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A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, City Hall, on Wednesday, October 13, 1954, at 4 o'clock p.m., with Mayor Van Every presiding, and Councilmen Albea, Barter, Boyd, Brown, Dellinger, Smith and Wilkinson present.

Absent: None.

INVOCATION.

The invocation was given by Councilman Claude L. Albea.

MINUTES APPROVED.

Upon motion of Councilman Smith, seconded by Councilman Wilkinson, and unanimously carried, the minutes of the last meeting were approved as submitted.

ORDINANCE NO. 240 AMENDING ZONING ORDINANCE TO CHANGE ZONING ON LOT AT 529 DOWD ROAD.

The hearing in connection with Ordinance No. 240 Amending the Zoning Ordinance, to change the Building Zone Map from R-2 to Industrial on a portion of a lot at 529 Dowd Road, was held. No objections to the proposed change were registered by the property owners within the area. Councilman Smith moved the adoption of the ordinance, which was seconded by Councilman Wilkinson, and unanimously carried. The ordinance is recorded in full in Ordinance Book 11, at Page 383.

NO ACTION TAKEN ON REQUEST THAT OPERATION OF KINDERGARTEN AT 410 EAST PARK AVENUE BE PROHIBITED.

Mr. Ernest DeLaney, Attorney, stated that he and his clients were present to hear the decision of the Council with regard to their request at the last Council Meeting that the Zoning Ordinance be enforced to prohibit the continued operation of a Kindergarten in an R-2 zone at 410 East Park Avenue. He presented a petition, signed by property owners in the vicinity of the Kindergarten requesting the enforcement of the ordinance; stating they feel the operation of a private school will be detrimental to the community on account of the increased noises and disturbances and would render the property less desirable for residential purposes.

Councilman Boyd stated it is his opinion, and seems to be the opinion of other attorneys, that the operation of the Kindergarten is perhaps not a violation of the law. He moved that the Council take no action in the matter. The motion was seconded by Councilman Brown.

Upon the question being asked by Mr. John D. Shaw, City Attorney, as to the effect of the motion on the direction of the Council to him at the meeting on September 15th, regarding the matter, Councilman Boyd replied that the motion, if adopted, will nullify those directions.

Councilman Dellinger stated he understands the matter is now in the Courts.

Councilman Boyd advised that he understood that Mrs. Haithcock, who operates the Kindergarten was arrested on a criminal warrant after Mr. DeLaney was advised at the Council Meeting last Wednesday that a hearing on the question would be held today; that he also understands that the warrant has been withdrawn. Mr. Yancey, City Manager, stated the warrant was not issued at the instigation of the City. Councilman Dellinger asked Mr. DeLaney if he knew who signed the warrant, and Mr. DeLaney replied that he did not know but presumed that the Desk Sergeant did so. Councilman Dellinger then asked Mr. Paul Erwin, Attorney for Mrs. Haithcock, if he knew who signed the warrant. Mr. Erwin stated the warrant was issued out of the City Recorder's Court; that it is his understanding that it was issued at the suggestion of one or more of the ladies opposing the operation of the kindergarten or Mr. DeLaney. That he went into Recorder's Court to try the case as attorney for Mrs. Haithcock, who had been made ill because of it, and found it had been nol prossed.

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Mr. DeLaney stated he wished to reply to Mr. Erwin, and advised that as Judge pro tem of the City Recorder's Court he endeavors to enforce the law; however, when the case came to his attention in Court, he immediately disqualified himself to hear it and asked the Solicitor to not press the case or refer it to the County Recorder's Court, as he would not hear it.

Mr. DeLaney asked that his clients be heard. The Council was agreeable to having the question discussed, and Councilman Boyd stated that being the case he would withdraw his motion for the present.

Mrs. Potts, 1819 Lynhurst Avenue, stated she did not think the warrant had any connection with the question at hand; that she wanted to know how long it takes for the Council to determine if a law is a law. That the Zoning Law should be enforced if we are going to have a zoning law. That nursery schools should be located in the newer areas where there are many children and not in older residential areas where citizens reside who have retired and want quietude. Mrs. Rich, 400 East Park Avenue, stated it is her understanding that Mrs. Haithcock was notified regarding the existing violation on April 23rd, and that on September 13th she was told by the City to close the school, which she did not do, and on September 15th, the City Attorney was instructed to restrain her from operating through the Courts, which he did not do.

Mr. John D. Shaw, City Attorney, stated he advised the Council at last week's meeting that there was a question in his mind if a violation exists.

Mr. DeLaney stated that the zoning laws provide that the City may restrain a person from violating the law and makes it a misdemeanor for each day that the violation continues, and secondly, a private citizen can seek an injunction through the Courts against such person for the violation. He stated he thinks it is a matter for the Court to decide what the law means. That if the Council takes no action, his clients will be forced to bring an injunction against Mrs. Haithcock, which in the meantime will leave her in the dark as to what to do with the school.

Mr. Paul Erwin stated that Mrs. Haithcock is operating a Day Nursery for working parents who must place their children under the care and protection of someone during working hours. That the ordinance provides for public and parochial schools, colleges, churches, duplex houses and apartments in an R-2 zone; that directly across from the Nursery is Dilworth Elementary School which hundreds of children attend, and, naturally, make noise, while only some 20 to 30 small children attend the Nursery under strict supervision; that when the zoning law was written, all phases that it would cover could not possibly be thought of; that changes are constantly made in the law as the occasions arise, and as they appear to be the sensible solution to a problem, and are fair and just. He stated further that he has a petition signed by every resident in the block advising they would like the Nursery to continue in operation. He also stated he feels a grave injustice is being done Mrs. Haithcock.

Councilman Albea stated that from what Mr. Erwin says, he understands there has been no violation of the ordinance, to which Mr. Erwin replied that that is correct. Mr. Erwin stated further that if the Council feels the operation of the Nursery does not conform in every way to the ordinance, and that under its provisions a hardship is being imposed on Mrs. Haithcock, then the Council has the right to change the ordinance to include this type school. He stated that the Nursery operates from 7:15 a.m., so that parents may leave their children on their way to work and remains open until the children are called for; that classes are held from 8:45 a.m. to 12 noon; that the primary function of the school is a Day Nursery but instructions are given some children in first grade work.

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Councilman Boyd stated he wished to renew his previous motion based on the opinion of the City Attorney and the serious doubt of there being a violation of the zoning ordinance; he moved that the Council take no action in the matter. The motion was seconded by Councilman Brown, Councilman Albea asked when it would be established if there is a violation of the law, to which Councilman Boyd replied that the Courts will establish that if the matter is taken to the Court. The vote was then taken on the motion, and the votes were cast as follows:

YEAS: Councilmen Baxter, Boyd, Brown, Smith and Wilkinson.

NAYS: Councilmen Albea and Dellinger.

REQUEST OF CANNON AIRPORT, INC, TO LEASE SPACE AT DOUGLAS MUNICIPAL AIRPORT FOR LOCATION OF BASE OPERATION DEFERRED UNTIL NOVEMBER 10TH MEETING.

Mayor Van Every advised Mr. John Cunningham, President of Cannon Airport, Inc., that the Council has discussed his request to lease space at Douglas Municipal Airport for the location of an additional fixed base operation, and has decided that a further study must be made of the proposal. That it is the thought of the Council to appoint a Committee of technical persons who have full knowledge of such matters, to study the proposal and make recommendations to the Council, so that the Council may decide just what is best for the City in the matter.

Councilman Smith moved that the Council again consider the request at the meeting on November 10th, after the report of the Committee is received. The motion was seconded by Councilman Baxter, and unanimously carried.

ESTIMATE OF COST OF IMPROVING GARNET PLACE TO BE MADE BY CITY MANAGER.

Mr. Joe McMillan and a small delegation of residents of Garnet Place and St. Luke Street were present and again requested that improvements be made to the three blocks of Garnet Place beginning at St. Luke Street. They advised that the street is impassable, particularly so since sewer and water lines were laid in the street, and urged that something be done to correct the condition. Upon motion of Councilman Dellinger, seconded by Councilman Baxter, and unanimously carried, the City Manager was directed to have an estimate made of the cost of improving the street.

REQUEST FOR LICENSE TO OPERATE SHOOTING GALLERY AT 131 WEST TRADE STREET DEFERRED,

The City Manager reported that the Chief of Police is of the opinion that it would not be in the best interest of the City to have a Shooting Gallery located at 131 West Trade Street, as requested by Mr. S. D. Wright. In view of the fact that Mr. Wright was not present at the meeting, Councilman Smith moved that the matter be deferred. The motion was seconded by Councilman Wilkinson, and unanimously carried.

QUESTION OF CITIZENS PARKING CARS TO PAY TRAFFIC FINES AND WATER AND TAX BILLS DISCUSSED.

Councilman Smith advised that his recommendation that the Banks be requested to act as collection stations for the payment of traffic violation fines by citizens, was made in the interest of finding some means for citizens to park their cars; that another suggestion has been made that the circular walkway to the front of the City Hall be widened to permit parking by citizens paying water and tax bills as well as traffic fines. Councilman Brown stated he had discussed the matter with some of the Bankers who stated they would rather issue citizens a money order and let them mail it in to the City, instead of the Banks handling the fines. He stated further that he believes there are usually sufficient parking spaces available to the public on the street in front of the City Hall.

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RESOLUTION PROVIDING FOR PUBLIC HEARING ON NOVEMBER 3RD ON ORDINANCE NO. 241 TO AMEND ZONING ORDINANCE TO CHANGE ZONING AT 1429-31 SOUTH BOULEVARD.

Following the introduction of an Ordinance Amending the Zoning Ordinance to change the Building Zone Map from B-1 to B-2 on property at 1429-31 South Boulevard, a Resolution was introduced and read Providing for a Public Hearing on November 3rd on the proposed ordinance. Councilman Dellinger moved the adoption of the resolution, which was seconded by Councilman Smith, and unanimously carried. The resolution is recorded in full in Resolutions Book 2, at Page 249.

REMOVAL OF TREES FROM PLANTING STRIP IN 500 BLOCK OF NORTH BREVARD STREET APPROVED.

Upon motion of Councilman Boyd, seconded by Councilman Baxter, and unanimously carried, approval was given the removal of two trees from the planting strip in the 500 block of North Brevard Street, whose roots are damaging the street pavement.

GRIER AVENUE, FROM WELCH STREET TO JENNINGS STREET, TAKEN OVER FOR MAINTENANCE.

Councilman Dellinger moved that Grier Avenue, from Welch Street to Jennings Street, be taken over for City maintenance. The motion was seconded by Councilman Boyd, and unanimously carried.

CONTRACTS FOR WATER MAINS CONSTRUCTION AUTHORIZED WITH (1) WILSON LEWITH AND (2) D. E. ALLEN.

Upon motion of Councilman Smith, seconded by Councilman Baxter, and unanimously carried, the following contracts were authorized for the construction of water mains:

- (a) Contract with Wilson Lewith for the construction of 500-ft. of water mains in Midland Avenue, outside the city, to serve property between Wilkinson Boulevard and Southern Railway main line, at an estimated cost of \$750.00. All costs to be borne by the applicant who will dedicate the mains to the City upon completion.
- (b) Contract with D. E. Allen for the construction of 7,136-ft. of main and 4 hydrants in Eastwood Acres, outside the city, to serve residential property near Hickory Grove Road, at an estimated cost of \$16,244.00. All costs to be borne by the applicant, who will own the mains until the territory is taken into the city.

CONTRACT AWARDED GRINNELL COMPANY FOR COPPER TUBING.

Councilman Smith moved that contract be awarded the low bidder, Grinnell Company, Inc., for 15,000 ft. of 3/4 inch Copper Tubing, as specified, on a unit price basis, representing a total price of \$5,280.00, less cash discount of \$52.80, or a net delivered price of \$5,227.20. The motion was seconded by Councilman Baxter, and unanimously carried.

CONTRACT AWARDED HAJOCA CORP. FOR WROUGHT IRON PIPE.

Motion was made by Councilman Smith, seconded by Councilman Baxter, and unanimously carried, awarding contract to the low bidder, Hajoca Corp., for 30,000 ft. 3/4 inch and 7,500 ft. 2-inch Wrought Iron Pipe, as specified, on a unit price basis, representing a total price of \$10,962.00, less cash discount of \$219.25, or a net delivered price of \$10,742.75.

CONTRACT AWARDED BLYTHE BROS. COMPANY FOR THE CONSTRUCTION OF STREET IMPROVEMENTS IN BRUNSWICK AVENUE-GARDEN TERRACE PROJECT.

Upon motion of Councilman Brown, seconded by Councilman Baxter, and unanimously carried, contract was awarded the low bidder, Blythe Bros. Company for the construction of street improvements in the Brunswick Avenue and Garden Terrace Project, all as specified, on a unit price basis, representing a total price of \$29,718.00.

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CONTRACT AWARDED CROWDER CONSTRUCTION COMPANY FOR CONSTRUCTION OF BRIDGE IN THE BRUNSWICK AVENUE-GARDEN TERRACE IMPROVEMENTS PROJECT.

Motion was made by Councilman Brown, seconded by Councilman Baxter, and unanimously carried, awarding contract to the low bidder, Crowder Construction Company, for the construction of Bridge in the Brunswick Avenue-Garden Terrace Project, all as specified, on a unit price basis, representing a total price of \$33,310.84.

CONSTRUCTION OF DRIVEWAYS ON MONROE ROAD AUTHORIZED.

Councilman Albea moved approval of the construction of Two 35-ft. driveways on Monroe Road and One 35-ft. driveway on Fugate Avenue, all for 3701 Monroe Road. The motion was seconded by Councilman Smith, and unanimously carried.

CONSTRUCTION OF SANITARY SEWER MAIN IN VINTON STREET.

Upon motion of Councilman Dallinger, seconded by Councilman Wilkinson, and unanimously carried, the construction of 110-ft. of 8-inch sanitary sewer main in Vinton Street was authorized to serve 2 family units and 3 vacant lots, at an estimated cost of \$220.00, with all costs to be borne by the City.

RESOLUTION WITH RESPECT TO WIDENING PROVIDENCE ROAD FROM QUEENS ROAD TO BRIAR CREEK.

Councilman Brown introduced the following resolution, and after the reading thereof moved its adoption, which was seconded by Councilman Albea, and unanimously carried:

RESOLUTION WITH RESPECT TO
WIDENING PROVIDENCE ROAD
FROM QUEENS ROAD TO BRIAR CREEK.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE,
NORTH CAROLINA:

That, the City of Charlotte will widen Providence Road from Queens Road to Briar Creek (not including any new bridge over Briar Creek) to a width of forty-five (45') feet, within the present right-of-way of Providence Road.

RIGHT-OF-WAY AGREEMENT WITH STATE HIGHWAY COMMISSION AUTHORIZED CO-SIGNED BY CITY WITH ERVIN CONSTRUCTION COMPANY FOR CONSTRUCTION OF SANITARY SEWER IN EASTWAY DRIVE AND POTTERS ROAD.

Upon motion of Councilman Albea, seconded by Councilman Smith, and unanimously carried, the Mayor and City Clerk were authorized to co-sign with Ervin Construction Company an agreement with the State Highway & Public Works Commission for the construction of 785-feet of 8-inch sanitary sewer mains in Eastway Drive and Potters Road.

PRIVATE SANITARY SEWER LINES OWNED BY ERVIN CONSTRUCTION COMPANY AUTHORIZED CONNECTED TO CITY'S SANITARY SEWERAGE SYSTEM.

Motion was made by Councilman Albea, seconded by Councilman Wilkinson, and unanimously carried, authorizing the connection of the following private sanitary sewer lines, owned by Ervin Construction Company, to the City's sanitary sewerage system, upon condition that the Company comply with all laws, rules and regulations now in effect, or which may hereafter become effective relative to property similarly situated:

- (a) 785 feet of 8 inch sanitary sewer lines in Eastway Drive and Potters Road.
- (b) 955 feet of 8 inch sanitary sewer lines in Eastway Drive, Potters Road and Falmouth Road.

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SETTLEMENT OF CLAIM OF MRS. FRANK N. CALDWELL FOR DAMAGES TO PROPERTY BY SEEPAGE FROM LEAKS IN SEWER LINE.

Motion was made by Councilman Smith, seconded by Councilman Wilkinson, and unanimously carried, authorizing payment of \$389.90 in settlement of claim of Mrs. Frank M. Caldwell for damages to her building at 121 West Trade Street, caused by seepage from leaks in the City's sewer lines.

APPOINTMENT OF COMMITTEE TO STUDY PROPOSAL OF CANNON AIRPORT TO LOCATE AN ADDITIONAL FIXED BASE OPERATION AT DOUGLAS MUNICIPAL AIRPORT.

Upon motion of Councilman Wilkinson, seconded by Councilman Smith, and unanimously carried, the following Committee was appointed to make a study of the proposal of Mr. John Cunningham, President of Cannon Airport, to lease property at Douglas Municipal Airport for the location of an additional fixed base operation, and to make a report of their recommendations to the Council by November 3rd:

Mr. McAlister Carson, Jr., Chairman
Chairman of the Chamber of Commerce Aviation Committee
Mr. John C. Erwin
Member of the City's Airport Advisory Committee
Mr. Odell Garrison
Inspector for Civil Aeronautics Administration
Mr. W. Evan Wheeler
District Sales Manager, Capital Airlines
Colonel William Payne
Commanding Officer, Air National Guard
Mr. Frank Bailey
Chairman, Junior Chamber of Commerce Aviation Committee

ADJOURNMENT.

Upon motion of Councilman Dellinger, seconded by Councilman Baxter, and unanimously carried, the meeting was adjourned.


City Clerk