 pounds figure and use that to determine the cost of the saved landfill space.

Upon questioning the City Manager indicated the cost to support recycling program was not included in the budget. He said that this was provided in the budget in the years after Council eliminated the curbside recycling program, but that Council needs to come to some consensus before it is included again in the budget.

Councilmembers Alexander and White commended the City for the amount of recycling that takes place at the City's landfill facility.

Councilmember Hall noted a great deal of materials could be kept out of the waste stream by businesses if they recycle office paper.

The Mayor and City Council discussed the City's Ordinances of prohibiting recreational campers to be used as a place of residence on residential lots. This item was placed on the agenda at the request of Councilmember Hall. She said a fire recently destroyed the residence of a family in Albemarle. They wanted to live on the property in an RV camper while construction takes place, even though they had funding assistance for temporary housing. She thought the City Council might want to consider changing their policy that currently does not allow this type of activity.

Councilmember White said there would certainly need to be setback requirements and this should only be allowed for very specific instances and for a specific period of time.

Mayor Whitley suggested this issue be discussed with the members of the Planning and Zoning Board and the Zoning Board of Adjustment at their May 7 meeting.

Councilmember Neel asked if allowing visitors in RVs to stay in the RV while in town was permitted. Director of Planning and Community Development Bob Sasser said it does happen, but is probably a technical violation of the law.

The Mayor and City Council discussed the Centralina Council of Governments Board of Delegates meeting scheduled for May 14. The City's delegate Councilmember Hall has a conflict and cannot attend. She asked if anyone would attend the meeting in her place. No one else indicated they would represent the City at this meeting.

The Mayor and City Council selected May 20 at 5:00 p.m. in the City Hall Annex as the date for additional paperless agenda training.

The City Council rescheduled the May 8 Budget Work Session to Tuesday, May 13 at 6:00 p.m. due to a conflict with the Stanly County Sports Hall of Fame Banquet.

The Mayor and City Council were reminded of the May 7 meeting with the members of the Planning and Zoning Board and the Zoning Board of Adjustment at the Rosebriar Restaurant at 6:30 p.m.

The Mayor and City Council reviewed a letter from the Albemarle ABC System indicating they would be making a quarterly profit payment to the City of Albemarle in the amount of \$10,000. The City Manager indicated in his memorandum that the City received its first payment last week.

Upon a motion by Councilmember Hall, seconded by Councilmember Napier and unanimously carried, the City Council adjourned to closed session pursuant to NCGS 143-318(a)3 to consult with the City Attorney.

Upon a motion by Councilmember Underwood, seconded by Councilmember Napier and unanimously carried, the City Council reconvened to open session. Mayor Whitley announced that a closed session was held pursuant to NCGS 143-318(a)3 to consult with the City Attorney.

Upon a motion by Councilmember Hall, seconded by Councilmember Underwood and unanimously carried, the City Council voted to seek support from the North Carolina League of Municipalities on the issues involving the NCDOT policy to require only municipalities over 5,500 in population to pay for utility relocation cost in NCDOT projects, and to seek legislative relief through the City's local legislative delegation.

Councilmember Hall said there was a recent study commission of the NC General Assembly that recommended a moratorium on municipal annexation. She felt the Council should provide some direction to the City Manager on what the City's position is on this matter. Councilmember Neel said the City should contact the legislative delegation opposing the moratorium.

The City Manager indicated he would draft a letter for the signatures of the Mayor and City Council opposing the annexation moratorium.

Councilmember Neel said that a recent Albemarle Downtown Development Corporation Planning Retreat there was discussion about a perceived parking problem in the downtown area. A study committee has formed from this meeting to review downtown parking and they would like to meet with the City Council in the near future to discuss the matter.

Mayor Whitley suggested the meeting be held after the City has completed its budget process.

Councilmember Neel said there was a great deal of black plastic pipe in front of a structure on Pee Dee Avenue that was completely blocking the sidewalk. The City Manager said this was removed over the weekend.

Councilmember Neel complimented the Public Works Department for their work in widening a section of Leonard Avenue.

Councilmember Neel said a light in the City Council Chambers has been blinking and needs to be replaced.

Councilmember Neel says the City needs to adopt an Ordinance to require two ways in and out of apartment complexes with over 50 units.

Councilmember Alexander asked if the City had an Ordinance designating a setback for trees in relation to property lines. The City Manager indicated the City did not have such an Ordinance.

Upon further discussion, the City Manager said staff would research other municipalities to see if they had anything like this.

Councilmember Alexander reported the vegetation at the intersection of Pee Dee Avenue and North Tenth Street has not been cut. The City Manager said the Public Works Department has left notice at the property and would see when the compliance period expires and when the City can take action if the property owner does not.

Mayor Whitley asked the City Manager to speak on recent discussions about a possible partnership with Stanly Community College about a new West Albemarle Community Police Substation. City Manager Allen said he

spoke with Dr. Michael Taylor about this and the community college might be willing to pay for part of a new facility.

Mayor Whitley said he would ask Dr. Taylor for a formal proposal.

Upon a motion by Councilmember White, seconded by Councilmember Napier and unanimously carried, the City Council adjourned to Tuesday, May 6 at 5:00 pm. for a Budget Work Session.