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The City Council of the City of Charlotte, North Carolina, met in a televised session on Monday, November 15, 1976, at 7:30 o'clock p. m. in the Education Center, with Mayor John M. Belk presiding, and Councilmembers Betty Chafin, Louis M. Davis, Harvey B. Gantt, Pat Locke, James B. Whittington, Neil C. Williams, and Joe D. Withrow present.

ABSENT: None.

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INVOCATION.

The invocation was given by Reverend Daniel M. Deaton, Jr., Minister of Sharon Baptist Church.

MAYOR AND MEMBERS OF CITY COUNCIL OF GREENSBORO TO BE CHALLENGED IN CONNECTION WITH FOOTBALL GAME TO BE PLAYED BETWEEN WEST CHARLOTTE HIGH SCHOOL AND GREENSBORO HIGH SCHOOL.

Mayor Belk recognized Mr. Leroy Miller, Principal of East Mecklenburg High School, and stated he is sorry East lost its football game over the weekend. He was expecting them to be State Champions. Now that East is no longer in the picture, we still have West Charlotte, and he recommends to Council that they challenge Mayor Jim Melvin in Greensboro and his Council to come and weep over the sorrow of Greensboro when they return next Friday night from the game at West Charlotte.

Motion was made by Councilman Gantt, seconded by Councilman Whittington and unanimously carried to challenge the Greensboro Mayor and Council.

Mayor Belk stated he would issue the challenge to them, and get a crying towel for each member of Council from Greensboro. They will go back with red eyes and tears of sadness after West Charlotte beats them.

DECISION ON PETITION NO. 76-53 BY DAVIS AND DAVIS REALTY COMPANY FOR A CHANGE IN ZONING OF PROPERTY ON SOUTHEAST CORNER OF INTERSECTION OF PROVIDENCE ROAD AND SARDIS ROAD, TABLED UNTIL MEETING OF COUNCIL ON NOVEMBER 22.

Councilman Gantt moved that the subject petition for a change in zoning from R-15MF to O-15(CD) be denied as recommended by the Planning Commission. The motion was seconded by Councilwoman Chafin.

Councilman Whittington stated it is his understanding that when the petitioners of this property came to the Planning Commission staff they only asked for enough of this property to be rezoned to put a drive-in bank there. That Mr. Bryant or his staff, recommended they develop all of it - in addition to the bank, a small office complex. Is this correct?

Mr. Bryant, Assistant Planning Director, replied he did not have any participation in that discussion but he noticed that the petitioners' attorney has made that statement. In checking it out, it seems it was stated in the context that if you make bank usage or office usage of the frontage of the property you are really raising questions about what you do with the portion that is left over. To that extent, perhaps some encouragement was taken in the direction of proposing the entire development.

Obviously, while the entire triangular section of the property requested for rezoning was considered on that basis, it is legally possible to consider any portion of it. The feeling was you would get an entire plan in front of you and then if it was possible to choose a smaller portion of it, or if it would make more sense to choose a smaller portion of it, you would have that option. Looking at the small size of the triangle, it is obvious

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if you develop the frontage portion on Providence for bank purposes it would raise some real questions as to what the remaining portion could be legitimately used for.

Councilman Withrow asked if the petitioner owns any property across the strip of Sardis Road that was closed partially? Mr. Bryant's reply was no. Councilman Withrow stated this is all the property that this petitioner owns - this triangle?

Mr. Bryant replied he is not sure whether there has been some conveyance of property in this area or not; but originally, keeping in mind that the Carmel Road extension did cut through a tract of land, so that as far as he knows, unless there has been some conveyance, there is property under the same ownership that lies on the other side of Carmel Road extension, but not across Sardis Road.

Councilman Williams stated he has a couple lingering misapprehensions about this. It was his understanding that this rezoning was for the purpose of allowing a bank building on the entire triangle of the land and that was the way the entire triangle was going to be developed. Obviously, that must not be correct.

Mr. Bryant replied the application was filed for O-15(CD) which is controlled district zoning classification. The site plan which was submitted and was considered at the public hearing called for a bank structure to be located on the front portion of the property facing Providence Road and the remaining rear portion of the property was to be developed for office purposes.

Councilman Williams asked if that is the petition they are voting on - to allow that type of development on the triangle? How much area is in that triangle of land? Mr. Bryant replied 2.7 acres.

Mayor Belk stated he does not think the City should hurt any citizen in the course of action it takes. He asked Mr. Bryant if it would be in order, if these people are willing to sell, for the City to beautify the area and own it? Mr. Bryant asked if he meant the rear portion? Mayor Belk stated he was talking about the entire portion.

Mr. Bryant replied he would assume the City could purchase any property if they wished to. Mayor Belk stated he did not mean to condemn it; he is talking about another angle - if they feel that this new road has damaged their property - would it be out of order? Mr. Bryant replied the City could purchase the property for a small park if it so desired.

Councilman Williams asked Mr. Bryant how much of the 2.7 acres would be devoted to the bank and how much would be left? Mr. Bryant replied at this point he would have to estimate, but the bank portion would include the full frontage on Providence Road. In addition it would include enough to get a driveway access to Carmel Road extension so in effect the amount of land would be at least a third or more of the 2.7 acres, which would be better than an acre, leaving about 1.7. They have to keep in mind that what is left would be a very irregular shaped parcel to the extent that it would be a rather sharp triangle shaped portion. That would be the concern about separating the frontage use from the entire parcel. If it would be the petitioner's intent to utilize the entire parcel only for bank purposes, of course that is another matter.

Councilman Williams asked, with the present classification, what permitted uses are there for this piece of property? Mr. Bryant replied it is zoned R-15MF at the present time. Councilman Williams stated that means either multi-family or single family residential development? Mr. Bryant replied basically, plus some institutional types.

Councilman Gantt asked how many units could there be on 2.7 acres under R-15MF? Mr. Bryant replied it would be about 12 units per acre, probably in the neighborhood of 30 units. That is purely from the density standpoint.

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Fitting that many units on the property would be another matter to determine practically how many units you could get; something more like 15 or 20 would be a more practical figure.

Councilman Whittington asked if under this O-15(CD) could Council approve this petition, overruling the Planning Commission, for the bank only? Mr. Bryant replied yes. He said in the beginning that obviously Council has the option of approving anything less than the total - that could mean less than the total area or less than the complete plan submitted previously.

Councilman Williams asked if that would leave the back portion of the triangle hanging in limbo with the present zoning of R-15MF? Mr. Bryant replied it would, if they chose to divide it up. It would be possible to grant O-15(CD) on the entire parcel, but approving a plan which shows only the bank usage. That would mean the rest of the property could not, in effect, be used for anything.

Councilman Davis asked Mr. Bryant on this parcel arrangement they are talking about, in his professional opinion, would this affect his recommendations on this piece of land if they consider a partial piece for the bank only as opposed to the total development?

Mr. Bryant replied he does not think it would materially affect his recommendation because he thinks they are still making a decision to allow an additional non-residential activity to occur around this intersection area.

Councilman Davis referred to a letter from the petitioners' attorney. He stated the petitioners maintain that once they comply with various building setback lines and with the fact the property is botched up on all three sides by roadways, that no lending institution or developer would consider the property feasible for residential development and they submit a letter in support of this view. He asked Mr. Bryant to give his opinion on that.

Mr. Bryant replied he really cannot because obviously they have a different judgment indication here. They have supported their argument with an indication from a developer that this is his opinion.

Councilman Davis changed his question to ask if, in making his recommendation, did Mr. Bryant carefully consider this viewpoint? Mr. Bryant replied in making the recommendation, and they should keep in mind it is the recommendation of the Planning Commission, it was their opinion that the property could adequately be utilized for the existing zoning purposes.

Councilman Davis stated the petitioners also comment on the closing of Sardis Road; that this caused consideration of the property to lose a great deal of its strength; that the tract continues to be cut up on all sides and taking into consideration the building setback lines, makes it totally unusable for residential purposes. He asked Mr. Bryant if, in his recommendations to the Planning Commission, he had considered this?

Mr. Bryant replied he does feel like that even the partial closing of Sardis has considerably altered the circumstances here inasmuch as it has made the remaining portion of Sardis nothing more than a purely local access street. It could be terminated with a cul-de-sac or a turnaround which would make it nothing more than a local access street like you have in any residential context. When you partially close Sardis and cut out the through traffic movement on it, you have considerably altered the effect of the roadway system in that area on this property. He would not take away from the fact that you still leave a triangular shaped parcel of land with a roadway on all sides, but he does think the fact that it can only be used for local access purposes has altered the circumstances.

Councilman Davis asked Mr. Bryant if his opinion is that a multi-family development in the practical range of 15 to 20 units would be economically feasible? Mr. Bryant replied that is a very difficult question to answer, particularly in light of today's money situation. He can answer it best by saying it is his opinion, and obviously it is reflected in the Planning

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Commission's recommendation, that the property can be used for a legitimate purpose under the existing zoning. Whether or not 15 or 18 or 20 units would be the breaking point as far as the economic problem is concerned, he could not answer.

Councilman Gantt stated he can understand the nature of the line of questions being asked Mr. Bryant; they all seem to relate to the economic feasibility of the triangular portion of property left there. He would submit they are getting into some fairly mirky waters when they deal with the question of whether or not the property has an economic value, whether it fits for one bank and two office buildings; whether it makes sense as one bank; or whether it makes any sense as 30 luxury townhouses. The essential point in reading the Planning Commission's recommendation for denial is that Council has made much in terms of overall planning policy about the nature of development in that particular area. A number of zoning decisions have been made in that area and there has been a kind of policy decision made that Council would not encourage other than residential development in that particular area. To rezone the property for one bank, or one bank and two office buildings, he thinks clearly changes the direction of what that area might be and he thinks that for 2.7 acres to encourage this kind of development may be a mistake.

He pointed out the closing of the road does lend the possibility of attaching the two pieces of property, although they are not under one ownership at the moment; it also lends itself to having the road rededicated to a single owner in the event that a large residential development were to take place. That is one of the real possibilities that occurs with the portion that they now are rezoning and the larger mass of land on the other side of that. He thinks they will make a mistake if they start to encourage any kind of commercial or business development on that particular corner. He notes that the Planning Commission's decision was unanimous with the exception of two people who abstained.

Councilwoman Chafin stated she was particularly interested in the Planning Commission's reference to the Comprehensive Plan in their recommendation. She asked if Mr. Bryant could comment further on that, going all the way back into the history of the Plan.

Mr. Bryant replied what was mentioned in the recommendation was reference to the fact that when the 1960 Land Development Plan was prepared, there was originally shown in this area the feasibility or possibility at least of there occurring somewhere around this intersection area a small neighborhood shopping facility. Over a period of several years, and due in part to the number of zoning petitions which were submitted and rejected in the area, the Planning Commission finally recommended that Plan be amended and that the commercial area shown on the Plan at that time be removed. This was primarily out of concern for the opposition which had been shown up to that time to any further commercialization of this area. Somewhere perhaps in the area of 1965, 1966 or 1967 the Plan was amended to remove that. Then when the current Comprehensive Plan was prepared that information was available and was of concern, so the current Comprehensive Plan does not show any non-residential activity in this area as far as the planned land use pattern is concerned.

Councilman Whittington stated he wanted to speak to what Councilman Gantt said as it relates to this particular intersection. He asked Mr. Bryant if all of this property was zoned multi-family in 1960 by the Planning Commission and Council in the then new zoning ordinance? Mr. Bryant replied yes, in 1962. Councilman Whittington stated then whatever took place out there took place after several months of study by Council and the Planning Commission and part of this property, where the Pinehurst Apartments are now located and the Marsh property and the apartment complex across the road from this property, were all zoned multi-family and have been zoned that way since 1960. Mr. Bryant replied that is correct.

Councilman Whittington stated since that time Council on its own motion approved a change in the grandfather clause, or zoning, of the Heckenbleikner property located where Sardis Road and Providence Road intersect - the old

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part. Directly across the road from that there is a Pure Oil station that was there during the early 40's and has recently been purchased and changed to an Esso. Since all that took place, the State has developed a four-lane road called Carmel Road and Sardis Road which intersect at that intersection. He stated his feeling is, that this having been before Council four times in the past, that here is an opportunity for us to make a decision on this particular piece of property once and for all. He does not see this as a move for Council opening up "a can of worms" or Pandora's box to have other property at this intersection rezoned. Indeed, there have been several requests for rezoning at this location on other corners and Council wisely turned them down.

Councilman Whittington stated because of the road complex and because it has been here many times before, he would make a substitute motion to rezone the property to an O-15(CD) classification with the site plan reflecting only bank usage on the parcel. The motion was seconded by Councilwoman Locke.

Mr. Underhill stated he thinks this is all right, but there is a provision in the ordinance that gives him a little bit of a problem with that. In the section of the ordinance which deals with review and approval by the Council, the ordinance provides that Council can consider and evaluate and attach changes in the original site plan, etc. But at the very conclusion of that it says "petitioner shall have a reasonable opportunity to consider and respond to such additional requirements prior to the final action by the City Council." That would suggest before Council can adopt Councilman Whittington's motion that perhaps the petitioner has to be given the opportunity to respond to what he would consider to be an additional requirement since they are modifying the original site plan which was submitted to permit only the bank rather than the bank and office complex. The petitioner may, of course, be willing to go along with that, but under the ordinance it seems that he has the right to respond to such a proposal.

Mr. Bryant stated he thinks this is the way they should look at it. The parallel conditional districts are voluntary districts. They cannot, and this is stated in the enabling legislation, be forced upon any property owner. They are voluntary, so the petitioner should have an opportunity to indicate if this plan would be satisfactory.

Councilman Williams asked if he is right in his understanding that no further public hearing is required, but that the petitioner has an opportunity to respond? Mr. Underhill replied that is correct. No public hearing is called for. The petitioner only has an opportunity to respond to whatever conditions Council might wish to impose upon the original site plan as submitted.

Councilman Williams asked if a motion to table this matter until the next meeting of Council would suffice to give the petitioner ample opportunity to respond? Mr. Underhill replied yes, and he would suggest he include in that motion that the petitioner be advised that Council is considering such a change and that his opportunity to comment as provided by the ordinance will be afforded to him during this week's period before the next meeting.

Councilman Williams moved that the matter be tabled until the next regularly scheduled meeting of Council and that the petitioner be advised of his rights to have further input. The motion was seconded by Councilman Withrow.

Councilman Gantt asked for someone to state for the record why they are tabling this matter. Is it on the basis of economic feasibility? Are they saying they think business development is better at that intersection? Councilman Williams stated his reason is that if commercial development on the island is of a limited nature and is of a sort that the petitioner is willing to live with, then he thinks they have met him half way and it is a reasonable compromise.

Councilman Whittington stated he thinks the whole neighborhood out there needs to know where they stand on this particular intersection because it has been up here so many times. For that reason he wants to resolve this.

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As Councilman Williams says, this is a compromise and the reason he made the motion and asked the question is because, as he understood the letter from the attorney, they would be willing to take half of this rather than the whole which is a compromise between what the Planning Commission recommends and what Council is requesting. The City Attorney says they need to let them have the opportunity to be heard on the matter if they will accept this. That is why he is willing to vote on Councilman Williams' motion.

Councilman Gantt replied he thinks they have stated it clearly for him. He is just not convinced that if it is CD zoning which allows at this moment a bank, in two years they might face additional pressures for having the two office buildings added on the site. You are in the position then of having a bank on that location and it is going to be harder to turn it down. He thinks Council's position is clear - it is R-15, it is multi-family and there are all kinds of other possibilities. He wants to make that point before they vote on the issue.

Councilman Davis stated he has no objection to the delay of a week, but he thinks whether it is developed partially or fully, would not affect his vote.

The vote was taken on the motion to table for one week and passed as follows:

YEAS: Councilmembers Willaims, Withrow, Chafin, Davis, Locke and Whittington.
NAYS: Councilman Gantt.

DATES OF DECEMBER 6 AND DECEMBER 7, 1976 SET FOR PUBLIC HEARINGS ON THE THIRD YEAR COMMUNITY DEVELOPMENT GRANT APPLICATION.

Upon motion of Councilman Withrow, seconded by Councilwoman Chafin, and unanimously carried, Public Hearings on the Third Year Community Development Grant application were set for December 6, 1976 at 3:00 o'clock p. m. and December 7, 1976 at 7:30 o'clock p. m.

AMENDMENT TO CONTRACT FOR SALE OF LAND TO PROFESSIONAL A & E ASSOCIATES, LTD. DENIED, WITH CONTRACT TO BE PERMITTED TO EXPIRE ON ITS SCHEDULED DATE OF TERMINATION, AND STAFF INSTRUCTED TO RESUBMIT THE PROPERTY FOR BIDS.

Councilman Withrow stated there is a statement in the agenda attachments for this item that the contractor is ready to go ahead with the development of this piece of property. He asked if Council approves the amendment will the contractor be ready to go?

Mr. Vernon Sawyer, Director of Community Development, replied he is asking to substitute a two story office building in place of a restaurant, and he is ready to go. He is at the point of having concept plans already prepared for the two story office building. The architect for Professional A & E Associates, Ralph Whitehead, is ready to proceed with final plans and specifications and go right into construction if favorable action is taken on this request.

Mayor Belk stated he had the impression that it is split into two sections and that he is only ready to go on one section. Mr. Sawyer replied that is correct. Mayor Belk stated then he is not ready to go. Mr. Sawyer stated he is not ready to go on the whole parcel.

Councilman Withrow asked if he is going to buy the whole piece of property? Mr. Sawyer replied that is his proposal. That Council agreed to split the whole parcel into two parcels about a year ago and granted him an extension of time to develop both, one for a restaurant, and one for an office building. He is not at this time ready to go with the original office building plan, but he is ready to go with a two-story office building which he would substitute for the restaurant. His proposal is to take title to the entire property and develop the two-story office building as the first stage. Then to develop another office building, either the original five-story proposal within three years or failing that, he assures them that he will develop another two-story building comparable to the one that he is ready to go with immediately.

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Councilman Williams stated in times past when decisions have been made on this subject, no other redeveloper was ready to bid on the property and move forward. Is there anyone now ready to do that? Mr. Sawyer replied they have had two inquiries. They were made with the knowledge that no firm proposal had been received prior to the end of October on the parcel. He does not know how serious they were, but they have had two inquiries from realtors or brokers who say they have a client who would like to develop some or all of the property.

Councilman Whittington asked if there are any other properties left in the Blue Heaven area other than this? Mr. Sawyer replied this is the last parcel.

Councilman Gantt stated he would at least like to see what Mr. Whitehead has to propose. He thinks they are in the position that Mr. Whitehead is pretty much in the driver's seat. They do not have a lot of people clammering for the property. If he has something that he is ready to get off the ground, he would like to see what it is.

Mr. Whitehead stated the first building they propose to build is a two-story brick office building on the corner parcel - South McDowell and Baxter. He exhibited an architectural drawing of the proposed building. He stated they tried for some time to get a suitable restaurant tenant and were unable to, so they switched to a two-story office building. This has proven to be more economically feasible because they have over 60 percent of it pre-leased.

He stated the property fronts on Baxter Street primarily. About 40 percent of the property is occupied by easements, for a storm drainage culvert, sanitary sewer and power usage. It lends itself to two sites, the first being the two-story office building. They still have complete plans for a five-story building on the other site; they are still planning to do something but in the event they cannot lease 60 percent of the five-story building which has about 47,000 sq. ft. they would then build another two-story building with a minimum of 20,000 sq. ft.

Councilman Davis asked if it is true that Urban Renewal property is not to be held for speculation. Mr. Sawyer replied that is true. Councilman Davis asked if it is true that Urban Renewal property is to be developed to maximize additional property tax revenue? Mr. Sawyer replied yes it is. Councilman Davis stated he does not remember the details of the contractual arrangement with Mr. Whitehead but has the City fulfilled all of its obligation to Mr. Whitehead and are they at this point free to negotiate with anyone they choose?

Mr. Sawyer replied he thinks we have fulfilled our obligation to Mr. Whitehead; we have extended the time as requested to October 31st. If Council does not accept the proposal tonight, the City could not negotiate; they would declare him in default of the contract and after a period of time - the contract itself gives him an additional 30 days to correct the default - then we would take the property back and would have to go through the process of re-advertising and taking bids - they cannot negotiate for the sale of the property.

Councilman Davis stated he understands from their previous discussions that Mr. Whitehead has invested a good deal of time, energy and money in this option and has only been able to assure them of partial development at this time. The city having fulfilled all of its contractual obligations, he feels the same way that Mr. Sawyer has expressed before, he has considerable sympathy for Mr. Whitehead and would like to allow him time to work this out, but he wonders if they are permitted this luxury with the tax money. If this is in some degree in conflict with the basic regulations of the Urban Renewal program, would they not be under some obligation at this point to consider what else is available? The reason he brings this up is because one realty company came to him and indicated they were willing to purchase the property at the price of this contract and proceed and guarantee immediate and full development of it.

Mr. Sawyer asked if it would be greater development than that proposed by Mr. Whitehead? Councilman Davis replied yes, and stated the realtor is

Masten-Faison-Weatherspoon Realty Company which he understands has contacted Mr. Sawyer also. Mr. Sawyer replied that is one of the two they have had inquiries from, and it has been on a continuing basis.

Mr. Whitehead stated he does not believe the point has been made clear that they are willing to take title to the land on January 31, 1977 - the entire parcel. They have the funds to pay for the land. This other firm did not bid on it when he did - no one bid on it when he did in November of 1973. They are not asking for any delay except for the 90 days to finish the plans on the two-story office building. They have 90 percent of the money on hand and are in a position to take title to the land. It is not just a contract for the sale of land - the most difficult part of it is the contract for development according to Urban Renewal procedures which means that you have to have it pre-leased, and financed.

Councilman Davis asked if the original discussion and his bid on this was not based on full development of it, and then the recession came along? Mr. Whitehead replied it was their intent to have full development of it. You cannot speculate on Urban Renewal land. The only way any of it can ever be sold is after it is developed and the city gives you a certificate of completion. At that time you can sell.

Councilman Davis stated it seems to him that the city has fulfilled its contractual obligation to Mr. Whitehead and even though he is very much in sympathy with the changes in the economy that caused the scaling back of his plans, he is not sure they have the legal authority to go ahead and do something that might not be in the best interest of the citizens.

Councilwoman Locke asked if he is going to make a motion to deny this bid? Councilman Davis replied he is not sure enough about the resubmitting it to bids. He would need Mr. Sawyer's advice on that - but it would be his thought at the moment that they should terminate this option contract when it expires with Mr. Whitehead and then re-bid it.

Mr. Whitehead stated this property has 40 percent easement on it. The price is \$1.60 per square foot. The City sold property on the other side of the street for \$1.61 with no easements, allowed Washburn Press to develop the first phase of 25,000 square feet, and the second phase of 25,000 square feet. What he is proposing on this side is to build the maximum size building with parking that would be allowed on this lot, and another 20,000 minimum on the other. He contends that is comparable to what the City has already approved on Washburn Press. He has gone to a great deal of expense and planning trying to develop this and has raised the money to pay for the land. If the City wants to sell it and wants it to be developed comparable to what they allowed across the street, then he is prepared to take conveyance of the land on January 31.

Councilman Withrow stated to Mr. Whitehead that Council has given him two chances before to take the property. Now they come to the point where this is all they have left. When you come to this point, it becomes more valuable really. Then he thinks they have to decide whether they owe him an obligation or whether they owe the taxpayers an obligation to go and re-bid this piece of property, knowing this is the last piece of property we have there and get a higher density on it, or a bigger facility that would bring in more tax revenue. He thinks that is what they have to decide.

Councilman Whittington stated the agenda attachment says the redeveloper points out that he has spent at least \$62,000 in A & E fees and other deferred construction costs for the proposed five-story office building, and that he is most anxious to construct that building. But if it does not become economically feasible to do so within three years, he will construct a second building consisting of at least 20,000 square feet of gross floor area. Does this not mean if Council approves this, they are allowing him to build the two-story building but giving him another three years to build a second one? Tying up that other property that long?

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Mr. Sawyer replied that is correct. Councilman Whittington stated, and he is recommending that? Mr. Sawyer replied yes. He is giving them a minimum of another building comparable to the one he has illustrated. Or, if the market improves by that time, he will go with the five-story building which is his desire.

Councilman Williams asked Mr. Sawyer if there is anything to prevent Mr. Whitehead from engaging in competitive bidding if this amendment is rejected and it is put up for bids again? Mr. Sawyer replied nothing at all. Anyone can bid on it.

Councilman Gantt stated it seems to him, and he expressed it the last time Mr. Whitehead appeared, that it is very difficult the third time to issue an extension or even an amendment to this. That they ought to take the route of at least advertising this property again. If it works out that he is the low bidder or the only bidder, then they can re-negotiate what the situation ought to be. They run the risk of having, as Councilman Withrow has said, some others who might be interested in the property who might be willing to develop it more intensely, which is to the benefit of the City in terms of tax value. He really does not believe they are obligated to have the property Mr. Whitehead is concerned with developed to the extent of the Washburn property. That initially Council made an agreement for a certain density type of development. If that is not achieved, then he thinks in all fairness they have the right to re-bid the property.

Councilman Davis stated he agrees with Councilman Gantt. They do not owe Mr. Whitehead anything although, with Mr. Sawyer, he feels some considerable empathy toward him because of his involvement with the property. He does not think they are permitted to indulge this sort of thing on City Council. The fact that they did permit partial development by Washburn Press - this was during a recessionary period when presumably that was the best deal they could get - they had no other offers that he knows of. He does think they have an obligation to the taxpayers to execute the best contract they can on their behalf.

For those reasons he moved Council deny this amendment and permit the contract for sale to expire on its scheduled date of termination, and that the staff be instructed to resubmit the property for bids. The motion was seconded by Councilwoman Locke.

Mr. Burkhalter, City Manager, stated before they vote he wants to be sure that everyone understands what is involved. He does not know if this would be agreeable to Mr. Whitehead at all, but he does have plans, he is ready to start building immediately on the small tract of land. He does not know whether he would want one tract or not but he has a building ready to go tomorrow. They might deny him the extension on the larger tract, but sell him the small tract.

Mr. Sawyer stated the original contract calls for the development of a five-story office building of 47,000 square feet and a restaurant. The square footage for the restaurant never was specified. Mr. Underhill asked him if the contract for sale would permit the conveyance of part but not all of what was originally bid on? Mr. Sawyer replied that one of the amendments, he believes, permits that. One of the key tests is whether or not the development codes respond to the offering. They have discussed this in house and agree this would respond for this part.

Councilman Davis asked Mr. Sawyer if it would be possible, taking Mr. Burkhalter's suggestion, when they submit the property for bids that they divide it up and make one parcel in conformance with what Mr. Whitehead has development plans for and a second parcel. Take bids on the individual parcels as well as on the total to see what would derive the most income for the City?

Mr. Sawyer replied they could offer all or any part. They could illustrate it as two parcels and any one developer could bid on both or bid on one.

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Councilman Davis stated he thinks if it is done that way it would certainly give Mr. Whitehead an advantage to utilize the planning he has already done and he would like to see it done that way if the motion is passed.

The vote was taken on the motion and carried unanimously.

HEARING ON ORDINANCE AMENDING CHAPTER 22, TREES, OF THE CITY CODE OF THE CITY OF CHARLOTTE TO PROTECT TREES ON PRIVATE COMMERCIAL DEVELOPMENT INSIDE THE CITY.

Mr. Robert Hopson, Director of Public Works, stated as Charlotte has grown the sylvan beauty of our trees has been lost to some extent in urbanization. To protect trees on private property, the City Council requested the right of the City to legislate and regulate such trees in the 1975 Legislature. The Legislature granted that right subject to a public hearing which is being held tonight.

Since April of 1975, right after this permission was granted, the Tree Commission has met many times and has come up with many ideas relative to what to do to save and enhance our city involving private property and its citizens. They have met many times with builders; they have taken tours with some of the builders and developers; and have tried to incorporate what they think is a fair and reasonable regulation. This ordinance applies only to commercial and industrial property. It does not apply to any homes in no substance whatsoever. In view of that, if the ordinance is passed, later on as they deliberate, he would recommend that Section 22-9(b) read as follows: "Undeveloped property zoned for single family or duplex residential use."

In writing this ordinance and working with the City Attorney, they inadvertently left in "when developed is the principal residence of the owner or his tenant." The Commission did not wish to leave this where only the owner was involved. It applies to all residential property.

The ordinance also applies to parking lots adjacent to public right of way, the five-foot planting strip on small lots and lots over one acre having a 10 percent planting area. It also sets standards for protection of trees during development - barricades and placement of equipment and soil to protect trees.

The Public Works Department believes they can handle this program with its current resources. When building picks up, they might need additional staff later on. They have been working closely with the Tree Commission, with the developers and with other interested groups in compiling and coordinating this ordinance. Mr. Ralph Squires, representing the builders, has sat with the Commission all the way through these deliberations and is now a member of the Commission.

Dr. Herbert Hechenbleikner, Chairman of the Tree Commission, stated the main points of the ordinance have already been presented. He gave some figures developed by a landscape architect about the percentage of landscaping in some areas of the city - Eastland Mall has approximately 11 percent devoted to beautification landscaping; Randolph Medical Center has 19.5 percent; Cotswold has approximately 10 percent; the Zayre Store and stores adjacent on Woodlawn and South Boulevard, 0 percent.

If they are going to maintain the reputation of Charlotte as a beautiful city with abundant trees, we are going to have to do something about saving trees on certain types of private property, and not just public property. If there are objections that this will cost too much, he quoted from the Charlotte Weekly-East of September 2 which stated the Greek government says it is going to spend \$30.0 million on trees, flowers and lawns to make Athens the city of jasmine and roses again. Only 2.5 percent of Athens is made up of trees, lawns, flowers and green space. The government wants to increase that to at least 10 percent. It plans to plant 2.5 million trees and 28,000 acres of flowers and lawn. If a government as poor as Greece can afford 10 percent beautification, certainly Charlotte can.

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Dr. Hechenbleikner introduced members of the Tree Commission, each of whom spoke briefly in support of the ordinance: Mr. Fred Sadri, Vice-Chairman; Mr. Herman Porter; Mrs. Pat Rodgers; Mr. Jack McNeary; Mr. Lee McLaren; Mr. Phil Newman; and Mr. Leroy Miller.

He illustrated with slides some of the damage to trees that can and does occur during construction activity.

Also speaking in favor of the ordinance were: Mrs. Don Fultz of the Charlotte Council of Garden Clubs; Mr. Roy Alexander, President of the Metrolina Environmental Concern Association; Mr. Mike Peeler, representing the Central Piedmont group of the Sierra Club; Mr. Peter Lucas, Providence Square Apartments; Ms. Rhonda Ennis; and Mr. L. C. Coleman representing Northwest Charlotte.

Speaking also was Mr. Bill Berry of the Home Builders Association.

Councilman Gantt asked Mr. Berry if, as a developer of residential property, he would like to be excluded from the ordinance? Be allowed to eliminate whatever trees he wants to. Mr. Berry replied yes, there are numerous reasons. It is not that they want to be left out of the picture; not that they do not want to play the game. They have made many hours of presentation of these reasons to Mr. Hopson and the Public Works Department staff. Councilman Gantt asked if they have determined that it will be too costly in terms of what they would have to pass on to the home owner? Mr. Berry replied that is correct. He would estimate the increase to each home would be between \$300 and \$500. He agreed with Councilman Gantt that the homes would be more valuable with the trees left; that this should be left to the discretion of home builders to decide on their own because it is financially profitable for them to leave trees without any regulation at all.

Councilman Davis asked Mr. Berry if he supports the ordinance as it is presently proposed? Mr. Berry replied no. He stated the change he would propose would be to take Mr. Hopson's recommendation to delete the portion which stated "when developed as the principal residence of the owner or his tenant."

Mr. Hopson stated that was the intention of the Commission. They debated the residential versus commercial many times. The ordinance will take care of everything except residential property. This was their intention; it was just an oversight in the proofreading when that phrase was left in.

Mr. Gene Davant, Charlotte realtor, spoke in opposition. He stated he found out about this meeting late this afternoon so he is unprepared to represent the developers to any degree. It is interesting to him to see that all commercial, industrial and office use properties are included but no houses are. It makes them feel a little discriminated against. He noted that if he were to cut down a tree on his office lot, six inches or more, he would have to get a permit or would be subject to a fine of \$50 a day for a year or \$18,000. Most of the developers he knows are interested in Charlotte and want to see the greenery increase and improve.

He asked if they wanted to move a house in Fourth Ward and have to cut down a few trees, how would you go about getting permission? It is a very complex matter. He dreads the thought of having to get a permit everytime he wants to cut a tree down on his property. He is sure it will mean adding more city staff and more people to the Tree Commission as time goes on.

Councilman Gantt asked Mr. Davant if this is something he has to do every day - in terms of cutting trees down? Mr. Davant replied no. But when you get started on a project you may have to cut quite a few trees down. He does not know whether the Commission is going to be very, very strict and make him not do his project, or not be able to sell a piece of land. It is going to be a hard situation for the Tree Commission, for the owner, for the buyer and for the broker. They have to accept all this on faith that they will have a Tree Commission which will say "Sure, go ahead and cut them down." He questions giving all this authority to eight or eleven people.

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Another concern is if you want to appeal the Commission's decision, the request is directed to the Chairman of the Tree Commission and the Director of Public Works who will appoint a three-member board selected from the appointed members of the Tree Commission. The people who said no in the first place will be getting together in another group and maybe saying no the second time. There is no right to appeal to anyone who is elected.

Councilman Gantt asked if he is saying he finds the application cumbersome? That if he is a developer, developing an industrial site, indeed he would in preparing his plans have to bring them in for review, not for every single tree a separate application, but he would assume the entire site would be evaluated on that basis. He just cannot see if as being as involved as he seems to be making it. It does not seem much different from the building inspection process they go through now for the structure you put on the land.

Mr. Davant replied when you are starting out on a project and want to put a building where you would have to take 50 trees out. If the Tree Commission says fine, there is no problem, but if they say absolutely not, then you have a stalemate between an owner who has a piece of property they cannot do anything with and a Tree Commission that will not give any ground. He just does not want to see it get so complicated.

Councilman Withrow stated he believes this was copied partially from the Atlanta ordinance. He has talked with a lot of the commercial developers in Atlanta and they do not object; they say it has worked well there. He hopes our Tree Commission will not put a burden on the developers and will work with the developers and he believes they will. The Atlanta ordinance takes in the home builders as well and they say all of it is working well.

Mr. Danny Watts stated he is a real estate broker in Charlotte and he is speaking for himself. He stated his opposition to the ordinance as it applies to him. That he has not had a great deal of time to review the ordinance, but what he has seen has absolutely shocked him. One is: "Subject to the exclusions of this ordinance, it shall be unlawful for any person to cut down or otherwise destroy any live tree growing on land within the City of Charlotte without a written permit issued by the City Arborist." The impact of that one statement just knocked him out. That you cannot cut down any live tree within the City of Charlotte without running down here and filing a written application to get a permit to go out and cut down any live tree. He stated this is nothing but governmental control of private industry.

Councilman Gantt asked if he has read page 7 which has a definition for tree? Mr. Watts replied he had. Councilman Gantt stated the way he made it sound is if he cut down a tree he would be in trouble. Mr. Watts replied it is a tree six inches, breast height. How are you going to be able to determine whether it is five and half inches or if it is six inches or seven? The intent is still there.

He referred to several different sections of the proposed ordinance, stating that this scares him; it is moving into the direction of complete government control; it is tying a developer's hands. It is a misdemeanor if you do it unintentionally and get caught; it carries a \$50 fine or 30 days imprisonment. Imagine cutting down a six inch tree and going to prison for 30 days.

Councilman Withrow stated this worked in Atlanta. Could we not give this a try. We can always rescind it at a later date if it does not work. He stated he thinks we should at least give it a try to see if it works.

Councilwoman Locke stated she would like to defer this item as there are some people who will probably want to contact the Councilmembers about this.

Councilwoman Locke moved the ordinance be deferred and maybe delete some of the sections. The motion was seconded by Councilman Williams.

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Mr. Underhill, City Attorney, stated in connection with that section that Mr. Hopson referred to in which he proposed an amendment. With all deference to Mr. Hopson's language he thinks the purpose would be more easily clarified if the entire subsection (b) of Section 22-9 was stricken, and the following substituted: "Property developed for single family residential purposes." If the intent is to exclude single family residential development from coverage by the ordinance, that language would do. The other way you leave a question if the word "undeveloped" is left in. That he would suggest that as better language, but if Council would like he will work on that further for refinement. Second, there is a typo on Page 10, under Section 22-16(d) at the bottom of the page. The paragraph starts off with Sections 22-11, 22-12, 22-13 and 22-24 shall also apply to this section. The reference to 22-24 should come out because there is no Section 22-24. There was one in the earlier draft; but this was not picked up when it was rewritten.

Councilman Gantt asked Mr. Underhill to clarify the penalties under this ordinance. If he inadvertently cut down a tree six inches or more in caliber, and it was discovered by the Tree Commission, will he be fined \$50 a day for every day he has done that; that he cannot get the tree back? Mr. Underhill referred to Page 12 of the proposed ordinance which includes the penalty section, and stated the penalty provision is exactly the same penalty provision that to his knowledge is attached to 99 percent of the city ordinances adopted. That it requires the person knowingly and willfully violating the ordinance before they can be guilty of a criminal offense. The penalties that are provided are the maximum penalties provided by State law for violation of any municipal ordinance. The language, "every day upon which such violation continues shall constitute a separate and distinct offense" is a very common provision in municipal ordinances. He would guess it is in 99 percent of the ordinances in the City Code.

Mr. Underhill stated Section 22-20 permits an alternative form of enforcement in that it permits the governing body to authorize the institution of civil action for injunctive relief to restrain a violation. That they have found through experience on many occasions that criminal enforcement of some municipal ordinances is ineffective. That a better course of action in many instances is to try to get the alleged violation enjoined or stopped by the institution of appropriate civil action rather than going the criminal route.

Councilman Locke asked how one could prove there has been a violation? Councilman Williams stated ignorance of the law is no excuse, and every criminal law has that language in it - the "willful and knowingly" applies to the act. When you cut down a tree you know you have cut it down. Councilwoman Locke asked if they would not have to catch you in the act of cutting it down? Councilman Williams replied not necessarily. Mr. Underhill stated there are some exclusions written in the ordinance. If you, as a property owner, desire to cut down a tree on your residential lot, the ordinance will not apply; nor would it apply to single family development; nor to routine maintenance. It would apply to commercial or industrial development, and the penalties would apply to those situations where an offense was committed.

Councilman Davis stated Charlotte has some of the finest developers and home builders in the United States, and they have done a good job. That is why we have heard so many people comment on what a beautiful city Charlotte is. That he thinks the intent of this ordinance is to impose some reasonable type of regulation, and it seems to get primarily at developers. We have had some outstanding examples of good development, and some which have been pointed out where zero percent of the land is used for some type of beautification. What most of us would like to do is to impose some type of regulation in a reasonable manner against this type of developer, without at the same time imposing any unusual or restrictive legislation on the developers who are good citizens, and do at least what would be required under this ordinance under normal circumstances. That he thinks it is interesting to note there is a home builder represented on the Tree Commission, and the home owners are excluded from this. There is no developer that he recognizes on the Tree Commission, and they are bearing the brunt of this. That he is going to vote in favor of the delay and he would like for the Tree Commission,

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if they will, to use this time to seek some informal input from the developers in Charlotte, and advise Council what they learn.

Councilman Williams stated he likes the affirmative aspects of this ordinance. It is the prohibitions that bother him. What is to prevent the arborist from being arbitrary. The standards are pretty general, and he notices there are six standards, but there is no standard the developers need - the unusual characteristics of their property which might require them to cut a tree. He thinks it should be thought about some more; that he likes the cooling off period we are getting into.

Dr. Hechenbleikner stated Mr. Davant is talking about moving a house from a home site; he is cutting down all the trees on the old site, and cutting down all the trees on the new site. He is moving a house from one place to another. There is nothing in this ordinance to prohibit that. This property is excluded. That he does not believe our officials - City Engineer, Director of Public Works, the Landscape Supervisor and City Arborist - are double-eyed villains. They have their bosses; the City Council controls it. He stated the Tree Commission has no regulatory power, no authorization to do anything but recommend. So, they do not need to fear the Tree Commission. But in the final analysis, people overseeing this under the control of City Council will regulate all this. It can always be rescinded; it is not a magna carta that is inviolate.

Mayor Belk stated he thinks they have a legitimate complaint about finding out about this ordinance this afternoon, and they would like to study it a little more in detail. That this will give the developers an opportunity to look at it.

Councilman Whittington asked how long it is proposed for the ordinance to be held up? Councilwoman Locke replied one week - it was to defer one week.

The vote was taken on the motion and carried unanimously.

PRESENTATION BY LEWIS CLARK ASSOCIATES FOR AESTHETIC IMPROVEMENTS IN BUILDING OF CITY STREETS.

Mr. Hopson, Public Works Director, stated this project started about a year and a half or two years ago when Council became concerned about the residential neighborhoods that were being traversed by arterial such as Woodlawn Road, Eastway Drive, Sharon Amity Road, and other streets similar to that in our city. That we wanted to know what we could do about this to help in the future. Concerns were also expressed by neighborhoods' efforts to obtain changes in zoning when these things start occurring.

He stated he thinks there is an answer to these problems in the green booklet entitled "Charlotte Streets - The Choices Ahead" which each Council member has before him.

Mr. Hopson stated Lewis Clark and Associates, landscape architects in Raleigh, were retained to make this study. That Arequipa Park at the main library was designed by Lewis Clark and Associates. The study emphasizes planning - planning in all its stages. Short range planning and what can be done about certain things that have already occurred in Charlotte, and long range planning as to what can be done about additional street scapes that will come into focus as the years progress.

Mr. Lewis Clark summarized the report for Council, and presented slides depicting some of the ideas as pointed out in the booklet. During the presentation Mr. Clark stated the study has been worthwhile as a seed study to point out the problems to acquaint the public that Council is concerned about what is happening, and is searching for answers, and that these answers cannot be found overnight.

Councilman Gantt moved that the study be referred to the Public Works Department and Planning Commission. The motion was seconded by Councilman Whittington, and carried unanimously.

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CONTRACT BETWEEN THE NORTH CAROLINA JUSTICE ACADEMY AND CHARLOTTE POLICE DEPARTMENT FOR TRAINING POLICE PERSONNEL ASSIGNED TO HIGH CRIME NEIGHBORHOOD PROJECT.

Councilman Williams moved approval of the subject contract for all personnel assigned to the High Crime Neighborhood Project to receive training to satisfy LEAA requirements. The motion was seconded by Councilman Gantt, and carried unanimously.

DISCUSSION OF PROPOSED TALENT BANK FOR APPOINTMENT OF MEMBERS TO BOARDS AND COMMISSIONS DEFERRED.

Councilman Whittington stated he is vitally interested in the proposed talent bank, and he thinks it will take a good length of time to discuss it. He moved that it be presented to Council at a time when Council has more time to listen and have input into the proposal. He would rather it be at a Council/Manager Luncheon meeting. It is that important, and at this time of night he does not think Council should get into it, and cut Mr. Bullard off. The motion was seconded by Councilman Gantt, and carried unanimously.

APPOINTMENT TO COMMUNITY FACILITIES COMMITTEE DEFERRED ONE WEEK.

Councilman Davis moved that consideration of the subject appointment of Ms. Phyllis Niccolai be deferred for one week to give the City Attorney an opportunity to advise him on whether or not Ms. Niccolai has a conflict of interest. The motion was seconded by Councilman Whittington, and carried unanimously.

RESOLUTIONS OF CONDEMNATION.

(a) Councilman Gantt moved adoption of a resolution authorizing condemnation proceedings for the acquisition of property belonging to Marsh Broadway Construction Company, Inc., Realty Syndicate, Inc., Security Interest, and Marsh Mortgage Company, Security Interest, located at 7309 Path Finder Court, and 7201 Tall Tree Lane, in the County of Mecklenburg, for the Paw Creek Outfall, Phase II Project. The motion was seconded by Councilman Withrow, and carried unanimously.

The resolution is recorded in full in Resolutions Book 12, at Page 144.

(b) Motion was made by Councilman Withrow, seconded by Councilman Whittington, and unanimously carried, adopting resolution authorizing condemnation proceedings for the acquisition of property belonging to Marsh Broadway Construction Company, Inc.; Realty Syndicate, Inc., Security Interest; Northwestern Bank, Security Interest, Realty Syndicate, Inc., Lessee, located at 6900 Interstate 85, in the County of Mecklenburg, for the Paw Creek Outfall, Phase II Project.

The resolution is recorded in full in Resolutions Book 12, at Page 145.

(c) Upon motion of Councilman Whittington, seconded by Councilman Withrow, and unanimously carried, a resolution was adopted authorizing condemnation proceedings, for the acquisition of property belonging to Realty Syndicate, Inc., and Weyland Homes, Inc., Security Interest, located at 6200 Sullins Road, in the County of Mecklenburg, for the Paw Creek Outfall, Phase II Project.

The resolution is recorded in full in Resolutions Book 12, at Page 146.

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(d) Councilman Withrow moved adoption of a resolution authorizing condemnation proceedings for the acquisition of property belonging to Realty Syndicate, Inc., and Weyland Homes, Inc., Security Interest, located at 8000 Pawtuckett Road, in the County of Mecklenburg, for the Paw Creek Outfall, Phase II Project. The motion was seconded by Councilman Williams, and carried unanimously.

The resolution is recorded in full in Resolutions Book 12, at Page 147.

CONSENT AGENDA APPROVED.

Upon motion of Councilman Gantt, seconded by Councilman Whittington, and unanimously carried, the consent agenda was approved as follows:

- (1) Applicants for property rehabilitation grants:
 - (a) Grant to Ruth E. Shaver, at 3005 Whiting Avenue, in the North Charlotte Area, in the amount of \$3,834.
 - (b) Grant to Annie K. Parker, at 432 Mallory Street, in the North Charlotte Area, in the amount of \$4,400.
 - (c) Grant to Annie Bell Taylor, at 3308 Ritch Avenue, in the North Charlotte Area, in the amount of \$4,350.
- (2) Settlement in the case of City of Charlotte vs. Charles E. Parks, et ux, in the additional amount of \$2,050, for Parcels No. 2 and 2A, Remount Road Widening Project.
- (3) Denial of claim of Bruce L. Perkins, 1118 Echo Glen Road, in the amount of \$5,000, when water service in his residence was disconnected in error.
- (4) Encroachment agreement with the North Carolina Department of Transportation permitting the City to construct one 15-inch sanitary sewer line under US 21 and one 8-inch sanitary sewer line under Hambright Road.
- (5) Property transactions:
 - (a) Acquisition of 15' x 300.64' of easement at 5417 Twin Lane, off North Graham Street, from Walter K. Deese and wife, Faye B., at \$1.00 for sanitary sewer main additions in Annexation Area II (7).
 - (b) Acquisition of 15' x 39.4' of easement at 5419 Twin Lane, off North Graham Street, from Henry O. Taylor and wife, Harriet W., at \$1.00 for sanitary sewer main additions Annexation Area II (7).
 - (c) Acquisition of 15' x 11.93' of easement at 7310 Lancer Drive, Old Providence, from Mobay Chemical Corporation, at \$15.00, for Providence Utility Trunk Relocation.
 - (d) Acquisition of 15' x 267.03' of easement at 7008 Lancer Drive, Old Providence, from Phillip R. Hall, Jr., and wife, Carol H., at \$1200, for Providence Utility Trunk Relocation.
 - (e) Acquisition of 30' x 488.50' of easement on the westerly side of McCoy Road, south of Gilead Road, from Lura K. Stratton, at \$1,000, for Torrence Creek Outfall.
 - (f) Acquisition of 25' x 102.37' of easement at 7115 Belhaven Boulevard, from Belhaven Limited, at \$150 for Gum Branch Outfall Project.
 - (g) Acquisition of five parcels of real property located in the West Morehead Community Development Target Area, as follows:

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- 1). 5,520 sq. ft. from Anna B. Malcolm, 1310-12 Winnifred Street, at \$6500.
 - 2). 16,625 sq. ft. from Everett M. Austen, at 1201-09 Jefferson Street. Parcels 2, 3 and 4, at \$72,000.
 - 3). 6,430 sq. ft. from ARMCORP, Inc., at 1217 Jefferson Street, at \$9,000.
- (h) Acquisition of one parcel of real property located in the Southside Park Community Development Target Area, from Hawes Realty and Investment, Inc., 215-17 Lancaster Street, at \$7800. (4,200 sq. ft.)
- (6) Equipment exchange made by Burroughs Corporation to meet original contract specifications, at no additional cost to the City.

RESOLUTION EXPRESSING SYMPATHY UPON THE OCCASION OF THE DEATH OF MRS. NELL FORESTER DAVIS.

Mayor pro tem Whittington stated Mayor Belk and all members of Council were informed today of the passing of Councilman Lou Davis's Mother.

He presented the following resolution:

BE IT RESOLVED by the City Council of the City of Charlotte, North Carolina, that heartfelt sympathies of the Mayor and members of the Council be hereby extended to the family of Councilman Louis M. Davis, upon the occasion of the death of his mother, Mrs. Nell Forester Davis.

BE IT FURTHER RESOLVED that this resolution be spread upon the minutes of this meeting, and a copy thereof be forwarded to Councilman Louis M. Davis.

The resolution was unanimously adopted by Council, after which Councilman Williams lead in prayer.

EXECUTIVE SESSION OF CITY COUNCIL SET FOR MONDAY, NOVEMBER 22, 1976.

Councilwoman Locke moved that the City Council hold an executive session on Monday, November 22, 1976 immediately upon the conclusion of the regularly scheduled council meeting on that date for the purpose of conferring with the City Attorney concerning the lawsuit entitled: Kannon, et al vs. HUD, pursuant to the provisions of G.S. 143-318.3(5). The motion was seconded by Councilman Whittington, and carried unanimously.

RESOLUTION ON PUBLIC TRANSIT REQUESTED PLACED ON AGENDA WITHIN NEXT THIRTY DAYS.

Councilman Davis stated on November 1st he presented a resolution on public transit development to Council. That he has received a report back from the Planning Commission, and the report is substantially a summary of all the plans the City of Charlotte and this Council has in process to improve public transit. What he had hoped would come out of this in addition to that would be some positive actions that Council could take at this point to demonstrate our concern for the development of transit at the expense of the automobile.

He stated in view of the report from the Planning Commission, he is requesting this be placed on a Council agenda within the next 30 days for discussion. He does not necessarily want this by the Planning Commission, but by whatever appropriate staff the City Manager feels it should be.

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Councilman Davis stated the primary thrust he would like to get from this would be at least a series of target dates for completion of these studies so that Council and the public will know when there will be a study before Council for some action.

He stated he would like to have it on a formal agenda within the next 30 days.

CITY ATTORNEY ADVISES HE IS WORKING ON REPORT CONCERNING REZONING OF ANOTHER'S PROPERTY.

Councilman Davis stated recently Mr. Gene Davant, representing the Charlotte Board of Realtors, appeared before Council to question our zoning ordinance that permits one to petition to rezone property of another. He stated the fact that the ordinance does permit this results in considerable inconvenience and frequently some expense to the property owner. Perhaps the authority to petition another person's property for rezoning should be reserved for government or for some professional planning agency.

Councilman Davis requested the City Manager to have the appropriate staff members report back to Council on Mr. Davant's suggestion, with whatever changes the City Manager and his staff might recommend to the zoning ordinance.

The City Attorney advised he is working on this at the request of Councilman Withrow; that he cannot say when he will get back to Council with the report but he intends to make it to the entire Council.

BRIEFING AND JUSTIFICATIONS FOR PARALLEL CONDITIONAL DISTRICT ZONING REQUESTED.

Councilman Davis stated in the same report he would like to ask Staff to brief the Council on the background and justification for parallel conditional district zoning, and conditional use permits. This concentrates too much discretionary power which can be exercised in an almost arbitrary manner. At best it seems to be little more than contract zoning, which in the past has not held up in Court. He is concerned that part of our zoning ordinance might be invalid when tested in Court.

RESOLUTION ON CONDUCT OF COUNCIL MEETINGS REQUESTED PLACED ON NEXT AGENDA.

Councilman Davis stated this is the first time the full Council has been present and voting since the October 25th meeting. He would like to discuss the unprecedented manner in which our November 1st meeting was prematurely adjourned in such a way as to shut off discussion. This is in contravention of Council's own written and procedural policy.

Although widely circulated news accounts described the sudden move as an attempt to cut off a councilmember, he did not feel any personal affront nor did he feel his constitutional freedom of speech has been infringed. He thinks the affront and humiliation is to the body of Council, and the 306,000 people Council represents. Council was elected by the people to provide the policy making leadership under which the city operates; Councilmembers are sworn to perform this duty in open meetings where the public business can be discussed by Council with public participation.

He stated he is pleased that Councilmembers Harvey Gantt and Neil Williams voted with him against this move to usurp the prerogatives of this Council.

Either what happened on November 1st - that is, the flagrant abuse of the power and privileges vested in the chairmanship of this body, secret dealings behind closed doors to manipulate the Council, and suppression of

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information becomes our policy, or we must condemn that action. He does not see how this Council can ask for or expect the support of the electorate if we in this public forum deny our own people access to public information.

He stated the voters have wisely held much of the control of government in their own hands. We must have public support and cooperation if we are to lead effectively. Strong and effective leadership is essential if the City of Charlotte is to expect the quality of growth that will benefit all of its citizens.

Councilman Davis proposed the following resolution:

RESOLVE, that Council re-affirm its intention to use this forum for open and honest discussion of public business. Full disclosure of pertinent information will be made in a timely manner to keep the public informed. Discussion will not be limited and debate will not be cut off unless the reasons for such action are stated and approved by 2/3 of those councilmembers present in conformance with the rules of order previously adopted by this Council.

Councilman Davis requested the unanimous vote of Council required to act on the resolution tonight, and he so moved. The motion was seconded by Councilman Williams.

Councilman Williams stated first a technical point. He thinks the rules of order allow a motion to adjourn on a simple majority vote, and it does not require any unusual majority to adjourn, which is what happened last time, and it was not a motion for cloture, or anything that resembles what the Congress of the United States gets into.

Second, he thinks what happened on that motion to adjourn was largely unintentional on the part of some people who might have voted for adjournment. Sometimes we get caught up in the rush in concluding a meeting; sometimes it gets late, and sometimes we have other things to think about. We may not reflect long enough on what to do. The Congress of the United States is referred to sometimes as the world's greatest deliberative body, and we do not need to emulate Congress by any means. But maybe we should deliberate more about some of our decisions. Council has shown that by voting to postpone decisions on some important matters instead of acting hastily on them, and possibly regretting it at a later time. Perhaps we learn from some of our mistakes.

This resolution is hard to oppose. It is almost like motherhood and country and apple pie. It is reaffirming free speech of the First Amendment to the Constitution and everything else we have always talked about. He does not see any reason why not to vote for it. He is sure we are all committed to those principles anyway.

Councilman Whittington stated he was not in attendance at the Council Meeting Mr. Davis referred to, and he did not mention his name either way. He asked the record to state he was not present. He stated he would like for Mr. Davis to pass copies of the resolution around; it is only fair that all of us realize what he is asking Council to vote on, if that is his intent. Then he assumes he wants Council to wait a week and officially vote on the motion, or does he want it all done tonight? Councilman Davis replied he asked for it to be done tonight. He has no objections to it being delayed any reasonable period of time.

Councilman Whittington stated he does not have any objections; he would like to request that it be delayed one week, and that Mr. Davis request it be placed on the agenda officially at the next meeting. He does not think he needs a motion for that.

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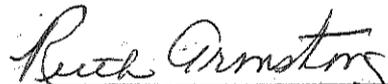
Councilman Davis replied he is willing to do that. In view of Mr. Williams' remarks it was perhaps a misunderstanding by members of Council on the technical matter of adjournment. His interpretation of Roberts Rule is a motion to adjourn coming at the normal time in a business session is not debatable and can be carried by a simple majority vote. On the other hand, if during the agenda, prior to the normal time for adjournment, in this case prior to Council discussions, a move to adjourn would be in effect a move to set an early time for adjournment. This type of motion is debatable at the time. In the case where the intent of the motion to adjourn seems to be at least to him, and to observers present, to cut off debate, which would require a 2/3 vote. He thinks it is important if that was a misunderstanding or misconception that we correct that to the public and maybe that is all there is to it, and it would be better to dispense with it tonight. He has no objections to it either way.

Councilman Whittington stated in the sixteen years he has been down here, he has never cut off anyone, and he does not think he intends to do that in the future. But he would appreciate it if Councilman Davis would let this go through the process and let everyone know what he intends to do, what the resolution states, and then have it put on the agenda for the next meeting.

Councilman Davis withdrew his motion, and asked that the resolution be placed on the formal agenda for next week.

ADJOURNMENT.

Upon motion of Councilman Davis, seconded by Councilman Gantt, and unanimously carried, the meeting adjourned.


Ruth Armstrong, City Clerk