

NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-4063

ROBERT WRIGHT, MARK MICHALEC,)
and SCOTT SHIPMAN individually and on)
behalf of all others similarly situated,)
)
Plaintiffs)
)
v.)
)
CITY OF CHARLOTTE,)
)
Defendant.)

**MOTION FOR SUMMARY
JUDGMENT ON PLAINTIFFS'
THIRD CLAIM FOR RELIEF
(LIABILITY ONLY)**

NOW COME PLAINTIFFS Robert Wright, Mark Michalec, and Scott Shipman pursuant to Rule 56 of the North Carolina Rules of Civil Procedure and move the Court for entry of Summary Judgment on Plaintiffs' Third Alternative Claim for Relief. Defendant City of Charlotte is liable for and required to return to plaintiffs all amounts deducted from name plaintiffs' weekly pay which deductions were ultra vires. *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805 (N.C. 1999)¹

In support of this motion, Plaintiffs rely on their Complaint, Defendant's Answer, the certified copy of the January 17, 1966, minutes of the Charlotte, North Carolina City Council (**attached hereto as Exhibit A**), the certified copy of the April 8, 1969, minutes of the Charlotte, North Carolina City Council (**attached hereto as Exhibit B**), the Complaint in the verified Graue action and related admissible documents², plaintiffs' Joint Affidavit (**attached hereto as Exhibit C**) and such additional relevant documents as may be represented at the hearing.

As reflected on page 361 of the certified copy of the January 17, 1966, minutes of the Charlotte City Counsel (**Exhibit A**).

**PAYROLL DEDUCTION OF FUNDS FOR VOLUNTEER
POLICE PLEDGE FUND, AUTHORIZED.**

¹ Plaintiffs acknowledge that it is unusual to move for summary Judgment early in a proceeding. However, in this case it is believed summary judgment is appropriate and would expedite the resolution of this case as summary judgment on claim three would render the other claims moot as all claims seek the same monetary relief and would also remove any impediment that might otherwise exist toward class certification and allow for immediate class certification.

² The verified Graue complaint and related documents are attached to the Complaint. Exhibit C referenced in the Receiver's transmittal letter reflecting deductions purportedly taken was filed with the court separately by plaintiffs' counsel.

Councilman Thrower moved approval of the use of payroll deductions for the Volunteer Police Pledge Fund, subject to the details being worked out satisfactorily. The motion was seconded by Councilman Short and carried unanimously. (emphasis added)

Defendant City of Charlotte in paragraph 22 of its Answer avers "payroll deduction [for the Pledge Fund] was 'specifically approved' by virtue of the recorded vote of the City Council contained in the text of **Exhibit A** to the Complaint."³

However, the above does not reflect a "recorded vote of the City Council" allowing for the deductions subsequently taken. Without more – "subject to the details being worked out later"- nothing was approved on January 17, 1966.

Thereafter, as reflected on page 460 of the certified copy of the April 6, 1969, minutes of the Charlotte City Council (**Exhibit B**) the action taken subsequent to January 17, 1966, was mentioned in connection with a request to authorize identical payroll deductions for a Volunteer Pledge Fund for the Fire Department.

PAYROLL DEDUCTION FOR VOLUNTEER PLEDGE FUND
FOR FIRE DEPARTMENT AUTHORIZED.

Mr. Veeder, City Manager, stated in 1966 Council approved a Volunteer Pledge Fund for the Police Department permitting payroll deduction of \$5.00 each when there is a death of a member of the department, with the money going to the beneficiary. That the Fire Department through a memorandum from Chief Black as asked for similar privileges for the Fire Department. (emphasis added)

Councilman Stegall moved approval of the request as recommended. The motion was seconded by Councilman Short, and after discussion, carried unanimously.

The April 6, 1969, minutes of the Charlotte City Council reflect a "recorded vote" of the City Council for a Fire Department Pledge Fund deduction but do not reflect a recorded vote for any Police Pledge Fund deduction and to the best of Plaintiffs' knowledge no "recorded vote" for the Voluntary Police Pledge Fund exists and thus all deductions taken from Police Department participants were ultra vires.⁴

Plaintiffs' Affidavit (**Exhibit C**) and the verified Graue Complaint make clear that an unquantified amount of money has been deducted from the pay of the named plaintiffs as well as from the pay of the other putative class member which needs to be returned.

³ Complaint Exhibit A and Exhibit A hereto are the same.

⁴ Only if City Manager Veeder's comment reflected in the April 6, 1969, Charlotte City Council minutes can somehow be read together with the January 17, 1966, City Council minutes to retroactively reflect a "recorded vote of the [Charlotte] City Council" can death benefits deductions from Pledge Fund participants' pay avoid being ultra vires.

WHEREFORE, Robert Wright, Mark Michalec, and Scott Shipman individually pray this honorable Court as follows:

That the Court enter Summary Judgment on plaintiffs' Third Claim for Relief (Liability) finding that the City of Charlotte actions in deducting funds from plaintiffs Wright, Michalec and Shipman weekly pay from their initial deduction until deductions were ceased was ultra vires;

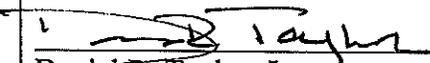
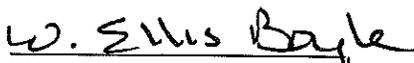
That Defendant Charlotte is required to remit to plaintiffs the amount of funds deducted from Plaintiffs' pay plus interest at the legal rate from the date of each deduction;

That, in the alternative, the Defendant is required to remit to plaintiffs the amount of funds deducted from Plaintiff's pay less the amount of funds deducted to make payment to the beneficiary of a deceased Pledge Fund participant plus interest at the legal rate from the date of each ultra vires deduction;

That the Court further require the Defendant City of Charlotte within thirty (30) day to inform counsel for plaintiffs the date of each \$5 deduction taken from the pay of each named plaintiffs; and

That, in the alternative, the Court further require the Defendant City of Charlotte within thirty (30) days to inform counsel for plaintiffs the date of each \$5 deduction taken from the pay of each named plaintiffs not deducted for payment to the beneficiary of a deceased pledge fund participant.

This the 11th day of September 2021.

 Daniel R. Taylor, Jr. E. Winslow Taylor Taylor & Taylor, Attorneys at Law, PLLC 418 N. Marshall St., Suite 204 Winston-Salem, NC 27101 Tel.: 336-418-4745	 W. Ellis Boyle Knott & Boyle, PLLC 4800 Six Forks, Suite 100 Raleigh, NC 27609 Tel.: 919-783-5900
<i>Attorneys for Plaintiffs</i>	

CERTIFICATE OF SERVICE

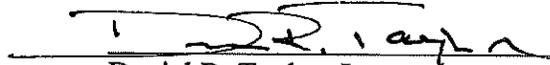
The undersigned hereby certifies that on September 11, 2021, he served the following:

**MOTION FOR SUMMARY JUDGMENT
THIRD CLAIM FOR RELIEF (LIABILITY)**

upon counsel for Defendant by United States Postal Service addressed to:

Daniel E. Peterson
Parker Poe
620 South Tryon Street, Suite 800
Charlotte, NC 28202
Attorney for Defendant City of Charlotte

This the 11th day of September, 2021.



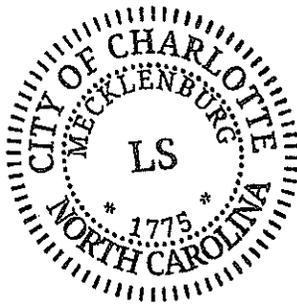
Daniel R. Taylor, Jr.
Taylor & Taylor,
Attorneys at Law, PLLC
418 N. Marshall St., Suite 204
Winston-Salem, NC 27101
Tel.: 336-418-4745

EXHIBIT A

CERTIFICATION

I, **Billie F. Tynes**, Interim Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the Minutes attached hereto is a true and exact copy of an extract of minutes from Minute Book 46, Pages 331-362, originally approved by the Charlotte City Council at a Regular Meeting convened on the 17th day of January, 1966.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 17th day of August, 2021.



Billie F. Tynes
Billie F. Tynes, Interim Deputy City Clerk

A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, City Hall, on Monday, January 17, 1966, at 2 o'clock p.m., with Mayor Stan R. Brookshire presiding, and Councilmen Claude L. Albea, Fred D. Alexander, Sandy R. Jordan, Milton Short, John H. Thrower, Jerry C. Tuttle and James B. Whittington present.

ABSENT: None.

The Charlotte-Mecklenburg Planning Commission sat with the City Council and heard the discussions on the Zoning petitions, with the following members present: Mr. Sibley, Chairman, Mr. Ashcraft, Mr. Lakey, Mr. Olive, Mr. Stone and Mr. Turner.

ABSENT: Mr. Gamble, Mr. Jones, Mr. Tate and Mr. Toy.

* * * * *

INVOCATION.

The invocation was given by Mr. W. J. Elvin.

MINUTES APPROVED.

Upon motion of Councilman Albea, seconded by Councilman Jordan and unanimously carried, the Minutes of the last meeting of the City Council were approved as submitted to them.

PETITION NO. 66-4 BY DR. T. M. MCMILLAN AND WIFE FOR CHANGE IN ZONING OF 13.4 ACRE TRACT ON THE SOUTHEAST CORNER OF PROVIDENCE ROAD AND CARMEL ROAD, FROM R-15 TO B-1, WITHDRAWN.

Mr. Robert Perry, Attorney for the petitioners of the subject property, advised that Dr. McMillan and his wife wish to withdraw their petition for the reasons they have found that the residents of the community were unaware that the corners of Carmel and Providence Roads and of Sardis and Providence Roads were presently zoned R-15MF; and they were also unaware of the plans for connecting Sardis and Carmel Road. That they anticipate that the residents will study the changing character of these intersections and the Major Thoroughfare Plan and General Development Plan and will be more favorably inclined to the change in zoning of the subject property in the near future.

Councilman Short moved that permission be granted to withdraw the petition. The motion was seconded by Councilman Alexander, and unanimously carried.

HEARING ON PETITION NO. 66-13 BY SHARON HOME LOAN COMPANY AND J. J. HARRIS FOR CHANGE IN ZONING OF PROPERTY EXTENDING FROM SHARON ROAD TO NEAR INVERNESS ROAD AND LYING TO THE SOUTH OF WICKERSHAM ROAD, FROM R-12 TO R-12MF AND O-15 CONTINUED UNTIL FEBRUARY 21, 1966.

Mr. J. J. Delaney, Agent for the petitioners of the subject property, advised that Sharon Home Loan Company and J. J. Harris requests that the hearing be deferred until February 21, 1966.

Upon motion of Councilman Tuttle, seconded by Councilman Jordan, and unanimously carried, the hearing was continued until February 21st, as requested.

HEARING ON PETITION NO. 65-117 (AMENDED) BY MELVIN T. GRAHAM ET. AL. FOR CHANGE IN ZONING OF PROPERTY ON THE EAST SIDE OF PARK ROAD FROM O-15 TO B-1, AND FOR CHANGE IN ZONING OF PROPERTY ON THE EAST SIDE OF PARK ROAD FROM O-15 TO O-6, DEFERRED UNTIL FEBRUARY 21, 1966.

Mr. Charles Henderson, Attorney representing the petitioners of the subject property, advised that a letter from the petitioners to the Mayor, City Council, Chairman and Members of the Planning Commission was filed today to the effect that because of a protest they would like to leave a buffer of 125 feet along the property line on the easterly side of the subject property; therefore, they request permission to withdraw from the petition the said 125 feet and leave it zoned O-15; this is both within the park and where they ask for B-1 zoning and in the park where they ask for a change from O-15 to O-6.

Councilman Short asked if the withdrawal of this portion of the property from the petition will eliminate the protest? Mr. Fred Bryant, Assistant Planning Director, advised that he believes it will.

Mayor Brookshire asked for the opinion of the City Attorney on the question; and Mr. Kiser stated that he has not seen the map of the property which he requests be withdrawn until this moment, and he would have to check it against the Petition signed by the protestors to be absolutely sure, but if the protestors were those who bordered the property along the creek and they are the only protestors who were able to invoke the 20% rule, the withdrawal of the 125 feet buffer would effectively remove the requirement for the 3/4th vote.

Mr. Henderson stated that the principal protestor was the Selwyn Village Corporation, and all of the land that was represented by this protest is just across the creek. That the petitioners thought there was an adequate buffer in the creek itself, but they felt that they should have assurance that there would not be any B-1 immediately next to the creek. That the petitioners are happy to try in this way to meet that protest; in fact, they are trying to meet any protest.

Mr. Myles Haynes, Attorney representing the protestors whose protest invokes the 20% rule, stated that as of last week there was nothing at all in the Planning Commission files to his knowledge that made any reference to forming a buffer zone at all, so they will take the position that this constitutes a motion to amend the original petition and ask that the hearing be continued until they have time to evaluate the situation.

Mayor Brookshire asked if the next date for hearing zoning petitions, February 21st would be satisfactory, and Mr. Haynes stated that it is satisfactory to them.

Councilman Whittington moved that the hearing be continued until February 21st and that the request for the withdrawal of the 125-foot buffer be referred to the Planning Commission in the interim period, and they be asked to advise the Council their opinion of the withdrawal and that they furnish Council their recommendation in writing at least three days prior to the hearing. The motion was seconded by Councilman Albea.

Mr. Henderson stated this is not something new and it is not something that is done for the purpose of being a surprise. They originally met with the Planning Staff and discussed the creek and the flood plain forming a natural buffer; it was suggested, however, that in order that there might be an orderly, understandable ordinance on the books and instead of drawing arbitrary lines through the property, that they would use Park Road and the creek

and the existing B-1 line where the Shopping Center comes to the property, and the property line on the far side, thereby eliminating any confusion. He stated he would not want anyone in the audience to think they are doing this for any other reason than trying their best to meet the wishes of the neighborhood.

Councilman Thrower asked the City Attorney if this withdrawal of the buffer zone is granted, does it eliminate the right of these people to go ahead and still protest requiring a six to one vote? Mr. Kiser replied that the right of the people who are interested in protesting terminates on Wednesday, which is two working days prior to the date established for the public hearing. If the public hearing for this particular amendment is moved back until February 21st that will enable others to file additional protests not later than Wednesday before the 21st of February.

The vote was taken on the motion and unanimously carried.

PROMPT CONSIDERATION REQUESTED OF PETITION NO. 65-86 BY M. LEE HEATH FOR CHANGE IN ZONING OF TRACT OF LAND EAST OF SHARON ROAD AND NORTHEAST OF NEW QUAIL HOLLOW ROAD NOW PENDING FOR RECOMMENDATION OF PLANNING COMMISSION FOLLOWING THEIR ROAD STUDY OF THE ENTIRE AREA.

Mr. John Shaw, Attorney representing Mr. M. Lee Heath, advised that about a month ago he appeared before Council with respect to Mr. Heath's petition for a change in zoning of a tract of land east of Sharon Road and northeast of new Quail Hollow Road. That the Planning Commission requested permission to delay their recommendation to Council to make a road study of the entire community, which was, of course, satisfactory to his client. That the confusion seemed to be created by the suggested road through the property; that they put very little faith in the road being extended, and it is their opinion that the Quail Hollow Road will be able to take care of the traffic. That Mr. Heath asked him to appear before Council today and ask that the matter be given reasonably immediate consideration and not wait until a study is made of the entire area. That all they want is to be treated like their neighbors, the Belk interests.

Councilman Tuttle asked Mr. Fred Bryant of the Planning Commission Staff if he knows about how long it will be before the Commission's recommendation is made to Council? Mr. Bryant replied that the study is being made, as to when the study related to this area will be completed it is hard to say. That he would suspect that the study would be completed sometime within the next month to six weeks.

Mayor Brookshire advised Mr. Shaw that he does not think the Council will want to take any action on the petition until the recommendation of the Planning Commission is received.

HEARING ON PETITION NO. 65-111 BY MRS. JOHN H. LITTLE AND MISS SARA LITTLE FOR CHANGE IN ZONING OF A LOT AT THE NORTHWEST CORNER OF ALBEMARLE ROAD AND DRIFTWOOD DRIVE, FROM R-9MF TO B-1.

The public hearing was held on the subject petition.

Mr. Fred Bryant, Assistant Planning Director, advised the lot fronts 294 feet on Driftwood Drive and 188 feet on Albemarle Road. There is an abandoned house on the property, a house directly across Driftwood Drive and adjacent to the property down Driftwood Drive there is also a residence. Other than that, the property and area is generally vacant. There is a B-2 strip zoning along Albemarle Road and across Driftwood from the property

the zoning is B-1 on all four corners of Sharon Amity - Albemarle Road, the subject property is presently zoned R-9MF and is the only property fronting on Albemarle - Sharon Amity Roads that is not zoned for business purposes. Other than that the vacant property down Driftwood is zoned R-9MF.

Councilman Whittington asked if this is at the corner at the entrance to Driftwood Development, and Mr. Bryant stated that it is, that this is a very nice subdivision, and this is the street leading off Albemarle Road into the subdivision. That there is another street into the subdivision but it is off Sharon Amity Road.

Mr. Forest Collier, Attorney, advised that Mr. Frank Orr represents the Petitioners and he was unable to be here and asked that he sit in for him and try and answer any questions.

Councilman Short asked what the petitioners are planning to build on the property, and Mr. Collier stated he is not sure what use the ladies plan to make of the property, but he does not believe that they have any immediate plans for any development.

No objections were expressed to the proposed change in zoning.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-1 BY BROWNING CONSTRUCTION COMPANY FOR CHANGE IN ZONING OF LOT AT THE SOUTHEAST CORNER OF WALKER ROAD AND GOSHEN PLACE, FROM R-12 TO R-9MF.

The public hearing was held on the subject petition.

Factual information relative to the property and surrounding area was given by Mr. Fred Bryant of the Planning Commission staff, who stated the property is located at the corner of Walker Road and Goshen Place. The property is vacant and fronts 102 feet on Walker Road with a depth of about 209 feet. The adjacent property on the south and the east is used for single-family residential purposes, as is all the property across Walker Road. Across Goshen Place there is a new apartment house; and other than that, the area is used for single-family purposes with some vacant land and the property along Walker Road is also used for single-family purposes. The zoning forms a boundary between single-family and multi-family residential along Walker Road, and everything from Goshen down to Sharon Amity Road is zoned R-12 and everything from Goshen back toward McAlway Road is zoned multi-family.

Mr. William Shuford, Attorney for the petitioner, stated that Mr. Bryant is in error that the property to the south is entirely single-family, he believes there is a duplex adjoining the property. The property immediately to the north and a large portion of the property to the north and northwest of the lot is zoned R-9MF, which is the same zoning they seek and there are a number of apartments in this R-9MF zone - in fact, immediately across Goshen Place there is an 18-unit apartment building. In addition to that, there are forty-units on the adjoining lot. To the south there is a duplex and a single-family residence more to the side, which he understands belongs to Mr. Evans, one of the protestors, but his house would not be immediately effected by the change in that no part of his house is close to the lot in question, except his back yard. That the duplex to the south is owned by Mrs. Ketchum, the other protestor, and he presumes is a nonconforming use and was there prior to the present R-12 zoning. That there is a duplex which has two entrances to it on Walker Road, and this, in effect, is what the Petitioner, Browning Construction Company, wishes to have - two entrances on Walker and two on Goshen Place.

He presented a sketch of the proposed apartment building and photographs of the adjoining property. Mr. Shuford advised that the protestors have stated that the proposed type of building would be detrimental to the value of their property and to the neighborhood, and he would argue that the character of the neighborhood is already multi-family.

Mrs. John Ketchum, 4403 Walker Road, stated she owns the duplex next to the property in question, and it is her home. That there is only one of the duplexes on the street that really looks like a duplex. That they think Goshen Place is the correct place to stop all of these apartments that have been coming into the neighborhood. That they do not want any duplexes of the type the petitioner plans to erect, they are two buildings on a lot the same size of hers. That Mr. Shuford stated that the proposed duplex will not effect the Evans home as it adjoins only at the back door, and this is incorrect, it is his front door. She stated that she is a widow with three children to support and uses her duplex to help support them.

Mrs. Jasper Evans stated that she owns the property adjoining the lot in question on the east, and they looked for such a place for years, large enough to raise their family in a single-family, quiet neighborhood. That the buildings the petitioner wishes to erect will be bordering their front yard. She stated she does not think it desirable for them or the neighborhood to have more apartments erected on their side of Goshen Place.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-2 BY W. H. FOX AND N. C. MCKAY FOR CHANGE IN ZONING OF TWO LOTS FRONTING 120 FEET ON THE WEST SIDE OF COMMONWEALTH AVENUE BEGINNING 220 FEET NORTH OF INDEPENDENCE BOULEVARD, FROM R-9 AND O-6 TO B-1.

The public hearing was held on the subject petition.

The Assistant Planning Director stated that the location of the property in question is on the west side of Commonwealth Avenue, near the intersection with Independence Boulevard and Eastway Drive. One lot is presently used for parking in conjunction with the Burger King Restaurant and the other is used for a house and office type operation. Adjacent to the property there are single-family homes; across the street is Commonwealth Presbyterian Church, and there are Service Stations up Independence Boulevard, and on both corners and on Eastway Drive is the A & P Store. On the corner the zoning is B-2, as it is all along Independence Boulevard. One lot of the subject property is zoned O-6 and the other lot is zoned R-9, as is all the remainder of Commonwealth Avenue. Across the street from the subject property, it is zoned O-6.

Mr. John McDonald, Attorney for the petitioners, stated the proposed use of the lot presently used by Burger King for parking will be the same - for parking - and the lot now zoned R-9, requested changed to B-1, is proposed to be used for a dress shop. That from the Coliseum to Pearson Drive along Independence Boulevard, a distance of some 12 blocks, there is a 400-foot area which is zoned B-2 except for this little corner, and if it were extended, these two lots in question would be included in B-2. That he understands the residents are afraid the lots will be used for a Used-Car Lot. That across the street are the homes of Mrs. Christmas and another lady, who control four lots, and he understands there is a possibility if they got the right price for their property, they, too, would want a change in zoning.

Mr. John S. Staton stated he is representing about 18 homeowners opposed to this rezoning, who have signed a protest petition. Most of these are

widows with children, Christian people. He stated there are no business buildings on Commonwealth Avenue other than the Burger King for several blocks. That the statement that Mrs. Christmas wants to sell her lot for business purposes, is absolutely unfounded, and she has refused for years to sell this property. He stated the people in this block and on the street are homeowners, not renters; that he has lived there for over twenty years, and he intends living there until he dies.

Mrs. Christmas stated that Mr. McDonald said they are willing to sell their property, and this is not true and she told him so when he came to see her. That if her neighbor wants to sell, she has not heard about it.

Mr. McDonald stated in rebuttal that he was told by Mrs. Christmas that she had the classification of O-9, and it is R-9, and he got the impression that she would sell the two lots she owns if the price were right, and he is sorry if he misunderstood her.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-3 BY ELECTRICAL CONTRACTING & ENGINEERING COMPANY FOR CHANGE IN ZONING OF A LOT 50' x 150' ON THE NORTH SIDE OF KESWICK AVENUE 150' EAST OF NORTH GRAHAM STREET, FROM O-6 TO I-2.

The public hearing was held on the subject petition:

Mr. Fred Bryant, Assistant Planning Director, stated the property is a lot facing Keswick Avenue and has on it electrical supplies belonging to the petitioner and the lot on which their building is located, is at the corner of Keswick and Graham. Going down Keswick there are three duplexes and single-family uses on down the street. On Graham Street there is either business or industrial zoning with a few vacant lots, and on the corner there is a service station and dry cleaning establishment. The zoning at present down Graham Street and to the rear of the property is for industrial purposes. There is a strip of O-6 zoning between the subject property on Graham Street and Bancroft Street; otherwise, the zoning is R-6MF.

Mr. Richard Wardlow, Attorney for the petitioner, stated the situation as outlined by Mr. Bryant is correct, and he will not repeat it. He stated the property is L-shaped consisting of two lots, one fronts on Graham Street and runs down toward Keswick Avenue at which point it extends back in that direction. The facts that bring this petition about are these - the petitioners moved their business on these two lots in 1947 and has conducted their business there ever since. Before the new zoning ordinance was adopted in January, 1962, the zoning was residential for the back lot and industrial for the front lot. They wanted to put some new equipment on the back lot, so in 1956, they came before Council with a petition for Industrial use and the back lot was zoned Industrial at that time, and they have continued their use without paying much attention to anything, including the new zoning ordinance that was put in in January, 1962. At that time the zoning lines were redrawn, and what they had gotten zoned Industrial, was thrown back into O-6. That when the new zoning ordinance came into effect, they were surrounded by R-2 on the north and to the left, the strip including their property was made O-6 and the other, R-6MF, so the Industrial zoning was taken away from them at that time. Had they known what was happening at the time and come to the hearing, the zoning lines would have been revised at that time.

So what they are asking today is that Council give them back the Industrial zoning, because they want to add another warehouse on that lot. They are not adjacent to any residentially zoned property; they are surrounded on

two sides by Industrial-2 property and surrounded on their other two sides by O-6 property.

No opposition was expressed to the proposed change in zoning.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-5 BY TOWN AND COUNTRY COMPANY FOR CHANGE IN ZONING OF A LOT AT 2300 INDEPENDENCE BOULEVARD, FROM O-6 TO B-1.

The public hearing was held on the subject petition.

The Assistant Planning Director advised that this is a lot at the southeast corner of Independence Boulevard and Rockway Drive; that Rockway Drive turns to the right as you go out Independence Boulevard and goes directly into Chantilly School property. At present the property has on it a single-family residence as does the majority of the lots in the block on Rockway Drive. Directly across Independence there is another row of single-family residences with a church at the corner of Briar Creek Road and Independence Boulevard. Across Rockway from the property is a vacant lot at the corner, then a residence and a church. The property between Chesterfield Avenue down to the creek and along Independence Boulevard is vacant. The zoning of the area at present is O-6 between the creek and Briar Creek Road, with the exception of a triangular piece bounded by Independence, Chesterfield and the creek which is zoned B-1. The area along Independence, across from the Merchandise Mart, is all zoned business, as is the area from the creek coming back towards town to Chantilly Shopping Center.

Mr. Jim Bolton, speaking for the petitioner and referring to the Planning Commission map, stated more than 7,000 feet is zoned either B-2 or B-1 where the Merchandise Mart is located, and B-1 on the corner across Rockway from the lot which they are requesting zoned B-1. That Rockway is paved and there is a paved alley behind the lot and, also, a paved turnaround. That beyond the creek there are 264 apartment units now being constructed; that the curbing and street layout is accomplished.

Mr. J. A. Morgan representing the Charlotte-Mecklenburg Board of Education stated as they look at the long range future of Chantilly School, they are concerned about anything other than office type of business going into the area that will interfere with the operation of the school. The enrollment of the school a year ago was 428, and this year it is 463, and they are experiencing an increase in the school population in this area. The school is located directly behind the property in question, and they are afraid of an annoying type of activity that will interfere with the regular school day.

Councilman Tuttle asked Mr. Bolton what their plans are for this property? Mr. Bolton stated the present zoning classification of O-6 would cause a situation similar to Pecan Avenue where single-family residences zoned O-6 have been painted green and paint and signs put out in front. They do not believe this causes an attractive approach to the city, and they would like to take the classification of B-1 zoning and put a retail business in. They feel if they use this as an office, it would be necessary to park in the street and, thereby, create problems. He called attention that the entrance to the school is on Briar Creek Road, and it would not be their intent at all to cause any additional traffic that would in any way endanger the children that attend the school.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-6 BY SCHOENITH, INC. FOR CHANGE IN ZONING OF A 6.466 ACRE TRACT OF LAND ON THE SOUTHWEST CORNER OF PROVIDENCE ROAD AND OLD PROVIDENCE ROAD, FROM R-15 TO B-1 S.C.D.

The public hearing was held on the subject petition.

Mr. Fred Bryant, Assistant Planning Director, pointed out the location of Providence Road leading out of town away from Charlotte and Old Providence Road leading off Providence going toward Sharon View Road to the Old Providence Development, and stated the subject property is located at the intersection of these two roads. On the property itself, there is a combination service station and store building that has been there for a good many years, and the remainder of the property is vacant. Across the road from the property is a sales office for Ervin Construction Company; that they checked on this the other day and decided this is a violation of the zoning ordinance, and it is in the process of being moved. Adjacent to the property going down Old Providence and going down Providence, there are single-family homes on rather large acre tracts; there is also a house on the east side of Providence Road, and a series of single-family residential homes on Old Providence going towards Sharon View; and other than that, the property is generally vacant. At present, everything is zoned R-15 with the exception of the R-15MF Zoning which extends from Sardis Lane all the way down to the left side of Providence as you go out to McAlpine Creek.

Mr. Robert Perry, Attorney for the petitioner, presented a map and called attention to the city limit line and a proposed loop road surrounding the City of Charlotte and joining U. S. 29-Bypass at the north limits of the City. He pointed out 29-Bypass and the intersecting streets as they intersect the proposed loop, only one outside the city limits. That Idlewild Road is inside the city limits; Arrowood is a projection of the extension of Old Providence Road, so, therefore, Idlewild, Old Providence Road, Starbrook and Arrowood are all the same street if projected. He stated the purpose of the map is to indicate the high desirability of a shopping center from the standpoint of traffic, and he advised there is very little they can do to that property, which will create any traffic problem whatsoever. That the Planning Commission in proposing the projection of growth of the City of Charlotte in the year 1960 showed the proposed shopping centers, and stated there are five proposed places for shopping centers. That it is three and one-half miles to the nearest shopping center from the subject property, and they feel with the growing area and with the advent of Old Farm Subdivision, and with the almost completed development of Lansdowne and the rapidly growing area of Old Providence and with the additional fact that there is an R-15MF Zone of over 100 acres, which according to present zoning will accommodate 1,000 families or 3,333 1/3 people; there will be a situation where they will need a shopping center here. That in 1962 when this petition was before Council, it was stated that about 15,000 people lived in the area to be served by this small facility would be correct, and he submits that is an understatement. This would not be a Cotswold, it would not be a John Crosland Center. This would be a convenience center of perhaps a drug store, grocery store, and hardware store, but not a large shopping center to serve the people in a limited area. They say there is a silent group that do not want to sign a petition who feel they would be mostly inconvenienced by the advent of this facility. Mr. Perry stated he lives within three blocks of a shopping center, and he considers it to be a plus factor as far as his home is concerned. They feel this will not create any problem in traffic and, aesthetically, are not going to hurt any of the people. That Mr. Stribling is one of the signers who brought the petition within the 20% Rule, and he is across the street on a large acreage tract, and his home is located 900 feet from the road. That Mr. Stribling is a very intelligent man and knows property

values, but they submitte him if they are granted this right, sooner or later he is going to come to appreciate the day when the Council and the Commission decided to give him the facility at that near place.

Mr. Jim Bolton called attention to a map and stated what they propose is a B-1 Shopping Center District. That there is a great deal of difference in the classification between B-1 and B-1 S.C.D. that many of the neighbors in the community are not aware of. That is that a plan program must be submitted to the Planning Commission, and this plan program must be in the best interest of the neighborhood. That they plan this to be beautiful center with trees in the parking area, and they plan fountains and places for rest while people are shopping; personal service stores and also a nursery. This is not a big shopping center, and it is 894 feet off Providence Road and a little over 500 feet on Old Providence Road. He called attention to the outline of some of the service area they feel this will take care of and showed a two-mile radius that goes up to about Sardis Road and then tunnels out to the many new subdivisions along Providence Road where the city has improved the road with bridges to take care of the people in that area. He stated that a Plan has been filed with the Planning Commission showing the intentions of the developers to put in retail shops, personal service stores, a nursery, and adequate parking, all properly designed by James H. Benton, Architect, and checked by the Planning Commission as to the adequacy of off-street parking. That this is at the intersection of four major thoroughfares. Mr. Bolton called attention to the general development plan and stated it is a part of the book "Charlotte Within the Next Twenty Years." That his clients believe in the progress of Charlotte and purchased the property after the development plan was proposed to the people. He called attention to the symbol "P" on the map dated 1955 indicating a proposed business district; to Zoning Map 28 which indicates the spot they are requesting rezoned; to an enlargement of the Major Thoroughfare Plan which indicates that a proposed major road does come down Sardis Lane and connects to Arrowood Road. He presented a graph of parking patterns prepared by Ervin Webb Institute and by Herman M. Bass, Head of the Institute of Traffic Engineers, New Haven, Connecticut, indicating a pattern of shopping centers where they enjoy peak hours at 10 o'clock and 5 o'clock. He stated they feel there would not be any problem to traffic going back and forth to school. Mr. Bolton presented an aerial photo indicating the site of the proposed shopping center and the residences near the site as being more than 900 feet, 255 feet, 400 feet, 250 feet, and 565 feet from the center site, and stated they are the closest residences on large tracts and are separated by almost impenetrable woods. Mr. Bolton stated in conclusion they would like to point out in the interest of the progress of Charlotte and the growth of our city that this will create additional revenue; that it is properly planned and that it will be convenience not only to this generation but to future generations.

Mr. Frank McCleneghan, Attorney representing the protestors, stated this is not the first time this piece of property has taken the trip to the Planning Board and the City Council. At one time there was a petition on this very corner to make the little store and filling station bigger, and Council turned it down. About two years ago, there was an application by these same owners to put this same sort of "convenience center" there, but it is going to end up and look like a shopping center. It may be a little smaller but it is going to cost \$2,500,00, and they should be able to get a sizeable structure for that price. That he is familiar with the "Twenty Year Plan" started in 1955, and he thinks it is a good idea, but it was projecting the future, thinking what might happen; but we have not reached that stage yet with this property. He called attention to the fact that Providence Road is the only road coming in to town that does not have stores on it; there are a few like Hunter's store which has been there a long, long time, and then the little filling station at Sardis and Providence Road and that was put there just under the wire - when the owners found there was going to be zoning, they jumped in and built the filling

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station; then the next one is this little store on the corner and has been there a long, long time; and then you go three or four miles out further and there is the little Grier store. Mr. McCleneghan stated he feels strongly about Providence Road, as it is the one and only street that comes into Charlotte that does not have stores on it; it is a street that has as pretty and as fine homes as you will find on any thoroughfare coming into Charlotte. That the most effective thing Council should be trying to find out is if there is a need and a demand for this shopping center. The petitioners got someone from Connecticut to tell about the economics, but he believes our Planning Board can give this information, and it is not necessary to go to Connecticut as he thinks we have the talent right here. That as far as the road is concerned, he thinks all the members of Council agree that a few dotted lines is a far piece from the road being there. It is not always when you start putting roads in Charlotte that they end up where the people thought they were going to be.

Mr. McCleneghan stated further he has some petitions and what Council and the Planning Commission wants to know is if there is a need and if there is a demand. That Mr. Perry or Mr. Bolton stated it was very important to the petitioners, and we agree that it is important only to their pocketbooks. This is important to the people who live out there in the neighborhoods, not only to the pocketbooks but they have built their homes there and they are happy there, and they thought it was going to stay that way; money is not the only thing in this from the standpoint of the protestants. He presented a petition from the people in the immediate vicinity and stated it is signed by 130 people. Another petition signed by people who live in the Mammoth Oaks section with 38 names; another one signed by people along Providence Road and in that section with 17 names. That Lansdowne is the largest subdivision near this property, and there is a school there, and he presented a petition containing 244 names signed by the people in Lansdowne; a petition from the Pinetree Drive section containing six names; Cedarcroft containing 16 names; Jefferson Drive area containing 56 names; Sharon View Road with 23 names; that about a week ago he attended a meeting at Lansdowne School and there were about 250 people there; he presented another petition signed by 19 persons on Valley Brook Road, and stated these are all from areas around the subject property and show these people have no need for this shopping center. He called attention to Old Farm Subdivision which he understands is the only subdivision which has been started since they were here two years ago, and presented their petition with 49 names; a petition from the Singing Springs Subdivision with 42 names and from Sardis Lane with 14 names. He stated these petitions have a total of 661 signatures. That is 661 property owners; and by their signatures, you can see they have no need for this shopping center, and they do not want it. That who would know better about the need than the people who live there. That the experts from Connecticut will tell you what is going to happen in 1970, and he does not think we should get ready for 1970 this afternoon, as he does not think we are in that big of a hurry. That what has been brought here this afternoon, as he analyzes it, is something that is going to happen in the future, maybe - maybe so or maybe not.

Mr. McCleneghan stated further undoubtedly it is going to cause a traffic problem. There is Lansdowne School with children going to and from it, some of them on foot, some on bicycles, some in car pools - but they will have to go right by this shopping center, and it is not going to be a safe and good condition. That he believes these petitions he has presented cover the "water front." That he would like to repeat again that the integrity of Providence Road is in the hands of the Planning Board and Council. They do not have business zoning, and they should not have it. He passed around some pictures of residences and stated this would give them some idea of the neighborhood; the homes these protestants have built

and live in and enjoy at this time. That whoever has worked on this has worked hard - he guesses it has been Mr. Bolton. That it has certainly been publicized; that he even sent out brochures and this is the first time he has ever heard of this done in zoning.

Mr. Henry E. Fisher, Attorney, stated he was originally interested in the Carmel Shopping Center, but the petition for that has been withdrawn. He then presented a petition signed by approximately eighty people, and stated it is true that most of the signers are in the Carmel section, but they have signed the petition protesting against both the Carmel Road, which has been withdrawn, and the Old Providence Road which is now under consideration, so for the consideration of the Council and the Planning Commission, he will present the petition.

Mr. James F. Justice stated he received one of the brochures, and it was not the sort of brochure he felt impelled to answer, but he has attended two meetings and knows the "silent support" is the most silent support he has ever heard from. That he lives in Lansdowne, and he knows that through that large development there are only two streets you can cross from Sardis Road over to this site within a distance of a mile and one-half and probably farther than that. Personally, this would mean to him whereas they now have a quiet residential street where their children walk to Lansdowne Elementary School, it will be made a main thoroughfare to carry the residents of Stonehaven Development and the rear section of Sherwood Forest and Rama Road directly through Lansdowne at the school to this \$2,500,000 Shopping Center. That he is opposed to, and so far as he knows he has heard none of his neighbors say they favor it.

Mr. Alvin London, Attorney, stated he appears not because he lives on Providence Road, but for clients who do live there. That within the last year Mr. and Mrs. Richard Otto purchased a home on Providence Road at the intersection of Rae Road, and they have made considerable improvements to it. One of the reasons they purchased it was because of the fact that it was on Providence Road and Providence Road itself was a beautiful approach to the home and was zoned. That this is within less than a year, and had they known there would be such a petition or any possibility of it being passed to permit a shopping center there, they would not have given consideration to purchasing the type of home which they purchased and in which they now live. That it is a large white house which was purchased from Dr. Palmer, and they put improvements onto to it and it exceeds what they originally paid for it. They are just one of the people there who feel exactly the same way. These people have expended a substantial sum of money for a home to live in within the last year on Providence Road and certainly they should be able to rely to some extent upon previous ordinances and previous zoning in the selection, purchasing and improving and investing money in a home in Charlotte. They protest and would like to add their voices.

Mr. Charles Welling stated he lives out there. They talk about how badly the center is needed, but the residents do not want it. That he went out here by choice to get a little piece of land to live on and raise a family, and they do not mind driving in to a Shopping Center and their wives do not mind going in. They were here several years ago to oppose this and everybody in that community is opposed to it.

Mr. Eli Springs stated he moved into Providence 28 years ago because it is the most beautiful section of any. They have kept Providence clean and have not messed it up with signs and stores or shopping centers, but have kept it beautiful.

Mr. Brook Barkley stated he is merely here as an exhibit sent by particular clients, Mr. R. E. Crump and Mrs. Eaton, to emphasize there is serious concern on the part of individual people out there by reason of a threatened invasion of a shopping area. Quite obviously the people do not want it and he sees no reason why it should be forced upon them, because if and when the time comes that they do want it, that will be time a plenty. That he just wanted to join in the opposition that has been voiced.

Mrs. Harry Dudley, resident of Old Providence Road, stated she does not want this shopping center out there even though it is supposed to be a convenience. They moved out to Old Providence a little over two years ago and if they had wanted to live near a shopping center, they would have moved towards Cotswold, not out in the country. That she has four children and if they should stop the use of school busses for children in this mile and a half radius, her children will have to walk up Old Providence Road across the intersection at Providence and Old Providence Road in order to get to school. That her children's lives are rather valuable to her and she wants to keep them. That there is a small bridge down at the creek that is a terrible traffic hazard. Every child from Old Providence who belongs to the swim club has to go across that bridge around Sharon View Road and into the club, and this shopping center will not help the traffic situation across this bridge. The State says they will put in a two land bridge out there, but they have been waiting for it quite a while. She asked them not to jam down a convenience they do not want.

Mr. Paul Ervin stated he is appearing on behalf of Mr. and Mrs. H. H. Everett who are out of the city. They have asked him to oppose very vigorously this proposal. They do not agree it is in the interest of the community or the people who live in the community. As to the proposal that has been made, this he says on his own motion, despite the technical assistance which the gentlemen had in the preparation of this proposal, they cannot change the size of this area involved. If they proposed to build a real shopping center here, they simply do not have anything like sufficient room for that purpose on about seven acres of land. Either they are not going to have parking space or they are not going to have buildings or will not have sufficient other conveniences. That it is sincerely hoped the Council and Commission will not be in favor of this proposal.

Mrs. George Heaton stated she would like to be on record as one who endorsed the drive to make Charlotte one of the show-place cities in the United States. That she lives on Valley Brook Road in the Providence Community; everyone who lives in Providence Community endorses this forward step for Charlotte. They believe in the highway entrances into the City of Charlotte being kept uncommercialized. They ask their representatives for progressive government, for progressive beautification and ask that they let them keep Providence Road uncommercialized. They believe a shopping center on Providence Road would defeat the drive to make Charlotte a show-place city.

Mr. Hugh M. Thomas, Jr., 1300 Blueberry Lane, stated the statement that the shopping center is needed for a convenience is wrong. That he passes five to six shopping centers, starting at the Charlottetown Mall on the way home. Secondly, they already have a traffic hazard in the neighborhood and children have been run over on bicycles going to playgrounds in the afternoon during the busy period that has been mentioned that shopping centers so enjoy. That he would like to go on record with his neighbors who live next door as they did not sign the petition because they were out of town - that they do not need a shopping center in this area for a convenience.

Mr. Tom Braaten, a resident of the Old Farm area and a new resident having lived there since October 1, stated they moved out there for the main reason that it was and is the most beautiful road in the city. With regard to the traffic problem being prevented, there is no doubt but what there will be

an increased traffic hazard in the Old Farm area within the next year and a half or two years. There will be nearly a hundred youngsters - ages six through twelve - who will have to cross Providence Road walking to Lansdowne School twice a day, and this will certainly be increased if they put a so-called "convenience center" some half mile to three-fourths of a mile from the entrance to Old Farm because of the 400 family multi-dwelling that is being erected now about a mile and a quarter towards town, next to Hunter's store. That with increased traffic and increased youngsters, there cannot help but be increased danger. They moved out in this area from the Montclair area where they lived for some 14 years and saw South Boulevard become almost 100% industrialized all the way out within three and one-half miles of Pineville. That he feels there are some segments in our community that know what is best for it, and it seems to him with the petitions that have been presented in opposition to this change in zoning, the Council should have the sense of the community.

Mrs. J. W. Nance of Old Farm section stated she would like to endorse what Mr. Braaten has just said. That she has to drive her children to and from school, and they are only two blocks from the school. When they moved into the section, they felt they would be close to the school and it would be very convenient for the children, but with the traffic that is presently there, she does not trust them to cross the road, and they do not want any added traffic in front of this school.

Mr. Jack Binford, 135 Sardis Lane, stated he is a Pennsylvania Yankee, and he is down here partly because Pennsylvania some years ago did not do much planning. That his friends up in the northern states lost some of their industries because North Carolina did do some planning. Apparently, whenever the industries left that area, the Connecticut people thought they should do some planning and maybe they are all done planning now, and they are able to come down and plan for Charlotte. As far as Charlotte is concerned, he thinks it is a very nice place; he likes the south and North Carolina. That if Old Providence Road and Providence Road is taken and defiled as Independence Boulevard has been defiled, then it will be a very unfortunate situation.

Mr. Perry stated that Mr. Bolton has some petitions in his automobile and also has some that are being circulated and in the hope that this will not upset the schedule, they would like to show these to Mr. McCleneghan, as Attorney representing the opposition, and let him pass on the authenticity of them and then submit them to the Planning Commission and Council. Mr. Perry stated he has a verifax copy of the petition available with 135 names on it; there are others that have not been picked up as they did not plan to use it, but they have been challenged to produced supporters and they do have them, and he would like Council and the Commission to know about them.

Mayor Brookshire replied this is the date set and advertised for the hearing, and he asked the City Attorney if some further presentations can be made. Mr. Kiser, Acting City Attorney, replied that, of course, Mr. Perry could submit whatever evidence he has; however, it certainly will have no effect whatever on the vote of the Council and is not such a petition as is comparable to the protest petition, and Council could accept it for whatever they consider it to be worth.

Council decision was deferred for one week.

MAYOR BROOKSHIRE CALLED A FIVE MINUTE RECESS AT 4:10 AND RECONVENED AT 4:15.

Mayor Brookshire called a five minute recess at 4:10 p.m. and reconvened the meeting at 4:15 p.m.

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HEARING ON PETITION NO. 66-7 BY SCHOENITH, INC. FOR CHANGE IN ZONING OF ONE ACRE LOT AT THE INTERSECTION OF THRIFT ROAD AND ELMWOOD CIRCLE, FRONTING 124.94 FEET ON THE SOUTHWESTERLY SIDE OF THRIFT ROAD AND 420.13 FEET ON THE NORTHWESTERLY SIDE OF ELMWOOD CIRCLE, FROM R-12 TO B-1.

The public hearing was held on the subject property.

Mr. Fred Bryant, Assistant Planning Director, stated the subject property is the corner tract fronting approximately 125 feet on Thrift Road and the property is vacant; there are residential single-family homes on the Thrift Road side; also, across Thrift Road from the property and to the rear of it coming down Elmwood Circle. Coming down Elmwood Circle is a residential subdivision; on the other side of Thrift Road, there are about three single-family residences and a small church and a nonconforming store-service station. Other than that, the area is generally vacant. The zoning at present is entirely R-9 on one side of Thrift Road and R-12 on the other side.

Mr. Robert Perry, Attorney for the petitioner, stated the city limits line is two miles in towards town. He asked Council to imagine they are at Freedom Shopping Center and stated it is 3.2 miles towards the City of Charlotte down Freedom Drive; that is the last grocery store and shopping center that we have in the area. That they submit there is a difference between a "shopping center" and a "convenience area" and there is no drug store, grocery store, or hardware store, any kind of store that would ordinarily fall into the convenience facility type of improvements except if you go half a mile down Freedom Drive towards the property in question, and this is 2.7 miles from the petition where there are three service stations; you go 2.4 miles from the subject property down Freedom Drive and there is a hardware at the corner of Bradford Drive and Thrift Road. All that is where U. S. 29-Bypass underpasses Thrift Road, with Horne's Motor Lodge being located at that particular property; then there is Westchester which is 1.4 miles from the subject property, and fronts about one-half mile on Thrift Road. Across the street there is a nonconforming Service Station and store. Going on out Freedom Drive you have a service station at the corner of Little Rock Road and Thrift Road, and at .7 mile there is a dry cleaning establishment and exactly a distance of .9 of a mile is a large tank farm. That this property is a mixture of residential and business property. They feel there is a large area to be served, not by a big shopping center but an area where residents can come and buy the items which they need on a day to day basis. They submit that this is a good location point. That right across the street on the same side of Thrift Road is a very unlevel and very unattractive lot where a sign reposes which says "Dump dirt, but not trash." They do not mean to demean the whole neighborhood as there are some nice houses in the Town and Country Estates which were developed by their clients before they acquired this property. That as far as this location is concerned at the corner of Elmwood and Thrift Road, there is what would be a logical place for a convenience of this type. They admit this carries with it the rather unsavory term of what is termed "spot zoning," but they submit as a matter of good planning that this type of enterprise will be more comparable in the development of the City of Charlotte than having somebody come along and build a big shopping center in the area because it is needed and sooner or later will have to be provided. That this will serve the need with the Freedom Shopping Center serving the larger needs of the people.

Mr. James Bolton called attention to a drawing and stated it is a beautiful center, as designed by the architect, with proper screening, traffio entries and that at the end of the property fronting on Elmwood Drive, there is a very heavily wooded buffer section and there is a creek before you enter into the Town Park Community. There are beautiful homes there, and they

feel like the entrance to Town Park would be greatly enhanced with this... 24 foot paved strip widened to its full right of way and with lights put in. That they have offered to the neighbors in the community their assistance to help form a neighborhood garden club or group, and they will, at their own expense, erect an entrance sign for them at the entrance to their property. He stated that the Town Park Community was developed; and at a later time, this property was offered to them, and they purchased it and are now seeking an approval for the change in its zoning. Mr. Bolton stated they have talked with different members of the community, and Mr. Perry will provide in any leases that are signed for any of the stores at the center, that there will be a restriction against on premise sale and consuming of alcoholic beverages and beer and wine.

Mr. James F. Justice, Attorney for the residents of Town Park Subdivision, who are protesting the petition, stated that Elmwood Circle is an eighteen-foot paved asphalt street - that is nine feet for each lane of traffic, which gives each of these lanes no more width than we get on a traffic lane painted on Trade Street. It is a narrow asphalt street and the only access street into this subdivision. Town Park has a total of 54 houses, 48 homes are represented in signatures to the petition in opposition to the rezoning, which he filed with the City Clerk. One refused to sign and five said it made no difference. He stated they have photographs of these homes; and from the appearance, they are in the \$30,000 bracket.

Mr. Justice stated to make their plan feasible at all, Mr. Bolton has been forced to turn the lot around and consider what is actually a side line as the front line of the property. That the approach to Elmwood Circle is hazardous, and he presented a drawing and pointed out Town Park Subdivision, the area requested rezoned, and stated that Freedom Shopping Center is exactly three miles from the entrance to Town Park. That as one approaches Elmwood Circle entrance going out from town, .1 of a mile from Elmwood Circle, there is a blind curve and a deep down-grade beyond that blind curve to Elmwood Circle; it sits at the bottom of a long hill in each direction; there is another blind curve approximately .1 of a mile beyond this intersection so that within .1 of a mile in either direction, there is a blind approach and steep down-grade to the position where the petitioners proposes to put this center. In addition to the fact that this is the only entrance to this residential area, the one adjacent to the center and the one where 48 out of 54 residents oppose it by their petition. That Mr. Perry has referred to businesses in either direction; .1 of a mile north of Elmwood Circle is Smith's Grocery Store and gas station, a nonconforming use; .6 of a mile north is Love's Grocery Store; and .7 of a mile is Cloninger General Merchandise and Barber Shop, .9 of a mile to Paw Creek Shopping Center. In the other direction 2.2 mile back towards town is a Doctor and Dentist office; 2.3 of a mile is Thomasboro Hardware and three miles exactly to Freedom Park Shopping Center.

Mr. Justice stated further that many of the residents bought their lot from Schoenith, Inc. and were surprised when this petition was brought to them. He presented a picture and called attention to the sign situated on the subject property advertising the Town Park Estates as highly restricted. That this sign is now on the property the petitioners want rezoned to benefit these adjacent property owners. He read the definition of a B-1 district - "Neighborhood Business District. This district is designed primarily for business centers for retailing of merchandise such as groceries, drugs and household items and for furnishing certain personal business and professional services for the convenience of residents of adjacent residential areas." That as he understands the term adjacent, it means those adjoining next to, connecting to. That Mr. Michael's name is on the petition; he is not directly in Town Park, but his home is the house adjoining

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the proposed site fronting on the Highway 27. There are no adjacent property owners who want this business center at the intersection of this highly dangerous road. That he understands that school busses are not now allowed to make a turn into this road across traffic. That the definition provides further "that the standards established for these business are designed to promote sound permanent business developments and, also, to protect abutting or surrounding residential areas from undesirable aspects from nearby business developments, and these districts are located at accessible places." That he would submit to Council that a more inaccessible place for a business could not have been found on the entire length of this highway all the way out to where it crosses the railroad tracks another mile above the site. In support of this, they have investigated the records of the County Police Department. When they were out there this weekend, the bridge base was a pile of rubble; they told him it was from a car that had run off the curb this weekend onto this lot. In February, 1958, a car ran off the road between Elmwood and Toddville Road and, also, there was a two car accident at N. C. 27 West and Elmwood at this intersection; in September, 1959, a two car collision between Elmwood and Toddville Road; November, 1959, on N. C. 27 West and Elmwood and Little Rock Road another accident; on February 5, 1960, one car at N. C. 27 West and Elmwood and October, 1960, one car at N. C. 27 West and Elmwood; February, 1961, one car at N. C. 27 West and Highway 17 which is just beyond this intersection; September, 1961, one car at N. C. 27 West and Elmwood; January, 1964, one car at N. C. 27 and Elmwood; July, 1964, one car between Toddville Road and Elmwood and, also, in July, 1964, a two car collision trying to make a left turn into Elmwood; November, 1965, an accident turning into Elmwood; again in November, 1965, a two car collision, car was hit in the rear trying to make a right turn into Elmwood; January 5, 1966, a two car accident at Highway 27, just up the street from Elmwood; January 6, 1966, a car ran off the road at Elmwood and January 15, 1966, a car ran off the road at Elmwood. Now, if he reads the city ordinance correctly, the purpose of the neighborhood business districts is to provide an accessible location for business that is needed and desired by the adjacent residents. They do not see that in this instance. He stated that from the bridge out on Thrift Road, 78 people have signed the petition as being opposed to this change; these are people who live on Highway 27 West. To put a shopping center at the one entrance to a substantial residential area and to invite a congestion of cars at this intersection does not facilitate the flow of traffic for fire engines, ambulances and emergency vehicles of any kind in and out of this residential area. They say this is contrary to the purpose of the zoning ordinance. The size of the lot itself makes them wonder if there is actually the area on this lot which the tax map shows. The back line at this end of the property is only 71.3 feet in depth. It is no longer 100 feet wide as was described on the original description of the property. How this would leave a depth to have a shopping center that, by scale, the width from front to back is 59 feet and still leave room for straight-in parking is beyond his ability to figure from this proposed layout that they have from the architect. Therefore, they can only conclude that if the center is put on the land area that is available, there will be practically none left for parking, certainly not to comply with one car for every 200 of square footage in the shopping center, plus one for every two employees.

Mr. Guy Carswell, Attorney for the opposition, stated he thinks the danger has been pointed out of this intersection at this strip of land where they want to put this shopping center. The City Bus cannot turn to the left for the only reason that you cannot see an oncoming car in time to make that move to the left because of the blind approach to this intersection. Elmwood Road is an access and exit to this development and the only road into it, and there are 250 people living in this development with one access and one exit, and no buffer. There is not the necessary area on which to

build a shopping center and park. That this is a busy road with blind approaches traveled by Gasoline Trucks, and School Busses are not allowed to stop and take in children because it is too dangerous. That is the situation. Mr. Justice presented some photographs, one of the view of the approach from the north coming south towards Elmwood, another of the view looking south toward town from Elmwood, the third of a view looking down Elmwood past the site of the property in question, and the last one a colored photograph of the beautiful sign "Live in Beautiful Town Park Estates." He stated that he was mistaken in the width of N. C. 27 West; that it is only 27 feet 9 inches wide.

Mr. Robert Perry stated they want to invite a so-called jury view of the property and see if it is as bad as the opposition pictures it. Secondly, he would like to invite Council's attention to their own City Planning Map. Also, he understands under the zoning ordinance they will have to include Thrift Road in such a way that it would widen it, curb it and make it more accessible; that they say it will not create a danger to the community. That they do not believe you can depend on tax maps for the correct size of property. That they have given the Council a description of the property and if it is not feasible to build the shopping center on this site, then the Building Inspection Department will not give them a permit to do so for you have to comply with city requirements, but they think it can be built, and they would like to advise Mr. Kiser, Acting City Attorney, that tax maps are notoriously inaccurate.

Mr. Justice stated if Elmwood is to be widened at all; a part of the 100 feet depth already lies in Elmwood, and any further widening would only increase the depth.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-8 BY PRESIDENTIAL MOTOR INN, INC. FOR CHANGE IN ZONING OF A LOT ON THE NORTHEAST CORNER OF WATERMAN AVENUE AND SHENANDOAH AVENUE, FROM R-9 TO O-6.

The public hearing was held on the subject petition.

Mr. Bryant, Assistant Planning Director, stated the tract is on the east side of Waterman Avenue at what was Waterman and Shenandoah, but Shenandoah has been closed where it deadends at the Creek. The lot is vacant as is all of the property between the lot and Independence Boulevard on that side of Waterman Avenue; other than that, the entire area to the north and west is utilized for single-family purposes. The zoning is B-2 along Independence Boulevard on both sides and back to what was Shenandoah and all of the property along Waterman is zoned R-9 on both sides, and the property to the rear of the subject lot is zoned O-6.

Mr. Richard E. Wardlow, Attorney for the petitioners, stated they are asking that the zoning of the lot be changed from the present R-9 zoning to O-6. That this area, all the way from Independence Boulevard going up the creek to Commonwealth Avenue, is owned by the petitioner. The petitioner's proposed motel will be entirely in the B-2 area, which he pointed out on the map. The map and plans of this motel are already on file in the Building Inspection Department, and it will be started immediately if they are granted the change requested. In planning the motel the rear end of the building will be 11 feet from the line that marks the division between B-2 and O-6 zoning. They left a rear area of over 100 feet for screening, etc., for the protection of the R-9 area back of the lot. The Building Inspector told them when they went for the Building Permit that even though they have left the required rear yard line, there is a building line intervening, which he interprets to mean that you must set back from the zone line rather than the lot line. So that means that

they either have to redesign the entire building to get a perfect, good area; they tried moving forward, but there was the sanitary sewer in the creek which they may not encroach upon. Mr. Ritch of the Planning Office suggested that this being O-6 property, they simply extend the O-6 zone to more of their residential lot; this would give them space to put their parking on the back and would give them more than adequate protection to fence it up between this and the residential property which they own. He stated the petitioner has his loan, he has had the contract for the motel since December 16th, and because of this problem, which is caused by lack of communication between the Building Inspection Department and the architect, they cannot proceed. He pointed out that the motel building and operation itself will be located entirely in a B-2 zone, even though what they are putting there is a B-1 use. In the B-2 zone the usage can be, among other things under the zoning ordinance, fuel oil distribution, auto racing, construction material storage, automobile garages, etc. That he does not say this in the way of a threat that if Council does not do this, they will do that, but merely to show the varied usage, because whatever they do it will be to gain the most financial benefit from the property. He pointed out on the map the location of the Merchandise Mart across Independence Boulevard, the Coliseum and Auditorium and stated that a motel is needed in the area.

No protest was expressed to the proposed rezoning.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-9 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION TO AMEND CHAPTER 23, ZONING, ARTICLE II, SECTION 23-25, STRUCTURES PERMITTED ABOVE THE HEIGHT LIMIT TO PERMIT CERTAIN STRUCTURES TO BE BUILT ABOVE THE HEIGHT LIMIT, PROVIDED SUCH STRUCTURES ARE SEPARATED FROM ADJOINING LOT LINES BY AT LEAST ONE HALF THEIR HEIGHT.

The scheduled hearing was held on the subject property.

Mr. Bryant, Assistant Planning Director, stated this as indicated is a petition by the Charlotte-Mecklenburg Planning Commission to consider a change in the text of the ordinance to clarify a situation that recently came to light. When the original ordinance was adopted in 1962, it was the intention at that time to permit certain structures, namely church steeples as well as other types of towers, to be erected above the basic height limit which for most districts is forty feet. It was the intent at that time to erect above that limit, but it was felt they should observe more than a normal amount of setback from the property line. The ordinance was written in such a way that if you wanted to build a church with a steeple that was to extend above the height limits, the entire structure or church had to be set back from the adjoining lot line by at least one half the height of the very top of the steeple to the ground. That meant that the building line of the church had to be separated from the lot line by one half that distance. This was not exactly the original intent, and this came to light as a result of the actual administration of the ordinance; so what the Planning Commission is proposing now is to amend the ordinance so that you may still build above the height limit of steeples, towers and so forth; but instead of the entire church building or structure having to be located from the side lot line one-half the distance of the height, the tower structure itself could extend above the height limit and that part would have to be located at least one half its distance from the top to the ground from the line. That if you were building in this circumstance, the main structure of the church building would have to observe only the normal setback from its side, but the distance from the side lot line to the portion of the structure extending

above the basic height limits would have to be at least one half the height from the ground.

No objections were expressed to the proposed change in the ordinance.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-10 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION TO CHANGE ZONING FROM R-6 AND B-2 TO R-6MF ON ELEVEN LOTS ON WEST SIDE OF FAIRBROOK DRIVE, BEGINNING AT FAIRDALE DRIVE AND EXTENDING SOUTH TO THE DEADEND OF FAIRBROOK DRIVE AND ONE LOT ON THE SOUTHEAST CORNER OF LYNCHESTER PLACE AND FAIRBROOK DRIVE: ALSO, CHANGE FROM R-6 AND B-2 TO B-1 PROPERTY ON THE WEST SIDE OF BEATTIES FORD ROAD, BEGINNING APPROXIMATELY 300 FEET NORTH OF HOSKINS ROAD AND EXTENDING NORTH TO FAIRDALE DRIVE; HAVING DEPTH OF APPROXIMATELY 200 FEET: ALSO, CHANGE FROM R-9, R-6MF AND O-15 TO O-6 PROPERTY ON THE EAST SIDE OF BEATTIES FORD ROAD, BEGINNING AT "A" AVENUE AND EXTENDING NORTH TO FAIRDALE DRIVE, HAVING A DEPTH OF APPROXIMATELY 400 FEET: ALSO, CHANGE FROM B-1 S.C.D. AND O-15 TO B-1 PROPERTY AT THE NORTHWEST CORNER OF BEATTIES FORD ROAD AND INTERSTATE HIGHWAY 85.

The public hearing was held on the subject property.

Mr. Fred Bryant, Assistant Planning Director, stated this request was brought to light by a zoning case which was considered recently. That on Beatties Ford Road just beyond I-85 a few weeks ago, there was a request to change a tract of land from B-1 to B-2 in order to submit a type of operation that was classified as a repair garage and other things. This request was denied, but at the same time the Planning Commission in looking at that area recognized that over a period of time there had gradually evolved in the area a very unusual pattern. It was one that went from B-1 S.C.D. to Office, then to B-1, then to B-2 with a scattering of single-family, multi-family, and office zoning. He pointed out the area on a map that was all zoned B-2, the Northwood Estates area, and on the land-use map that most of the area is already developed with single-family homes and duplexes, and that the zoning does not fit the land use at all. As a result of this study, the Planning Commission is recommending a pattern which they feel will help the situation and, in the meantime, stabilize the development that has already taken place in the area. They are recommending that basically all the property on the west side of Beatties Ford Road retain its business zoning, with some of it being out back from a B-2 classification to B-1; and with the exception of one tract of land at Hoskins Road owned by the Catholic Church, on which they have announced plans to erect a church and school combination in the not too distant future, and this they are recommending retain its present office zoning. At the same time, they recommend that the property which has been developed residentially, but is zoned business, be zoned in such manner as to recognize its current usage - R-6MF zoning along the area developed with duplexes and R-6 zoning for the remainder of the area that is already developed in single-family homes. There is one other change, much of this land on the east side of Beatties Ford Road is zoned residentially, and they are proposing that a strip of O-6 zoning be inserted along the east side of Beatties Ford Road in order to create a transitional or buffer area. Mr. Bryant stated further that the property owners affected by this change have been contacted in-so-far as they could find them, and they did not have any objections to the plan they are presenting. There were one or two who thought they should go a little further and bring more business into the area, but there was none exactly opposed to the plan.

Mr. Basil Boyd, Attorney representing some eight or nine property owners, stated the property they are concerned with is on the east side of Beatties Ford Road, from "A" Avenue down to Fairdale Drive. That the Planning

Commission on its own motion have proposed to take that property and zone it O-6. On the west side across the street from this property, they are proposing to zone that all B-1. That his request is very simple, and at the same time they consider it very important. That as he understands the only reason why the Planning Commission is recommending that the property on the east side of Beatties Ford Road be zoned O-6 instead of B-1, as is proposed across the street, is on account of the fact that they want to maintain a buffer zone between the street here and the residential property in the back. That he thinks this is the only basis why they have not zoned both sides B-1. That they submit this property should be zoned B-1 along with the other - that is 400 feet from Beatties Ford Road back to the residential property, and they are asking that it be zoned B-1 instead of O-6. That with a 400 foot depth between the front of this property and the rear of it, there could be no objection to it and could be no problem about not having a suitable and proper and sufficient buffer zone between the rear of this property and the residences. That you would not go back ordinarily with a B-1 building more than 60 or 75 feet and not over 100 or 150 feet depth, and you would still have 300 feet at the end of the business property as a buffer. That this has been done before and is in operation under zoning regulations. In a situation like this if you do not think 300 feet from the rear of a store is enough of a buffer zone, you can write in that these people - if you change it to B-1 - put up a fence or hedge. They submit that the property on each side of Beatties Ford Road is the same thing; there is no difference in it. That it certainly would make no difference in the zoning matters about fire and health and traffic and congestion. That they are petitioning the Planning Commission and hoping they can persuade them to make this recommendation; and they are hoping that the Planning Commission and the Council together will grant this request to make that property B-1 instead of O-6. That the property is too far out, and there would not be that many offices there, and why deprive these people of the same privilege just across the road when this buffer zone can well and sufficiently be taken care of.

Mr. Boyd presented a petition and filed it with the City Clerk.

Mr. Coleman Kerry, Minister of Friendship Baptist Church, stated they own \$35,000 worth of property in the close proximity to this area under discussion. Any reference to a buffer zone causes him a great deal of concern. Their church represents 466 families which own homes in the Northwood Estates. That the property which is now zoned - a little strip of land - was originally zoned residentially, there being a number of problems in so doing and as a result they ended up with a conflict of duplex homes in this area with a buffer separating a quite substantial investment of homeowners in the Northwood Estates. They know who owns this vacant strip of property which has been so zoned, and no real decision has been made as to what will happen to that property. That the church officials are in touch with the owners and have discussed many proposals and they have agreed to work with them because they feel if you change too many zones in this area you will end up with a pretty bad situation. He requested that any decision be delayed on this until the Planning Commission has had further study. That they say they have made contacts in the area, and he thinks they have the largest single investment out there, and even though their property is not in the immediate area, it is certainly in close proximity, and he thinks this should be weighed very carefully before any decision is made.

Council decision was deferred for one week.

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END A J

HEARING ON PETITION NO. 66-11 BY J. H. CHEATWOOD FOR CHANGE IN ZONING OF A LOT 60 FEET X 164 FEET ON THE SOUTHWEST CORNER OF WATERMAN AVENUE AND SHENANDOAH AVENUE, FROM R-9 TO O-6.

The scheduled hearing was held on the subject property.

Mr. Fred Bryant, Assistant Planning Director, advised this is a single lot diagonally across the street from the Presidential Motor Inn property on Waterman Avenue requested rezoned, the petition for which has been previously heard today. That the entire area to the north and west is utilized for single family purposes with B-2 zoning along Independence Boulevard on both sides and back to what was Shenandoah Avenue, and all of the property along Waterman is zoned R-9 on both sides and the property to the rear of the subject lot is zoned O-6.

Miss Margarite Frit, representing the petitioner, stated if the petition of Presidential Motor Inn is granted to change the zoning of their property across the street from R-9 to O-6, she believes it would be fair to consider Mr. Cheatwood's petition for relief in this situation. That at this moment, it would be a great loss to him to try to dispose of his property as a residence rather than O-6.

No protest was expressed to the proposed rezoning.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-12 BY SAMUEL J. KING FOR CHANGE IN ZONING OF A PIECE OF PROPERTY 207.59 FEET X 336.73 FEET LOCATED 187 FEET SOUTH OF McDONALD BELT ROAD AND 265 FEET EAST OF STATESVILLE ROAD, FROM B-2 TO I-2.

The public hearing was held on the subject property.

Factual information relating to the subject property was given by the Assistant Planning Director who stated this is a triangular shaped tract and is adjoined on the Statesville Road side by a service station and vacant property which is owned by the petitioner; there are two residences at the intersection of McDonald Road, and three residences on McDonald Road and Broome Trailer Service Company on the corner at Derita Road. All the area to the rear of the subject property is zoned I-2, with the property out to and across Statesville Road all the way along the length of Statesville Road, Zoned B-2.

Mr. Samuel J. King, the petitioner, stated after he had proceeded with his plans to build two structures on this property and submitted the plans to the Planning Commission, they found they had a little problem in that they did not have facilities for parking the trucks that would do service to the manufacturing facilities. It was indicated that the only way they could continue with their investment was to ask for the zoning change from B-2 to I-2.

No opposition was expressed to the proposed change in zoning.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-14 BY I. R. MEISENHEIMER FOR CHANGE IN ZONING OF A TRACT OF LAND APPROXIMATELY 510 FEET X 1,800 FEET LOCATED AT 7501 Neal Road, From R-12 TO B-2.

The scheduled hearing was held on the subject property.

Mr. Fred Bryant, Assistant Planning Director, pointed out Neal Road leading off Mineral Spring Road, following Mineral Spring Road out and coming out

practically in Derita. That this is a tract of about 19 acres and has on it at present sixteen trailers. That this is a trailer park that existed prior to the enactment of the present ordinance; therefore, it is a legal nonconforming use. The property has on it in addition to the trailers, a home which serves as the office for the mobile-home park; it is adjoined by a number of single-family structures throughout the area; on both sides of Neal Road leading up to Mineral Springs Road, there are single family homes; that immediately facing the property is a single-family house and a single trailer. On the other side of the property going out Neal Road, there are three homes on one side and a single home on the other side with a scattering of residential structures throughout the area. At present the zoning in the area is R-12 single-family.

Mr. W. H. Bobbit, Jr., Attorney for the petitioner, stated they have an existing problem and are not seeking something that is not already there. Mineral Springs Mobile Park has been in existence since about 1955 and in 1956 the entire parcel was plotted out, streets put in, areas for trailers level off, etc. Prior to 1962 a great number of facilities were put in for a number of trailers in excess of the 16 located there now. At the time of the adoption of the 1962 zoning ordinance, there were only 12 trailers located on the premises but the facilities were sufficient to serve two or three times that number without any new facilities - such as wells, septic tanks and major electrical wiring. Prior to 1962 when the ordinance was adopted, Mr. Meisenheimer, who is an independent carpenter, had expended something near \$10,000 in developing the Park. Since that date he has had the State Department of Health approve the plans for the entire area which consists of about 19 acres and could hold 80 to 90 trailers. That he allows approximately 4,000 feet per trailer, whereas the zoning ordinance requires only 2,500 feet. As far as the location is concerned, the property is approximately two miles from Downtown Derita on a deadend road, and the closest business zoning of any sort is Downtown Derita, and the next closest business zoned area is at the intersection of I-85 and old N.C. 29 at the general location of the Fairgrounds. The R-12 zoning of the area was done in 1962 and is something like one and a half miles long and one and a half miles wide, rectangular in shape and has in it something like 900 acres with no Business area at all and is bordered by an Industrial area which runs down along I-85. It is located in Mallard Creek Township about three and a half miles from the city limits which is at the intersection of Derita Road, North Graham Street and I-85. The problem they have become apparent in the last several months; Mr. Meisenheimer has felt all along that his Trailer Park has been well established and well laid out to where it came under the grandfather clause of the ordinance - but in the last several months he and the Building Inspection Department have had a difference in opinion on that and to try to resolve it here, once and for all if we can, rather than slug it out in criminal court, is what we have chosen to do. The change in zoning, if permitted, will not be noticeable, this property is rectangular, fronts about 500 feet on Neal Road, extends back 1,650 feet to a creek at the back at a distance of about 250 to 300 feet back from the road, the land moves up, and from that crest on back it goes down hill very steeply. The closest trailer to the highway now is about 350 feet and Mr. Meisenheimer's present plans do not anticipate that any trailers will be any closer than that. At the present of the 16 trailers there, a person riding down Neal Road and looking carefully could not see more than three or four of them, and they will not be visible from the highway whether he has 16 or 80. The zoning change involved here has been contested. The way this Trailer Park has been planned and developed should not be something that gives the Planning Commission or the Council or the Departments of the City, who administer the ordinance, new problems in traffic; we are dealing with a one-way street, a deadend road, and we are not dealing with a congested neighborhood. As Mr. Bryant pointed out, there are a number

of houses along Neal Road, but the distance from Neal Road to Mineral Springs Road on which this Trailer Park is located is half a mile or more, and the distance from this property to the deadend of Neal Road is another half mile or more. There are about 25 houses along both sides of Neal Road, but nobody lives on a 50 foot or a 100 foot lot, most of them live on estates of five, ten to thirty acres, but the fact remains that this Mobile Trailer Park and the signs which have been erected at the Derita entrance into Mineral Springs Road and at the entrance to Neal Road have been there since 1955 and most of these homes have been built with the full knowledge that the Trailer Park was there; in fact, one of the residents objecting to the Petition lives adjoining the property and has in his front yard, at a distance of approximately 150 feet from the road, a large house-trailer sitting right out on the road, so we do not understand his objections. The problem is clear, the need from the standpoint of the Petitioner is clear, the problems that the opponents will present are clear, someone always objects to change and has the right to, but we feel the equities of violence and the notice and existence and development and the fact that the lay of the land is such, that no additional objections to the community will be apparent, are things that should secure Councils support in permitting this zoning change. Mr. Bobbitt requested Council's earnest consideration of their petition.

Councilman Thrower asked how long Mr. Meisenheimer has owned the property and Mr. Bobbitt stated he purchased it in 1949.

Mr. John Hasty, Attorney representing the protestors, stated a petition has already been filed with the Clerk, comprising the entire adjoining property owners opposing the change. He presented a map of the property, pointing out that, with the exception of the business around N. C. 49, the entire area is either zoned R-9, R-9MF or R-12 and constitutes well over ten-square miles of residential property. He presented photographs of the homes in the area and explained that the property requested rezoned is clearly visible from the backyard of one of the opponents; a second photograph of a group of homes each costing \$20,000 to \$25,000 that would be effected by the rezoning with it coming within several hundred feet; another photograph of a view of a subdivision which lies immediately behind the subject property; another photograph of two homes in the Richview Homes section of Derita - all of these houses being right behind the proposed zoning change. He stated the residents who filed the petition opposing the change on Wednesday have been joined by others, and he has with him a petition containing 58 more names, which includes all except three of the property owners on Neal Road; the three not on the petition are people who do not live on their property and in the short period of time that was given, they were unable to obtain their signatures. He stated that the sign that was posted by the Planning Commission on the property was moved - and Mr. Bryant will substantiate this - to such a distance away that none of the residents saw it or knew it was there. That he was contacted only on Friday of week-before-last and only on Friday was the Sign visible to the residents as to the proposed change in zoning. He filed the additional petition with the City Clerk. He presented a map of the area, on which the names of each of the protestors and their property was indicated and which shows the Subdivision in which the homes in the photographs shown Council are located and the area requested rezoned which will bring the trailer park right up to the backdoors of these homes. He stated that Mr. Meisenheimer prepared a Trailer Park which, under the 1962 ordinance, became an existing use; he tried to expand this use - putting in more trailers - and the City Attorney now has under consideration a law suit against him. He asked that the Council not let him expand even under Mr. Bobbitt's argument that we have a Plan - this Plan was abandoned for more than one year, which I will argue to you under the law. Do not let Mr. Meisenheimer ruin the \$25,000 or \$30,000 homes. Do not let him ruin the homes which are already on Neal Road. E-2 zoning, as he understands it, is for the convenience of the surrounding neighborhood; this will not be a convenience.

Mr. Bobbitt remarked that he did not realize that his client was apt to ruin so many people. That some innuendo was perhaps intended in connection with the sign on the property. That the first notice that he or his client had that the sign had been moved came from Mr. Birmingham of the Planning Commission office; when they learned that it had been moved - by whom they do not know - Mr. Meisenheimer located it and moved it back out right by the shoulder of the road, where it was on Saturday morning when he went out to see if it was there.

Council decision was deferred for one week.

HEARING ON PETITION NO. 66-15 BY W. BRUCE HUTCHINSON FOR CHANGE IN ZONING OF A STRIP OF LAND 300 FEET IN DEPTH ON THE NORTH SIDE OF SUNSET ROAD, BEGINNING AT STATESVILLE ROAD AND EXTENDING WESTWARD APPROXIMATELY 1,800 FEET, FROM R-9 AND B-2 TO I-2.

The public hearing was held on the subject petition.

Mr. Fred Bryant, Assistant Planning Director, stated this location is out Statesville Road at the edge of the perimeter area, and the subject property is a strip of land on Sunset Road extending from Statesville Road westward to the edge of the perimeter area. The property is vacant, with the exception of one house at the intersection of Statesville and Sunset Roads, and there are a number of residences scattered through the area. The present zoning is B-2 around the intersection of Sunset and Statesville Roads; and other than that, it is all residentially zoned R-9, R-12 and R-12MF to Statesville Road.

No objections were expressed to the proposed change in zoning.

Council decision was deferred for one week.

RESOLUTION CLOSING A PORTION OF SOUTH DAVIDSON STREET, BETWEEN EAST SECOND STREET AND INDEPENDENCE BOULEVARD, IN THE BROOKLYN URBAN RENEWAL AREA, ADOPTED.

The public hearing was held on the request of the Redevelopment Commission for the closing of a portion of South Davidson Street, between East Second Street and Independence Boulevard, in the Brooklyn Urban Renewal Area.

No objections were expressed to the proposed street closing.

Councilman Whittington moved the adoption of a Resolution Closing a Portion of South Davidson Street, between East Second Street and Independence Boulevard, in the Brooklyn Urban Renewal Area. The motion was seconded by Councilman Thrower, and unanimously carried.

The resolution is recorded in full in Resolutions Book 5, at Page 177.

RESOLUTION CALLING FOR A PUBLIC HEARING ON THE REDEVELOPMENT PLAN FOR REDEVELOPMENT SECTION NO. 4 BROOKLYN URBAN RENEWAL AREA, ON FRIDAY, FEBRUARY 7, 1966.

Upon motion of Councilman Whittington, seconded by Councilman Jordan and unanimously carried, a resolution entitled: Resolution calling for a public hearing on the Redevelopment Plan for Redevelopment Section No. 4 Brooklyn Renewal Area on Friday, February 7, 1966, was adopted. The resolution is recorded in full in Resolutions Book 5, at Page 179.

ANNOUNCEMENT OF THE APPROVAL OF \$178,000 FOR STUDY OF PHASE NO. 5, BROOKLYN URBAN RENEWAL REDEVELOPMENT.

Mayor Brookshire announced that in connection with the Brooklyn Urban Renewal Redevelopment Plan, Senator Jordan has this afternoon announced the approval of the Study Fund Money for Phase 5 in the amount of \$178,000. The Mayor advised that he received the news when he was in Washington on Friday, but it could not be disclosed until Senator Jordan made his announcement.

SUPPLEMENT NO. 8 TO LEASE WITH EASTERN AIRLINES, REDUCING THEIR LAND AREA AND RENTAL IN TRACT "D" AND LAND AREA IN TRACT "C" FOR THE CONSTRUCTION OF THE AIR CARGO BUILDING AT DOUGLAS MUNICIPAL AIRPORT.

Councilman Thrower moved approval of Supplement No. 8 to the Lease with Eastern Air Lines for their use of land area at Douglas Municipal Airport, reducing the land area leased them in Tract "D" by approximately 18,800 square feet and a reduction in rental of \$110.96 per year, and reducing the land area in Tract "C" under option for lease to them, by 5,663 square feet, made necessary in order to construct the Air Cargo Building. The motion was seconded by Councilman Alexander and unanimously carried.

NAME OF PINEVILLE ROAD, FROM TYVOLA ROAD TO THE NEW CITY LIMITS SOUTH OF STARBROOK DRIVE, CHANGED TO SOUTH BOULEVARD.

Upon motion of Councilman Short, seconded by Councilman Alexander and unanimously carried, the name of Pineville Road from Tyvola Road to the new city limits south of Starbrook Drive, was changed to South Boulevard as recommended by the Planning Commission in order to extend the in-city street name into the area annexed to the city on December 27, 1965, so as to retain an orderly street naming system.

CONSTRUCTION OF SANITARY SEWER MAINS AUTHORIZED.

Upon motion of Councilman Thrower, seconded by Councilman Jordan and unanimously carried, the construction of sanitary sewer mains were authorized as follows:

- (a) Construction of 250 feet of eight-inch main in Pecan Avenue inside the city limit at the request of Cole Properties, Inc., at an estimated cost of \$1,045.00. All cost to be borne by the Applicant, whose deposit of the amount of the estimated cost has been received and will be refunded as per terms of the contract.
- (b) Construction of 700 feet of eight-inch main in Somerdale Lane, inside the city limits, at the request of The Windsor Company, at an estimated cost of \$3,530.00. All costs to be borne by the Applicant, whose deposit of the amount of the estimated cost has been received and will be refunded as per terms of the contract.

ROSTER OF ACTIVE MEMBERS OF CHARLOTTE FIRE DEPARTMENT APPROVED FOR CERTIFICATION TO THE BOARD OF TRUSTEES OF THE N. C. FIREMEN'S PENSION FUND.

Councilman Alba moved approval of the Roster of Active Members of the Charlotte Fire Department as submitted by Chief Walter J. Black for certification to the Board of Trustees of the North Carolina Firemen's Pension Fund. The motion was seconded by Councilman Thrower and unanimously carried.

E. E. WADDELL APPOINTED A MEMBER OF THE REDEVELOPMENT COMMISSION.

Mayor Brookshire asked if there were additional nominations to those of Mr. E. E. Waddell and Dr. Rufus R. Perry made at the last meeting to fill the vacancy on the Redevelopment Commission.

No other nominations were made.

Councilman Alexander moved the appointment of Dr. Rufus R. Perry to fill the vacancy on the Redevelopment Commission for the unexpired term of Mr. Malcolm, resigned, ending on November 27, 1969. The motion did not receive a second.

Councilman Whittington stated a few weeks ago when the Council had the responsibility of filling another vacancy on the Redevelopment Commission, he said then that we are attempting to meet the challenge of a growing community. That he believes we need to appoint men who have the necessary education, training, experience and interest to do a good job. That he would like to say that he knows of the qualifications of Dr. Perry and his work in this city. However, he believes his nominee, Mr. E. E. Waddell, can make a greater contribution because his school is in the Brooklyn Redevelopment Area, and he is familiar with the people affected by Urban Renewal and with their problems. He is a graduate of North Carolina A & T College in Greensboro with a masters degree; he has also attended the University of Pennsylvania, New York University, and the University of North Carolina at Chapel Hill. For twenty-three years he has been a school administrator, where he has gained valuable experience in policy making and dealing with the public. For the past eleven years he has served on the Board of Trustees of North Carolina A & T College at Greensboro. He was appointed to this Board first by Governor Luther Hodges and reappointed by Governor Terry Sanford. At present, he is Vice-Chairman of this Board of Trustees and has served as Vice-Chairman for the past six years. During this time he has worked closely with State and Federal Agencies in promoting the growth of this Institution, and this experience should prove very valuable on this Commission. He has had close relationship with the Redevelopment Commission and Urban Renewal in acquiring property and securing funds for erecting buildings for this college. He has been use to making major decisions that require large sums of money and long range planning which affected the lives of many people. At present, he is Principal of Second Ward High School, where he has been for the past three years. This was the first predominately Negro school in Charlotte where the student body and faculty were integrated, and this was done without incident. As the Principal of Second Ward School, he has worked closely with the officials of the Redevelopment Commission as well as with families and children most directly affected by Urban Renewal. This experience qualifies him to serve well as a member of the Redevelopment Commission, because he knows the problems of these people. He has in the past expressed publicly on many occasions his interest in Urban Renewal and his desire to be of assistance. It is his belief that this man will bring training, experience and desire to serve on this Commission that will be of benefit to all the citizens of Charlotte. For these reasons, he believes the Council today should elect Mr. E. E. Waddell as a member of the Redevelopment Commission, and he hereby moves his appointment for the unexpired term of Mr. James A. Malcolm. The motion was seconded by Councilman Tuttle.

The vote was taken on the motion and carried by the Following recorded vote:

YEAS: Councilmen Whittington, Tuttle, Albea, Jordan, Short and Thrower.
NAYS: Councilman Alexander.

RESOLUTION PROVIDING FOR PUBLIC HEARINGS ON FEBRUARY 21, 1966, ON PETITIONS NUMBERED 66-18 THROUGH 66-22 FOR ZONING CHANGES, ADOPTED.

Upon motion of Councilman Albea, seconded by Councilman Jordan and unanimously carried, a resolution entitled: "Resolution Providing for Public Hearings on February 21, 1966, on Petitions Numbered 66-18 Through 66-22 for Zoning Changes," was adopted.

The resolution is recorded in full in Resolutions Book 5, at Page 192.

NO MORE THAN TEN PETITIONS FOR ZONING CHANGES TO BE HEARD AT ANY ONE COUNCIL MEETING.

Councilman Thrower asked Council to consider hearing no more than ten zoning petitions at a meeting, and extend to the next meeting the other zoning petitions beyond this number. Councilman Whittington remarked that he agrees with this suggestion. Councilman Albea asked that an iron clad rule on this not be made, as any number of zoning petitions can by motion be postponed at any meeting. Councilman Thrower replied that they cannot be postponed if they have been advertised to be heard on a particular date, and, in his opinion, hearings on ten petitions on an agenda is enough to absorb in one day.

Councilman Thrower moved that Council hear no more than ten zoning petitions at a meeting and automatically extend the remaining petitions to the following week. The motion was seconded by Councilman Whittington who remarked that he thinks this is only fair. That today Council has been here since one o'clock, and in fairness to the people who present the petitions and ask Council to make a judgment, one can absorb only so much.

Councilman Albea commented that Council members asked for the job and got it, and the people want a hearing on their petitions as soon as they can get it, and he thinks they rather enjoy meetings like today's. Councilman Short remarked that he is wondering if this should be done in the absence of Mr. Kiser, Acting City Attorney, and he asked if this sort of thing has been done before? Councilman Thrower replied that usually hearings are set up on zoning requests for the third week, but there is no rule that says they have to be heard the third week of the month.

The vote was taken on the motion and carried by the following recorded vote:

YEAS: Councilman Thrower, Whittington, Alexander, Jordan, Short and Tuttle.
NAYS: Councilman Albea.

CONTRACTS AUTHORIZED FOR THE APPRAISAL OF RIGHTS OF WAY FOR THE NORTHWEST EXPRESSWAY.

Upon motion of Councilman Whittington, seconded by Councilman Tuttle and unanimously carried, the following contracts for the appraisal of rights of way for the Northwest Expressway, were authorized:

- (a) Contract with G. A. Hutchinson for the appraisal of one parcel of land on East Trade Street.
- (b) Contract with L. D. Bass, Sr., for the appraisal of one parcel of land on East Trade Street.
- (c) Contract with L. H. Griffith for the appraisal of one parcel of land on Central Avenue.
- (d) Contract with Wallace D. Biggs for the appraisal of one parcel of land on Central Avenue.

TRANSFER OF CEMETERY LOTS.

Upon motion of Councilman Jordan, seconded by Councilman Alexander and unanimously carried, the Mayor and City Clerk were authorized to execute deeds for the transfer of the following cemetery lots:

- (a) Deed with Estate of Fred N. Hall, Sr. for Graves 3, 4, 8 and 9 in Lot 272 and for Graves 1, 2, 3 and 4 in Lot 273, Section 2, Evergreen Cemetery, at \$480.00.
- (b) Deed with Mr. and Mrs. John L. Phifer, for Graves 5, 6, 7 and 8 in Lot 268 and Graves 9 and 10 in Lot 269, Section 2, Evergreen Cemetery, at \$360.00.
- (c) Deed with Mr. and Mrs. Leston T. Funderburk for Graves 5, 6, 7 and 8 in Lot 273, Section 2, Evergreen Cemetery, at \$240.00.
- (d) Deed with Mr. Horace E. Hall, for Graves 5 and 10 in Lot 272, Section 2, Evergreen Cemetery, at \$720.00.
- (e) Deed with Mr. E. Pat Hall, for Graves 1 and 6 in Lot 269, Section 2, Evergreen Cemetery, at \$720.00.
- (f) Deed with Mrs. Nell K. Hall, for Graves 2, 3, 7 and 8 in Lot 269, Section 2, Evergreen Cemetery, at \$240.00.
- (g) Deed with Mr. Harold L. Hall, for Graves 1, 2, 6 and 7 in Lot 272, Section 2, Evergreen Cemetery, at \$240.00.
- (h) Deed with Mr. Fred N. Hall, Jr., for Grave 1 in Lot 268, and Graves 4 and 5 in Lot 269, Section 2, Evergreen Cemetery, at \$180.00.
- (i) Deed with Mr. James T. Hall, for Graves 2, 3 and 4 in Lot 268, Section 2, Evergreen Cemetery, at \$180.00.

CONTRACT AWARDED TO TRAFFIC ENGINEERS SUPPLY CORPORATION FOR RADAR UNITS FOR POLICE DEPARTMENT.

Councilman Tuttle moved the award of contract to the low bidder, Traffic Engineers Supply Corporation in the amount of \$2,222.74 for two transistorized radar units, as specified. The motion was seconded by Councilman Whittington and carried unanimously.

The following bids were received:

Traffic Engineers Supply Corp.	\$ 2,222.74
National Welders Supply Co.	2,358.70
Stephenson Corp.	2,677.70

CONTRACT AWARDED EUREKA FIRE HOSE DIVISION, U. S. RUBBER COMPANY FOR FIRE HOSE.

Motion was made by Councilman Tuttle to award contract to the low bidder, Eureka Fire Hose Division, U. S. Rubber Company, for 23,000 ft. of fire hose, as specified, in the amount of \$20,013.15 on a unit price basis. The motion was seconded by Councilman Jordan and carried unanimously.

The following bids were received:

Eureka Fire Hose Div. - U. S. Rubber Co.	\$20,013.16
Dixie Fire & Safety Eqpt. Co., Inc.	20,208.60
Fabric Fire Hose Company	20,477.75
Blaze Guard Mfg. Company	21,053.20
The Fyr-Fyter Company	21,366.55
Goodall Rubber Company	22,817.08
American LaFrance	23,385.04

CONTRACT AWARDED PIEDMONT AUTO EXCHANGE FOR ONE TRUCK TIRE CHANGER FOR MOTOR TRANSPORT DEPARTMENT.

Upon motion of Councilman Jordan, seconded by Councilman Tuttle and unanimously carried, contract was awarded the low bidder, Piedmont Auto Exchange in the amount of \$1,906.84 for one truck tire changer, as specified.

The following bids were received:

Piedmont Auto Exchange	\$ 1,906.84
Tar-Heel Supply Company	1,952.37
Brake Service Company	2,012.77

BID ON CLAY BRICK REJECTED.

Councilman Tuttle moved that the only bid received on clay brick be rejected as recommended by the City Engineer and Purchasing Agent and that new bids be advertised. The motion was seconded by Councilman Short and carried unanimously.

The following bid was received:

Kendrick Brick & Tile Company	\$14,994.00
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ACQUISITION OF PROPERTY AND EASEMENTS FOR THE EASTWAY DRIVE WIDENING PROJECT, AUTHORIZED.

Upon motion of Councilman Albea, seconded by Councilman Alexander and unanimously carried, the acquisition of property was authorized as follows:

- (a) Acquisition of 1,600 square feet of property at 3018 Shamrock Drive, from Gibson L. Smith and wife, Elizabeth B. in the amount of \$2,000.00 for the Eastway Drive Widening Project.
- (b) Acquisition of 400 square feet of property at 3017 Shamrock Drive, from Mrs. Sybil Owens Davis and Roy O. Davis, Sr. in the amount of \$500.00 for the Eastway Drive Widening Project.
- (c) Acquisition of 1,100 square feet of property on Shamrock Drive, from John S. Chonis in the amount of \$1,100.00 for the Eastway Drive Widening Project.
- (d) Construction Easement to 175 square feet of property at 2014 Eastway Drive, from Eddith H. Clontz, widow, at \$30.00 for the Eastway Drive Widening Project.

RESOLUTION AUTHORIZING CONDEMNATION PROCEEDINGS FOR ACQUISITION OF CONSTRUCTION EASEMENT OVER PROPERTY OF WILLIAM H. LABHART AND WIFE, SYBLE S. LABHART, LOCATED AT 316 EASTWAY DRIVE FOR EASTWAY DRIVE WIDENING PROJECT.

Upon motion of Councilman Albea, seconded by Councilman Alexander, and unanimously carried, a resolution entitled: Resolution Authorizing Condemnation Proceedings for Acquisition of Construction Easement Over Property of William H. Labhart and wife, Syble S. Labhart, Located at 316 Eastway Drive for Eastway Drive Widening Project, was adopted.

The resolutions is recorded in full in Resolutions Book 5, at Page 183.

CONDEMNATION OF PROPERTY OF TOM MATTOX AND WIFE FOR CAPITOL DRIVE SANITARY SEWER EXTENSION, AUTHORIZED.

Councilman Albea moved that condemnation proceedings be authorized for property 15' x 1292.93 linear feet, lying along Capitol Drive, owned by Tom Mattox and wife, Azela S., for the Capitol Drive Sanitary Sewer Extension. The motion was seconded by Councilman Alexander and carried unanimously.

ORDINANCE NO. 415 TO AMEND CHAPTER 7 OF THE CODE OF THE CITY OF CHARLOTTE RELATING TO MONUMENTS IN CEMETERIES.

Upon motion of Councilman Thrower, seconded by Councilman Tuttle and unanimously carried, an ordinance entitled: Ordinance No. 415 to Amend Chapter 7 of the Code of the City of Charlotte Relating to Monuments in Cemeteries, was adopted.

The ordinance is recorded in full in Ordinance Book 14, at Page 257.

CROSSING GUARDS AUTHORIZED AT NEWLAND ROAD AND CUMMINS AVENUE AND AT NEWLAND ROAD AND SAMUEL STREET TO SERVE LINCOLN HEIGHTS AND WILLIAMS JUNIOR HIGH SCHOOL, AND TRANSFER OF FUNDS FROM THE CONTINGENCY ACCOUNT, GENERAL FUNDS, FOR THIS PURPOSE.

Upon motion of Councilman Albea, seconded by Councilman Whittington and unanimously carried, a crossing guard was authorized at Newland Road and Cummins Avenue and at Newland Road and Samuel Street to serve Lincoln Heights and Williams Junior High School, and \$860.00 was authorized transferred from the General Fund, Contingency Account for this purpose.

TRANSFER OF FUNDS FROM GENERAL FUND, UNAPPROPRIATED FUNDS TO TRAFFIC ENGINEERING DEPARTMENT ACCOUNT FOR THE INSTALLATION OF NEW SCHOOL ZONES AND SIGNS, AUTHORIZED.

Councilman Tuttle moved that \$12,680.00 be transferred from the General Fund, Unappropriated funds to the Traffic Engineer Department Account, for the installation of new School Zones and Signs for the 67 elementary and junior high schools located within the city limits, as recommended by the Traffic Engineer. The motion was seconded by Councilman Short and carried unanimously.

See Ordinance No. 550-X attached.

PAYROLL DEDUCTION OF FUNDS FOR VOLUNTEER POLICE PLEDGE FUND, AUTHORIZED.

Councilman Thrower moved approval of the use of payroll deductions for the Volunteer Police Pledge Fund, subject to the details being worked out satisfactorily. The motion was seconded by Councilman Short and carried unanimously.

3ND AJ

ENGINEERING AGREEMENT IN CONNECTION WITH THE WIDENING OF SHARON AMITY ROAD FROM TANGLE DRIVE TO INDEPENDENCE BOULEVARD AUTHORIZED WITH RALPH WHITEHEAD & ASSOCIATES.

Upon motion of Councilman Whittington, seconded by Councilman Albea and unanimously carried, an engineering agreement was authorized with Ralph Whitehead & Associates in connection with the widening of Sharon Amity Road from Tangle Drive to Independence Boulevard, AT A TOTAL LUMP sum fee of \$12,500.00.

REQUEST OF MRS. W. A. LILLY FOR INFORMATION REGARDING CONSTRUCTION OF SWIMMING POOL IN WOODBURY FOREST REFERRED TO THE PLANNING COMMISSION.

Councilman Tuttle requested Mr. Bobo, Administrative Assistant, to take up the letter from Mrs. W. A. Lilly regarding the construction of a swimming pool in Woodbury Forest with the Planning Commission, AND SEE if anything can be worked out for her.

ADJOURNMENT.

Upon motion of Councilman Thrower, seconded by Councilman Alexander and unanimously carried, the meeting was adjourned.

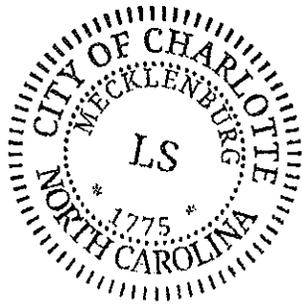
Lillian R. Hoffman
Lillian R. Hoffman, City Clerk

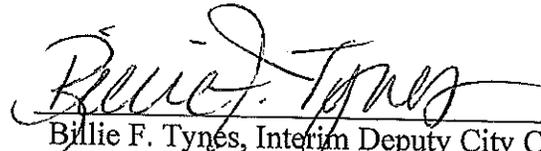
EXHIBIT B

CERTIFICATION

I, **Billie F. Tynes**, Interim Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the Minutes attached hereto is a true and exact copy of an extract of minutes from Minute Book 51, Pages 458-469, originally approved by the Charlotte City Council at a Regular Meeting convened on the 8th day of April, 1969.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 17th day of August, 2021.





Billie F. Tynes, Interim Deputy City Clerk

April 8, 1969
Minute Book 51 - Page 458

A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, City Hall, on Tuesday, April 8, 1969, with Mayor Stan R. Brookshire presiding, and Councilmen Fred D. Alexander, Milton Short, Gibson L. Smith, James B. Stegall, Jerry Tuttle and James B. Whittington present.

ABSENT: Councilman Sandy R. Jordan.

* * * * *

INVOCATION.

The invocation was given by Councilman Milton Short.

MINUTES APPROVED.

Upon motion of Councilman Whittington, seconded by Councilman Smith, and unanimously carried, the minutes of the last Council Meeting, on March 31, 1969, were approved as submitted.

MAYOR AND COUNCILMEN INVITED TO OPENING OF BASEBALL SEASON IN CHARLOTTE.

Mr. Don Hill stated he is present in reference to the opening of the baseball season; Mr. Phil Houser has just returned from Florida and has asked him to come today and invite the Mayor and Council to a successful season in the baseball park this year. Mr. Hill stated they are happy that the Mayor has agreed to open the season by throwing out the first ball. He stated Mr. Veeder has agreed to accept from the Councilmen the number of tickets for some boxseats for the game on Monday night; that they hope to have the Johnson C. Smith University Band present on Monday for the opening, and they hope to have a good turn-out for the opening season.

STATEMENTS BY VARIOUS CITIZENS.

Mr. W. J. Elvin stated a few weeks ago he suggested that the salaries of the Mayor and Council be increased by 100 percent; that he hoped this increase would encourage people better qualified with a broader general business and financial experience to run for these offices; that he would also suggest that all regular Council Meetings be held in the evening as many of the younger people are not available to hold office or attend meetings or committee assignments unless such a change is made.

Mr. Bobby White of the Derita Jaycees stated they are planning to hold a fair and carnival to open Friday or Saturday night as a project to raise money for their charities.

Mr. White stated the Jaycees want to get involved more in politics; that a lot of their men have expressed interest that has never been expressed before; also, the evening meetings would give them a better chance to attend the meetings and to express their ideas.

Councilman Smith stated he attended their meeting on Monday night and they are really a charitable group and they are young men with a lot of ability; that he commends them to government as the type of people he has talked about who should be involved in city government.

REPORT OF WATER AND SEWER STUDY COMMITTEE APPROVED AND COMMITTEE INSTRUCTED TO PROCEED WITH THE RECOMMENDATIONS OF THE REPORT.

Councilman Short stated in an effort to resolve the things the Water and Sewer Study Committee have been discussing, some of the members have been meeting almost continuously for the last five days on this matter; that he thinks the problems are resolved and the following report was presented to the County Commission this morning by Mr. Pat Calhoun, Chairman of the Committee, and it was approved and the Commission unanimously ordered the carrying out of the recommendations:

REPORT OF WATER AND SEWER STUDY COMMITTEE TO THE BOARD OF COMMISSIONERS OF MECKLENBURG COUNTY.

1. It is the conclusion of the Water and Sewer Study Committee that Charlotte and Mecklenburg County plan its water and sewer system to serve primarily as a source of supply for the citizens of Charlotte and Mecklenburg County.
2. It is also the Study Committee's conclusion that the Hoskins and Vest water treatment plants with their expansion potential can supply all of the treated water needed in Mecklenburg County until approximately 1990, and it is therefore not necessary to plan for another major water treatment plant at the present time.
3. It is recommended that HDR be authorized to proceed with further design work on those projects on which it already has design work under way (this to be limited to lines 8 inches in diameter or larger) and to work with the Water and Sewer Study Committee to insure that water lines in projects D through J of the HDR Comprehensive Report be designed in conformance with Paragraphs 1 and 2 above.
4. The Water and Sewer Study Committee has under way an in-depth study of extension policies for smaller lines and will present recommendations to the City and County governments as soon as possible.
5. With reference to the "Joint Statement of Policy for Extension of Water Service Along Old Monroe Road to Matthews" which was presented to the Mecklenburg Board of County Commissioners and to the Charlotte City Council on February 3, 1969 and was formally approved by both governments, the Water and Sewer Study Committee recommends the immediate implementation of that project as a substitute for Project K in the HDR Comprehensive Report with the following amendment.

Paragraph 6 of the water line proposal for Old Monroe Road which now reads: "The size of the lines shall be as specified in the HDR Comprehensive Report." should be amended to read: "The size of the line shall be 20 inches throughout."

Councilman Short moved that the report be approved and that the Committee be instructed to proceed with the recommendations of the report. The motion was seconded by Councilman Tuttle.

Councilman Whittington thanked the members of this Committee and particularly Mr. Short who has worked long and hard to get this resolved and stated this is an indication of how Council many times involves itself with various projects.

The vote was taken on the motion, and carried unanimously.

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RESOLUTION DECLARING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE TAXICAB SERVICE PROPOSED BY THE APPLICATION OF WILLIAM JAMES DILLESNAW FOR TRANSFER OF A CERTIFICATE HELD BY HERBERT LEE JOHNSON.

Councilman Whittington moved the adoption of the resolution authorizing the transfer of the certificate held by Herbert Lee Johnson to William James Dillesnaw. The motion was seconded by Councilman Tuttle, and carried unanimously.

The resolution is recorded in full in Resolutions Book 6, at Page 289.

ORDINANCE NO. 173-Z AMENDING CHAPTER 23, SECTION 23-8 OF THE CITY CODE AMENDING THE ZONING MAP BY CHANGING THE ZONING OF A PARCEL OF LAND AT 2700 EASTWAY DRIVE.

Councilman Smith moved the adoption of the subject ordinance, as recommended by the Planning Commission, changing the zoning from R-6 to R-6MF of a 1.98 acre tract of land at 2700 Eastway as requested in petition by Carl W. Kissiah. The motion was seconded by Councilman Whittington and carried unanimously.

The ordinance is recorded in full in Ordinance Book 16, at Page 132.

PETITION NO. 69-30 BY HUMBLE REALTY AND INVESTMENTS, INC., FOR A CHANGE IN ZONING FROM O-6 TO B-1 OF PROPERTY AT 1400 HARDING PLACE, AND A STRIP OF LAND ON THE OPPOSITE SIDE OF THE STREET, DENIED.

Motion was made by Councilman Stegall, seconded by Councilman Whittington, and unanimously carried, to deny the subject petition as recommended by the Planning Commission.

PETITION NO. 69-31 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR A CHANGE IN ZONING FROM R-9 TO R-9MF OF PROPERTY ON BOTH SIDES OF PARK ROAD, FROM YALE PLACE TO HILLSIDE AVENUE, DENIED.

Councilman Whittington moved that the subject petition for a change in zoning be denied. The motion was seconded by Councilman Tuttle, and carried unanimously.

PETITION NO. 69-4 BY R. L. MCGINN FOR A CHANGE IN ZONING FROM R-9 TO R-9MF OF A TRACT OF LAND ON THE WEST SIDE OF PARK ROAD, SOUTH OF MARSH ROAD, DENIED.

Councilman Tuttle moved to deny subject petition as recommended by the Planning Commission. The motion was seconded by Councilman Whittington, and carried unanimously.

PETITION NO. 69-12 BY CHARLES R. COLLINS FOR A CHANGE IN ZONING FROM R-15 TO R-12MF OF A 27.992 ACRE TRACT OF LAND ON THE NORTH SIDE OF SHARON VIEW ROAD AT MCMULLEN CREEK, DEFERRED.

Motion was made by Councilman Whittington, seconded by Councilman Short, and unanimously carried, to postpone decision on the subject petition.

April 8, 1969
Minute Book 51 - Page 461

PETITION NO. 69-13 BY LINCOLN COMPANY, INC. FOR A CHANGE IN ZONING FROM B-1 AND R-6MF TO B-2 AND O-6 OF PROPERTIES ON THE SOUTH SIDE OF CENTRAL AVENUE, BEGINNING AT CAROLYN DRIVE AND EXTENDING EASTWARD 847.49 FEET, DEFERRED.

Councilman Whittington moved that decision on the subject petition be deferred until seven members of Council are present. The motion was seconded by Councilman Smith, and carried unanimously.

ORDINANCE NO. 174-Z AMENDING CHAPTER 23, SECTION 23-8 OF THE CITY CODE BY AMENDING THE ZONING MAP TO CHANGE THE ZONING OF PROPERTY ON THE EAST SIDE OF NATIONS FORD ROAD, BEGINNING 943 FEET NORTH OF ARROWOOD ROAD.

Motion was made by Councilman Smith to approve the subject ordinance changing the zoning from R-9 to R-6MF of a 16.80 acre tract of land as petitioned by Henry L. Harkey. The motion was seconded by Councilman Stegall, and carried unanimously.

The ordinance is recorded in full in Ordinance Book 16, at Page 133.

APPROVAL OF AN AMENDMENT TO LEASE WITH UNITED AIR LINES FOR ROOM 125 AT DOUGLAS MUNICIPAL AIRPORT.

Councilman Alexander moved approval of an amendment to lease with United Air Lines for Room 125 at Douglas Municipal Airport, containing approximately 1,365 square feet, to be used as operations space incident to United's expanded operations at the Airport, at an annual rent of \$5,460. The motion was seconded by Councilman Whittington and after discussion, the vote was taken on the motion and carried unanimously.

LEASE WITH SHARON VOLUNTEER FIRE DEPARTMENT, INC. FOR PORTION OF WATER DEPARTMENT PROPERTY OFF SHARON ROAD, APPROVED.

Councilman Whittington moved approval of the subject lease of property consisting of approximately 125' x 211' to be used as site for volunteer fire station. The motion was seconded by Councilman Stegall.

Councilman Short stated there has been discussion by the Water and Sewer Study Committee for getting underway a tank that ultimately might involve this particular property.

The vote was taken on the motion and carried unanimously.

Mr. Veeder, City Manager, stated the only concern the city had about the Fire Department's use of this property was because of the proximity of the property to the church which adjoins the property; that the members of the Volunteer Fire Department have assured the city this is no problem as they speak to a degree for the church as some of the members are deacons in that church, and they have assured them there is no conflict in terms of the church's views toward this property.

ENCROACHMENT AGREEMENTS WITH STATE HIGHWAY COMMISSION, AUTHORIZED.

Upon motion of Councilman Tuttle, seconded by Councilman Stegall, and unanimously carried, the following encroachment agreements were authorized:

- (a) Encroachment Agreement with the State Highway Commission permitting the City to construct an 8-inch sanitary sewer line within the right of way of Woodlawn Road at Nations Ford Road to serve Gulf Oil Corporation.
- (b) Encroachment Agreement with State Highway Commission permitting the City to construct an 8-inch sanitary sewer line within the right of way of Beatties Ford Road and Hoskins Road.

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PROPERTY TRANSACTIONS AUTHORIZED.

Motion was made by Councilman Smith, seconded by Councilman Alexander, and unanimously carried, to approve the following property transactions:

- (a) Negotiated settlement with James Edward Goines and wife, Elsie L., for 952 square feet of property, and 140 square feet of easement area, at 3418 Eastway Drive, in the amount of total settlement of \$1,600.00, in connection with the Eastway Drive Widening Project.
- (b) Acquisition of 1.02 acres of property on Nations Ford Road, in Sharon Township, from Henry Grady Nash, Jr., and wife, in the amount of \$2,500.00, for sanitary sewer easement to serve J. A. Jones Construction Company.
- (c) Temporary construction easement of 75 square feet at 1036 Druid Circle, from Harold L. Walker and wife, Alice P., at \$1.00, for Druid Circle.

TRANSFER OF CEMETERY DEEDS.

Upon motion of Councilman Tuttle, seconded by Councilman Stegall, and unanimously carried, the Mayor and City Clerk were authorized to execute deeds for the transfer of cemetery lots, as follows:

- (a) Deed with Mrs. Walter Aubrey Davis for Northeast portion of Lot No. 142, Section 5, Elmwood Cemetery, transferred from Mr. J. A. Robinson, at \$3.00, for transfer deed.
- (b) Deed with J. A. Robinson for Northwest portion of Lot No. 142, Section 5, Elmwood Cemetery, at \$3.00, for new deed.
- (c) Deed with Samuel Walker Brown and Ethel Boyte Brown, for Lot No. 268, Section 3, Evergreen Cemetery, at \$504.00.
- (d) Deed with Ralph A. Sams and wife, Margaret S. Sams, for east half of Lot No. 22, Section F, Elmwood Cemetery, transferred from Charles H. Daughtry and wife, at \$3.00, for transfer deed.
- (e) Deed with William R. Jones, Sr. and Bertha Pearce Jones and William R. Jones, Jr. and Virginia Hewitt Jones, for Lot No. 312, Section 6, Evergreen Cemetery, at \$320.00.
- (f) Deed with William S. Medlin for Graves 1 and 2, in Lot No. 701, Section 6, Evergreen Cemetery, at \$160.00.
- (g) Deed with Mr. and Mrs. Julian Jerome Clark for Lot No. 385, Section 3, Evergreen Cemetery, at \$630.00.
- (h) Deed with Mrs. Donald H. Kirby, Sr. for Graves 3 and 4, in Lot No. 701, Section 6, Evergreen Cemetery, at \$160.00.
- (i) Deed with Mrs. Louise Merita Paine for Fraction of Lot No. 17, Section Q, Elmwood Cemetery, transferred from Surviving heirs of Mrs. Louise Melton Phillips, at \$3.00, for transfer deed.

REAPPOINTMENT OF MRS. ROBERT D. HOWERTON TO PARK AND RECREATION COMMISSION.

Councilman Stegall moved the reappointment of Mrs. Robert D. Howerton to the Park and Recreation Commission for a term of five years. The motion was seconded by Councilman Whittington, and carried unanimously.

April 8, 1969
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RESOLUTION ALLOWING THE CITY COUNCIL TO INCREASE THE COMPENSATION OF THE MAYOR AND THE COMPENSATION AND ALLOWANCES OF THE COUNCILMEN.

Mayor Brookshire stated a Bill was passed by the General Assembly this morning authorizing the City Council to set the rate of salaries and allowances for the next Council that will take office on May 19.

He presented the following resolution:

"RESOLUTION ALLOWING THE CITY COUNCIL TO INCREASE THE COMPENSATION OF THE MAYOR AND THE COMPENSATION AND ALLOWANCES OF THE COUNCILMEN.

WHEREAS, House Bill 52, recently ratified by the North Carolina General Assembly, allows the governing boards of the cities and towns of North Carolina to fix their own compensation and allowances and the compensation and allowances of the Mayor; and

WHEREAS, Section 2 of House Bill 52 permits the governing board of a city to take action until fourteen (14) days before a municipal primary; and

WHEREAS, in order to adequately compensate the Mayor and the members of City Council, the City Council is desirous of increasing the compensation for the Mayor and members of the City Council, and fix allowances for the members of the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charlotte that:

1. The compensation for the Mayor be increased from \$5,000 to \$10,000 per year.
2. The compensation for members of the Council be increased from \$1,800 per year to \$3,600 per year, and their individual expense allowance be set at \$75.00 per month.
3. That these increases become effective May 19th, 1969."

Mayor Brookshire stated in his opinion these increases are fully justified, and if Council sees fit to make them, he is sure that both the City Councilmen and the Mayor will continue to serve at considerable sacrifice, and instead of being overpaid, they will continue to be underpaid; he stated he recommends the passage of the resolution.

Councilman Whittington thanked the Mayor for bringing this resolution to Council and stated he thinks it is appropriate that the Mayor do so as he is not offering again for re-election.

Councilman Whittington moved the adoption of the resolution as presented. The motion was seconded by Councilman Short.

Councilman Tuttle thanked the Mayor for his remarks and stated it is quite evident in this particular council race the absence of young businessmen and the move today will make it more feasible for those - particularly the salesmen type and young lawyers - who cannot afford to run for this job as the present compensation does not even pay expenses; that it is most appropriate the Mayor has done this, and he is happy to vote for it.

Councilman Short stated this increase is aimed very much at the public interest in the way Mr. Tuttle mentioned; the present pay scale and the present financial loss is such that it is a very real difficulty to get candidates to run; while this will work to the benefit somewhat financially of those who are elected, or re-elected, the public interest will be served by this.

The vote was taken on the motion and carried unanimously.

RESOLUTION ESTABLISHING THE MASTER PLAN COMMITTEE ON LOW INCOME HOUSING AND CHARGING COMMITTEE WITH ITS RESPONSIBILITY.

Mayor Brookshire stated several weeks ago, he appointed a committee, headed by Mr. Oliver Rowe, to try and find sites suitable for public or low-income housing in Charlotte; it now appears this Committee should assume further responsibilities to the end that equitable distribution, architectural acceptance, open space, school facilities and economic effects on a community be basic to the plans for additional low income housing.

He stated with the knowledge of the Chairman, he is today charging this committee with the following responsibility in the form of the following resolution which he hopes Council will adopt.

"BE IT RESOLVED that the committee be known as the Master Plan Committee on Low Income Housing.

That the committee, through the cooperation of the Charlotte Section of AIA, which has already volunteered services, make a study of the most feasible types and designs of low income housing,

That personnel of the Legal Department, Planning Commission and any other department of the city be made available upon request of this committee,

That the committee be charged with the responsibility of recommending to Council:

- a. Suitable locations for low income housing in all sections of the city adequate to meet predicable needs for a minimum of five years.
- b. That no locations be recommended for the West side of the city until such time as every effort has been made to see that no section of the city has a disproportionate share of low income housing.
- c. That the economic effect of low income housing be a prime factor in determining what constitutes suitable locations.
- d. Types of units, numbers of units and types of construction for each possible site.

The committee shall be requested to report finding and recommendations to the Mayor and Council at an early date. The Council will then have the responsibility of recommending the plan in whole or in part to the Housing Authority for execution."

Councilman Tuttle moved the adoption of the resolution, which was seconded by Councilman Stegall.

Councilman Alexander suggested that the word "Suitable" under (a) be left out and the sentence begin with "Locations of low income housing". That number (c) states the economic effect of low income housing be a prime factor in determining what constitutes suitable locations is one of the reasons that the word "suitable" should be left out in (a).

Mayor Brookshire replied he would not see the committee making recommendations on locations that are not suitable in every respect; that suitable in this context would have to relate to guide lines laid down by HUD for approval. He stated he sees no reason why it should be taken out.

Councilman Smith stated this goes along very well with what the west side people petitioned for except in one facet; that is the constitution of the committee; he asked the Mayor if he is making any effort to see that the

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people on the committee are representative of the overall city? Mayor Brookshire replied he will see that at least two members of the Committee - new ones to be added yet, and he does plan to expand the committee to give geographic representation - will be from the west side.

Councilman Smith stated he thinks this is effect: answers their objections and it is a good resolution.

Councilman Short stated Mr. Tuttle has worked very hard on this and he should be publicly commended for the long hours and the very careful work and the fact he has been a real good ambassador for Council in this endeavor. Mayor Brookshire stated Mr. Rowe has spent hours on this in the past two weeks.

The vote was taken on the motion, and carried unanimously.

CITY ATTORNEY REQUESTED TO REPORT ON THE RIGHT OF SOMEONE TO PETITION FOR THE REZONING OF PROPERTY OF ANOTHER WITHOUT THEIR CONSENT.

Councilman Alexander stated on many occasions he has stated his opposition to any type of regulations that gives someone authority over someone else's property, and he refers to the zoning provisions which permit anyone to request zoning for anyone else's property. He stated he finds there is a lot of sentiment against this type of regulations in the zoning ordinance; that he thinks the same purpose can be accomplished by changing this. He suggested that Council ask the Planning Commission to give some thoughts to this to see what they can come up with; that we are getting to the point where the zoning seems to permit a circus type activity; that he is aware that zoning is needed; that planned, orderly development is needed in the cities today, but we offer a big gap whenever zoning gets to the point where a person who lives 10 and 12 miles away from the contested site can come in and register objections when they have no direct interest, and whatever decision is made on that particular piece of property would have no direct interest on their property. He stated he would like the Planning Commission to consider this, so that Council would have some suggested regulations to fill this gap.

Councilman Short stated the right of someone to protest legislation is fundamental in America; that Council might be able to classify these protestors, or those appearing on either side, and require that all those within two blocks sign one petition and the others sign another petition; that it would be unconstitutional to do anything to prevent someone from objecting to the course of legislation. He stated on the matter of ownership that would lead to all kinds of problems if Council was required to have the consent of the owner in order to consider zoning; it would tend to litigate against the idea that zoning is a legislative matter.

After further discussion, Councilman Alexander asked the City Attorney to check into the right of anyone to have someone else's property rezoned without their consent.

CITY MANAGER TO REPORT WITHIN TWO WEEKS ON MAKING SEWER CHARGE A TAX CHARGE.

At the question of Councilman Smith, Mr. Veeder, City Manager, stated he and Mr. Underhill are studying the request of Councilman Smith that the sewer charge be made a tax charge and he will report back within ten days to two weeks.

RE-INSTATEMENT OF COMMITTEE ON OBSCENITY TO BE DISCUSSED WITH PRIOR
CHAIRMAN OF MAYOR'S COMMITTEE.

Councilman Stegall stated several weeks ago Council adopted the ordinance on obscenity; that before that time he mentioned a prior Committee appointed by the Mayor on obscenity, and the Mayor said he would consider the re-instatement of the Committee. Mayor Brookshire stated Mr. Paul Ervin served as Chairman of this Committee and he has tried to reach him, but he was in the hospital for a rather serious operation, and he is not back in his office.

TRAFFIC ENGINEER REQUESTED TO SURVEY INTERSECTION OF SUMMIT AVENUE AND WEST
FOURTH STREET FOR POSSIBLE TRAFFIC SIGNAL INSTALLATION LATER.

Councilman Stegall requested the City Manager to have Mr. Hoose, Traffic Engineer, to look at the intersection of Summit Avenue and West Fourth Street; that since West Fourth Street opened and if you are going north or south on Summit during peak traffic periods, it is very difficult to cross the widened portion of West Fourth Street; that one afternoon last week he was there around five and he must have been there about ten minutes in a line of ten cars trying to cross West Fourth Street.

Councilman Alexander stated this request was brought to Council several weeks ago by both he and Mr. Jordan. Mr. Veeder advised that Mr. Hoose is looking at this and he will have a report for Council shortly.

CITY ATTORNEY AUTHORIZED TO SUBMIT BILL REGARDING CIVIC CENTER TO LOCAL
LEGISLATIVE DELEGATION.

Mr. Underhill, City Attorney, stated April 11 has been established as the deadline for local legislation introduction into the General Assembly; this means that any Bill the City has regarding the Civic Center will have to be introduced on or before that date. He stated last week he was informed by the City's Bond Attorneys, who are preparing the Bill, that the Bill would be prepared and in his hands this morning; when the mail came in he did not receive it and called the Bond Attorneys and they now say he will have the Bill tomorrow morning.

Mr. Underhill stated the Bill as proposed by the Bond Attorneys will be a local act; it will allow the City and the County, after prior vote of approval, to enter into a long term lease; it will extend and broaden the powers of the Charlotte Auditorium-Coliseum Authority and the operating agency for the civic center, and will generally establish the rights of cities and counties to enter into this type of agreement; that this is not a state-wide but a local act and has to be introduced by the April 11 deadline. He stated he has scheduled a caucus at 4:00 o'clock Wednesday with the Legislative Delegation to introduce the Bill; that as soon as he gets the Bill he will put it into the hands of Council, and the County Attorney will receive copies for the County Commissioners. He stated the Bill will contain specifics on the general items; that because of the time element he is going ahead tomorrow and introduce and present it to the Legislative Delegation so they will be able to introduce it into the General Assembly by the 11th.

Mr. Underhill stated the Bill is being prepared along the lines of the general proposals of CDA; it will give the City all rights and broad powers in which to exercise those proposals as submitted to Council.

After discussion, Councilman Whittington moved approval of the submission of the Bill by the City Attorney to the Legislative Delegation. The motion was seconded by Councilman Tuttle, and carried unanimously.

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DISCUSSION OF SPEED LIMITS ON STATE CONTROLLED ROADS AND STREETS INSIDE THE CITY LIMITS.

Councilman Smith asked if the City would have to get permission from the State Highway Commission to regulate the speed limits inside the city limits? Is this a legislative act or a regulation of the State Highway Commission? Mr. Underhill, City Attorney, replied the state law gives the State Highway Commission the authority to set and post speeds on those highways or streets that are a part of its system; that they enter into an agreement with all the cities and towns; that it is more of a cooperative agreement. Councilman Smith stated if this will have to wait for two years before the City can do anything, he would like to ask our Delegation to investigate the possibility of the City setting its own speed limits.

Councilman Smith stated he has Eastway Drive in mind, and also Providence Road; that he would like the right to regulate the speed limits whether the city exercises it or not, depending on the circumstances. Councilman Tuttle stated he thinks Mr. Smith is right, except he does not think legislation is needed; that all the city has to do if it wants to change the speed limits is to make the request and give the reason to the State; the State has never turned the city down; that Mr. Hoose is a good salesman and he very wisely uses the state rule; that if the City wants to change the speed limit on any state street, all it has to do is ask for permission to do so. Councilman Smith stated he thinks it should be the prerogative of the Council to set the speed limits; the Council is responsible for the welfare and safety of the people inside the city limits; that if it requires a local act to give the City permission to set speed laws, then he thinks we should ask for it; there will be some federal exceptions to this; but as far as state maintained streets are concerned, he thinks the City should have this authority.

Mr. Veeder, City Manager, stated every time the city is involved in some cooperative project with the State Highway Department, among other things we contract as a part of the agreement certain things such as signalization and parking, and he would imagine there is some language referring to speed limits; that legislation per se might get at part of this and amendments to some contracts might get at it another way.

Councilman Smith stated he thinks it is ridiculous for a road going through a residential area - like the belt road - at 45 MPH; then next to this road coming into it there is a 30 MPH street; that he thinks there should be some uniformity.

Councilman Smith requested Mr. Veeder to get with Mr. Vogler of the Legislative Delegation and ask if we can regulate speed limits on state roads inside the city limits and what will be necessary to accomplish this.

Councilman Whittington stated he thinks there should be a stronger tie of cooperation between the State and local authority and have one speed limit; that on Providence Road there is one place where it is 50 MPH and two blocks later it is down to 35 MPH and then you go back to 45 MPH.

Councilman Smith stated over a year ago someone brought up that the traffic on Eastway Drive was too fast, and everyone said 45 MPH was too fast through these residential areas, and someone said Council could not do much about it as the state controls it.

Councilman Smith stated he thinks the speed on Eastway Drive should be 35 MPH as it is a residential area; if it is to be an expressway then the zoning should be changed to business and go from there. Councilman Whittington stated on Woodlawn Road the people complain that the speed limit is not 45 MPH; it is 35 MPH.

Councilman Smith stated his point is that Council would have the control of the speed limits; Mr. Hoose would have to make recommendations on the speed limits for Council to approve; if Council brings up the fact it thinks it is too fast down Providence Road and Mr. Hoose stands there and says he cannot do anything about it because it is state controlled, Council should have the right to back up what Mr. Hoose recommends.

Mr. Veeder advised he would talk with Mr. Vogler and recognizing the deadline that this will put the Legislative Delegation on notice that Council is thinking about requesting this legislation.

LETTER FROM MR. CHAMBERS CONCERNING LEGISLATION ON FIREMEN'S RETIREMENT FUND TO BE STUDIED BY CITY MANAGER AND STAFF.

Mr. Underhill, City Attorney, stated he has received a letter from Mr. Chambers, Attorney, and asked if Council would like him to take any action on the letter; that each member of Council has received a copy of the letter. That it is suggesting a piece of local legislation; it is asking for a change in the method of financing the Charlotte Firemen's Retirement System by adding two phases "not less" in two different places which would permit the city and the individual fireman in the retirement system to maintain their present contributions at the same rate without any worry of a decrease of the percentage of contribution; that the amendment would clarify the present position.

Councilman Stegall suggested that Council not consider this until it receives recommendations from the City Manager's office.

Later in the meeting, Councilman Short stated this letter has some significance that they are seeking a certain equalization which they do not think they have. He asked if there is some way to ask for a reservation for other possible legislation from the Delegation with the understanding that it will have to be discussed first? Mr. Underhill replied he understands that request for local legislation after the cut off date will only be approved by the Rules Committee. Councilman Short stated he thinks Mr. Earle should be asked to comment on the contents of the letter.

COUNCILMAN WHITTINGTON LEAVES MEETING TO RETURN LATER.

Councilman Whittington left the meeting at this time and returned later in the meeting.

JOINT HEARING WITH COUNTY COMMISSIONERS ON APPLICATION FOR PLANNED UNIT DEVELOPMENT SET FOR MAY 5 AT 11:00 O'CLOCK A.M.

The City Manager stated Mr. McIntyre, Planning Director, advises he is working towards a joint hearing on a zoning matter with the Council and the Board of County Commissioners; that recently Council and the Board of County Commissioners approved a new category of zoning for planned unit development. The first application requiring a hearing is a development that is partially inside the perimeter and partially outside the perimeter where the Board of County Commissioners has jurisdiction; that Mr. McIntyre suggests this should be a joint hearing, so that the decision of Council will be compatible with the County Commissioners; that the date of May 5 either at 9:00 or 11:00 A.M. is suggested as the date and time of hearing.

Councilman Short moved that the hearing be set for Monday, May 5, at 11:00 o'clock a.m. The motion was seconded by Councilman Smith, and carried unanimously.

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PAYROLL DEDUCTION FOR VOLUNTEER PLEDGE FUND FOR FIRE DEPARTMENT AUTHORIZED.

Mr. Veeder, City Manager, stated in 1966 Council approved a Volunteer Pledge Fund for the Police Department permitting payroll deduction of \$5.00 each when there is a death of a member of the department, with the money going to the beneficiary. That the Fire Department through a memorandum from Chief Black has asked for similar privileges for the Fire Department.

Councilman Stegall moved approval of the request as recommended. The motion was seconded by Councilman Short, and after discussion, carried unanimously.

ADJOURNMENT.

Upon motion of Councilman Whittington, seconded by Councilman Stegall, and unanimously carried, the meeting was adjourned.

Ruth Armstrong
Ruth Armstrong, City Clerk

EXHIBIT C

NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 4063

ROBERT WRIGHT, MARK
MICHALEC, and SCOTT SHIPMAN
individually and on behalf of all others
similarly situated,

Plaintiffs

v.

CITY OF CHARLOTTE

Defendant.

**JOINT AFFIDAVIT OF ROBERT WRIGHT, MARK
MICHALEC AND SCOTT SHIPMAN**

Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman being duly sworn do depose
and say as follows:

1. Plaintiff Robert Wright is a citizen and resident of Mecklenburg County, North Carolina. Wright has been a sworn law enforcement officer employed by Charlotte for less than 20 years. Wright has participated in the Pledge Fund and to the best of his recollection has had Five Dollars (\$5.00) deducted from his salary weekly by the City of Charlotte from the time he was first employed on or about May 19, 2008, until salary deductions were ceased subsequent to July 2, 2019. According to Exhibit C of the Receiver's Report in the Graue action prepared by or for City of Charlotte employee Paul Paskoff, in excess of \$2,600 has been deducted from Wright's salary for Pledge Fund purposes.

2. Plaintiff Mark Michalec is a citizen and resident of Cabarrus County, North Carolina. Michalec is a sworn law enforcement officer employed by Charlotte for more than 20 years. Michalec has participated in the Pledge Fund and to the best of his recollection has had Five Dollars (\$5.00) deducted from his salary weekly since first employed on September 24th 1994, until City of Charlotte ceased deductions subsequently to July 2, 2019. According to Exhibit C of the Receiver's Report in the Graue action prepared by or for City of Charlotte employee Paul Paskoff, \$6,240.00 has been deducted from Michalec's salary for Pledge Fund purposes.

3. Plaintiff Scott Shipman is a citizen and resident of Union County, North Carolina. Shipman was a sworn law enforcement officer employed by Charlotte. Commencing with his employment on June 21, 1989, Shipman was a Pledge Fund participant and to the best of his recollection had Five Dollars (\$5.00) deducted from his salary weekly until he retired on July 1, 2018. Shipman has not received any payment from the Pledge Fund. According to Exhibit C of the Receiver's Report in the Graue action prepared by or for City of Charlotte employee Paul Paskoff, \$7,800.00 has been deducted from Shipman's salary for Pledge Fund purposes.

4. The employment of Wright, Michalec and Shipman with the City of Charlotte's Police Department did not require a background in finance or investing and none of the plaintiffs had such a background. Nor did their background equip them to understand the authority required to allow the City of Charlotte to deduct moneys from their weekly pay. They each made the decision to participate in the Pledge Fund based on the trust and confidence placed in senior members of the Police Department all of whom were employees of the City of Charlotte, the strong recommendations made to them at the time of their employment by employees of the City of Charlotte, and their desire to be part of the Charlotte police force team which supported

other team members and would support them when needed. The fact that the Pledge Fund was sponsored, approved, and administered by the City of Charlotte definitely influenced their decisions to participate

5. As part of the onboarding employment process, pursuant to which plaintiffs joined the Charlotte Police department, an employee of the City of Charlotte actively encouraged them to join the Pledge Fund at that time or within thirty (30) days of hiring. They were advised by one or more City of Charlotte employee (a) that the Pledge Fund was a good employee benefit which would return to the participant upon vesting more money than had been paid into it, (b) that the Pledge Fund was a vehicle by which they could support more senior police officers and (c) that the Pledge Fund was a vehicle by which they would be supported by subsequent enrollees.

6. At no time during the onboarding process, did the presenters indicate that the Pledge Fund was anything other than a benefit being made available to participants by the City of Charlotte and, in fact, the City of Charlotte listed the Pledge Fund on the voluntary benefits page of its human resources intranet site of the Police Department along with health insurance, 401k, and life insurance benefits.

7. At no point prior to July 2019, were they advised of any possible problems with the financial stability of the Pledge Fund, and, on information and belief, Charlotte was endorsing and actively enrolling newly hired employees to the Pledge Fund well beyond July 2019 when the Graue action was commenced.

8. Wright, Michalec, and Shipman authorized weekly deductions based on their understanding that the Pledge Fund was sponsored, authorized, and administered by the City of Charlotte and that all deductions were properly authorized by the City of Charlotte. Had Wright,

Michalec, or Shipman known that the Charlotte City Council had not authorized any deductions or had only authorized a deduction “when there was a death of a [Pledge Fund] member of the [police] department, with the money going to the beneficiary,” they would have objected to unauthorized deductions. The authorization by the City Council allowing for payroll deductions would have been an indication that the Pledge Fund was financially viable and absent such there was no basis to assume the Pledge Fund was financially viable.

9. Wright, Michalec, and Shipman trusted the City of Charlotte, the city manager, the human resources department, the finance department, and the payroll department to insure that only properly authorized deductions were taken from their salary.

10. Based on Charlotte Mecklenburg’s Officer Down Memorial Page website www.odmp.org eight (8) police officers died in the line of duty during the time that Shipman was a participant in the Pledge Fund, four (4) police officers died in the line of duty during the time that Michalec was a participant in the Pledge Fund, and one (1) police officer died in the line of duty during the time that Wright was a participant on the Pledge Fund. Obviously, if any of those officers were pledge fund participants at the time of death and any other pledge fund participant died when Shipman, Michalec or Wright was a pledge fund participant, a five-dollar deduction would have been appropriate as a death benefit for the deceased Pledge Fund participant if authorized by the Charlotte City Council.

[Signatures and Notary on following pages 5 – 7]

Paragraphs 1 and 4 through 10 of the preceding 4-page Joint Affidavit of

Robert Wright, Mark Michalec, and Scott Shipman sworn to

by *[Signature]*

Robert Wright

This the 10 day of September 2021

North Carolina Mecklenburg County
I, Shannelita Thompson a Notary Public for
Said County and State, do hereby certify that Robert Wright
personally appeared before me this day and acknowledged the
due execution of the foregoing instrument.

Witness my hand and official seal, this the 10th day of September 2021

(Official Seal)
Shannelita Thompson Notary Public
Mecklenburg County North Carolina
My Commission Expires 1/30/2025

Paragraphs 2 and 4 through 10 of the preceding four-page Joint Affidavit of

Robert Wright, Mark Michalec, and Scott Shipman sworn to

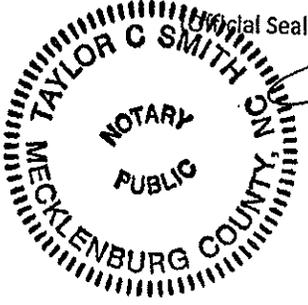
by [Signature]

Mark Michalec

This the 10th day of September 2021

North Carolina Mecklenburg County
I, Taylor C. Smith, a Notary Public for
Said County and State, do hereby certify that Mark Michalec
personally appeared before me this day and acknowledged the
due execution of the foregoing instrument.

Witness my hand and official seal, this the 10th day of September 2021.



[Signature]

Notary Public

Paragraphs 3 through 10 of the preceding 4-page Joint Affidavit of

Robert Wright, Mark Michalec, and Scott Shipman sworn to

by [Signature]

Scott Shipman

This the 10th day of September 2021

North Carolina Union County
I, Madison Lorella Notary Public for
Said County and State, do hereby certify that Scott Shipman
personally appeared before me this day and acknowledged the
due execution of the foregoing instrument.

Witness my hand and official seal, this the 10 day of September 2021

(Official Seal) _____

Notary Public

