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A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber in the City Hall, on Wednesday, April 4, 1956, at 11 o'clock a.m., with Mayor Van Every presiding, and Council members Baxter, Brown, Dellinger, Evans, Smith and Wilkinson being present.

ABSENT: Councilman Albea.

INVOCATION.

The invocation was given by Mayor pro tem J. S. Smith.

MINUTES APPROVED.

Upon motion of Councilwoman Evans, seconded by Councilman Smith, and unanimously carried, the Minutes of the last meeting on March 28th were approved as submitted.

REQUESTED OPENING OF PIERCE STREET, FROM WAVERLY AVENUE TO LATTA PARK, CONTINUED TO APRIL 18, 1956.

Mr. Robert Potter, Attorney representing the petitioners for the opening of Pierce Street from Waverly Avenue to Latta Park, asked to be heard further in connection with the petition.

Mayor Van Every stated that Mr. Fred Helms and Mr. Henry Fisher, Attorneys representing the opponents to the street opening, have advised they are representing clients in Court today and cannot be present here and wish to be heard before a decision is made by the Council. However, if Mr. Potter wishes to be heard he may do so.

Mr. Potter stated that when the matter was under discussion on March 14th, Mr. Helms read a portion of Chapter 136, sub-section 96, of the General Statutes, stating that a street which has been dedicated could be withdrawn by anyone who held an interest in the street. However, Mr. Helms did not read it all and he wishes to read the following: "Provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants, may execute and cause to be registered in the office of the Register of Deeds of the County where such land is situated, the declaration of withdrawal provided for in this section, and, under Chapter 146 of the General Statutes of North Carolina entitled, 'Partition', and Chapter 1, Article 29-A of the General Statutes of North Carolina, known as the 'Judicial Sales Act', and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the Court shall thereupon order the same cancelled of record." Mr. Potter stated the remedy to the withdrawal of Pierce Street lies in that portion of the Chapter he has just read. He advised further that he has a deed for 9/150th of the property from Mrs. Sudie Brenizer Neff to Bishop Vincent Waters; also has a Partition Proceeding which has been filed in the office of the Register of Deeds for Mecklenburg County, in the name of Bishop Waters, asking the Court to sell the property. Mr. Potter then read the list of defendants named in the Proceeding. Mr. Potter then presented an order signed by Mr. J. Lester Wolfe, Clerk of Superior Court for Mecklenburg County, in which Mr. Wolfe orders that the declaration of withdrawal be cancelled.

Mr. Potter stated the petitioners have been before the Council seven times and he ask that the street be opened. He stated further that St. Patrick's Church has been working on this matter for several years.

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Mr. John Shaw, City Attorney, stated he has been working on the question since it was referred to him on March 14th; that if the statutes as presented by Mr. Potter are applicable, it would appear the Council is back where they were before Mr. Fisher appeared before Council on March 14th.

Mr. Henry Fisher, Attorney representing Mr. R. L. Grubb, opponent to the street opening, came into the meeting, stating he had secured a postponement of his case in Federal Court until 2 p.m. in order to be present here. He called to the particular attention of Councilman Baxter that the order eliminating the declaration of withdrawal of the street presented by Mr. Potter is dated April 4th. He stated further that the portion of the Statute which is being considered was passed by the 1953 session of the Legislature, and so far as he knows it has not been passed on by the Supreme Court. That Mr. Potter has brought a case whereby his client is made a Partition defendant; however, none of the deponents have yet been served with papers, and it is the intention of his client to proceed in Superior Court to see that the street is not opened. That if the withdrawal is cancelled, naturally everyone is back where they started; however, he cannot see that an Order signed by the Clerk of Court has a note of finality, and if there is an appeal possible they shall avail themselves of it. He stated they still protest the opening of the street.

Mr. Potter stated that Mr. Fisher has the right to appeal, but if the Council waits on opening the street until the matter is carried to the Supreme Court, it will be 1958, and he, therefore, asks that the Council decide the matter today.

Councilwoman Evans asked the City Attorney to clarify the procedure for her on the basis if the Council theoretically declared the street open where does Mr. Fisher go from there? Mr. Shaw replied there would have to be a final decision made as to the validity of the section of the Statutes presented. Councilwoman Evans then stated that both of the attorneys say "if it is applicable" and she asked if the law was not made to apply? Mr. Shaw replied that the statute has been law for some years and the withdrawal section was added in 1953 and under this section the withdrawal has been filed, which brings up the matter of the validity of this section.

Mayor Van Every stated that as he understands it, as far as the Council is concerned we are just where we started in the matter; that if the street is opened, and the attorneys fight it, it is then the problem of the Courts. Mr. Shaw stated if the Council goes forward, then he must go to the provisions of the Charter and have a technically drawn resolution as to what will be done. That the question is the price for which the work can be done. That the City Engineer has advised him the cost will be \$2,200.00.

Mr. Yancey, City Manager, stated the estimate of \$2,200.00 is correct to open the street.

Councilman Dellinger stated he has been out and looked over the street in question and the park land, and he cannot see why it is so necessary to open this street, when a roadway from Romany Road could be opened into the area, and also the streets leading from Buchanan and Waverly can be used. Mr. J. J. DeLaney, petitioner, stated the safety of the children using the park is the primary purpose for requesting the street opening; that Romany Road and Dilworth Road are too heavily traveled for the safety of the children. That Pierce Street is a quiet street and will give access to the playground in a safe manner.

Councilwoman Evans asked Councilman Dellinger if he did not think the Park and Recreation Commission would have recommended the opening of a street from Romany Road if it had been logical? Mr. DeLaney then stated that it was the Park and Recreation Commission who originated the development of the park.

Councilman Baxter stated the delay in the matter has been unfortunate, and he regrets the inconvenience to the residents coming again and again to the Council in regards to the matter and he would like to see it acted on today; however, it has always been the policy of the Council to hear all interested persons and Mr. Helms has asked to be heard again, and he is unavoidably detained today.

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Mr. Potter then stated that Mr. Helms will be out of Federal Court within a short while, and asked if the Council will not hear him at that time.

It was pointed out that the Council Meeting will be over in a short while, and the matter should be deferred. Mayor Van Every then suggested that the question be continued for two weeks, and the Council concurred in the suggestion.

APPEAL FROM DECISION OF PLANNING COMMISSION DENYING REQUEST OF FUNERAL DIRECTORS FOR CHANGE IN CLASSIFICATION OF FUNERAL HOMES FROM BUSINESS-1 ZONE TO RESIDENCE-2 ZONE APPROVED FOR HEARING ON JUNE 13, 1956.

Mr. B. S. Whiting, Attorney representing McEwen Funeral Service, Inc., Harry & Bryant Co. Inc., Z. A. Hovis & Son, Hankins-Whittington Funeral Directors and Douglas & Sing Funeral Directors, filed an appeal from the decision of the Planning Commission on April 3rd, denying their request for a change in the Classification of Funeral Homes from a Business-1 Zone to a Residence-2 zone in the Zoning Ordinance, and requested that a hearing be held by the City Council at the meeting on June 13th. Councilman Smith moved that the request be granted and the proper notice of the hearing be published. The motion was seconded by Councilman Dellinger, and unanimously carried.

ORDINANCE NO. 312 AMENDING THE BUILDING CODE WITH RESPECT TO ELECTRICAL INSTALLATION OF WATER HEATERS AND INSPECTION FEES THEREFOR.

An ordinance entitled: "Ordinance No. 312 Amending the Building Code with Respect to Electrical Installation of Water Heaters and Inspection Fees therefor", was introduced and read. Upon motion of Councilman Smith, seconded by Councilman Wilkinson, and unanimously carried, the ordinance was adopted. The ordinance is recorded in full in Ordinance Book 12, at Page 34.

CONTRACT AWARDED GEO. G. SCOTT & COMPANY FOR MAKING ANNUAL AUDIT FOR FISCAL YEAR 1955-56.

Councilman Wilkinson moved that contract be awarded Geo. G. Scott & Company for making the City's annual audit for the fiscal year July 1, 1955 to June 30, 1956, at a price of \$7,000.00. The motion was seconded by Councilman Brown, and unanimously carried.

TRANSFER OF FUNDS FROM WATER AND SEWER DEBT SERVICE FUNDS TO MUNICIPAL DEBT SERVICE FUND AUTHORIZED.

Upon motion of Councilman Dellinger, seconded by Councilman Smith, and unanimously carried, approval was given the transfer of \$12,000.00 from the Water Debt Service Fund (Code 602 E-21) and \$3,000.00 from the Sewer Debt Service Fund (Code 620 E-21) to the Municipal Debt Service Fund (Code 103 E-8).

CONFIRMATION OF SALE OF PROPERTY AT 1564-66 AND 1600-06 MERRIMAN AVENUE TO SOUTHERN REAL ESTATE AND INSURANCE COMPANY.

Councilman Smith moved that the sale of property at 1564-66 and 1600-06 Merriman Avenue, on March 19, 1956 at public auction, be confirmed to Southern Real Estate and Insurance Company, at the high bid of \$2,000.00. The motion was seconded by Councilman Wilkinson, and unanimously carried.

BARMETTLER DRIVE, FROM CHURCHILL ROAD TO THE CITY LIMITS, TAKEN OVER FOR MAINTENANCE.

Upon motion of Councilman Smith, seconded by Councilman Wilkinson, and unanimously carried, Barmettler Drive, from Churchill road to the City limits, was taken over for city maintenance.

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SUBDIVISION PLATS APPROVED.

Motion was made by Councilman Wilkinson, seconded by Councilman Baxter, and unanimously carried, approving the following Subdivision Plats:

- (a) Plat of Eastway Park #5.
- (b) Plat of Amity Gardens #3.

J. A. JONES CONSTRUCTION COMPANY AUTHORIZED TO CONNECT PRIVATE SEWER LINES IN GREENSBORO STREET TO CITY'S SANITARY SEWERAGE SYSTEM.

Councilman Dellinger moved approval of the request of J. A. Jones Construction Company to connect 300 feet of sanitary sewer lines in Greensboro Street to the City's Sanitary Sewerage System, upon condition that they comply with all laws, rules and regulations now in effect, or which may hereafter become effective relative to property similarly situated. The motion was seconded by Councilman Wilkinson, and unanimously carried.

CONSTRUCTION OF DRIVEWAY ENTRANCES AUTHORIZED.

Upon motion of Councilman Smith, seconded by Councilman Wilkinson, and unanimously carried, the following driveway entrances were authorized constructed:

- (a) One 23-ft. driveway entrance at 1000 Kings Drive.
- (b) Three 15-ft. driveway entrances at 1027 Kings Drive.
- (c) Two 35-ft. driveway entrances on Shamrock Drive and One 40-ft. entrance on Globe Court, all for 2101 Shamrock Drive.
- (d) Two 35-ft. driveway entrances on Statesville Avenue, and One 35-ft. entrance on McCall Street, all for 1853 Statesville Avenue.

CONTRACT AWARDED KALE-LAWING COMPANY FOR SPECIAL VAULT EQUIPMENT IN OFFICE OF CITY CLERK.

Councilman Smith moved that contract be awarded Kale-Lawing Company for furnishing and installing one book section and two sections of document files, in the office of the City Clerk, as specified, at a total net delivered price of \$1,218.00, and that the said amount of \$1,218.00 be transferred from the Emergency Fund (Code 110) to the City Clerk Budget (Code 1504 G-6). The motion was seconded by Councilwoman Evans, and unanimously carried.

CONTRACT AWARDED ANDREWS MUSIC COMPANY FOR ELECTRIC ORGAN FOR AUDITORIUM-COLISEUM.

Upon motion of Councilman Dellinger, seconded by Councilman Baxter, and unanimously carried, contract was awarded Andrews Music Company, for one Hammond Electric Organ, as specified, at a total price of \$1,909.50, subject to cash discount of \$28.20, or a net delivered price of \$1,881.30.

CONTRACT AWARDED GRINNELL COMPANY, INC. FOR WROUGHT IRON PIPE FOR WATER DEPARTMENT.

Motion was made by Councilman Smith, seconded by Councilman Wilkinson, and unanimously carried, awarding contract to Grinnell Company, Inc. for 15,000-ft. 3/4-inch, 3,000-ft. 1-inch, 15,000-ft. 2-inch, 500-ft. 2 1/2-inch and 100-ft. 4-inch Wrought Iron Pipe, as specified, on a unit price basis, representing a total firm price of \$15,095.56, subject to cash discount of \$301.91, or a net delivered price of \$14,793.65.

SPECIAL OFFICER PERMIT AUTHORIZED ISSUED TO JOHN E. KAY ON PREMISES OF DOMESTIC LAUNDRY.

Councilman Brown moved approval of the issuance of a Special Officer Permit to Mr. John E. Kay, for use on the premises of Domestic Laundry. The motion was seconded by Councilman Wilkinson, and unanimously carried.

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LEASE OF AIRPORT BUILDING TO CAROLINA INSTRUMENT TRAINING SCHOOL CONCLUDED.

The City Manager reported that the lease of Airport Building No. TT-69 has been concluded with Carolina Instrument Training School, for a period of one year from April 1, 1956, at a monthly rental of \$15.00.

SPECIAL OFFICER PERMIT AUTHORIZED ISSUED TO HARRY HOLMES ON PREMISES OF THE CITY PARKS.

Councilman Smith moved approval of the issuance of a Special Officer Permit to Mr. Harry Holmes, 1231 Armory Drive, for use on the premises of the City Parks, at the request of the Charlotte Park & Recreation Commission. The motion was seconded by Councilman Wilkinson, and unanimously carried.

PLAT OF IDLEWILD SUBDIVISION APPROVED.

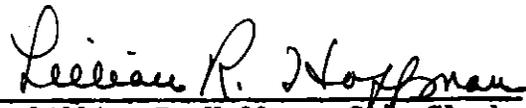
Upon motion of Councilman Smith, seconded by Councilman Baxter, and unanimously carried, the Plat of Idlewild Subdivision, being developed by Ervin Construction Company, was approved, as recommended by the Planning Commission.

CONSTRUCTION OF SANITARY SEWERS IN JEFF STREET AND HILLSIDE DRIVE BY BOB ALLEN AGENCY AUTHORIZED.

Motion was made by Councilman Smith, seconded by Councilman Dellinger, and unanimously carried, authorizing a contract with Bob Allen Agency for the construction of 476 feet of sanitary sewer mains in Jeff Street and Hillside Drive, at an estimated cost of \$1,265.00, to serve one family unit already built. The City to finance all costs and Applicant's deposit of \$1,065.00 to be refunded as per terms of the contract.

ADJOURNMENT.

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


Lillian R. Hoffman, City Clerk