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The City Council of the City of Charlotte, North Carolina, met in a televised session on Monday, August 23, 1976, at 7:30 o'clock p. m., in the Education Center with Mayor pro tem James B. Whittington presiding, and Councilmembers Betty Chafin, Louis M. Davis, Harvey B. Gantt, Pat Locke, Neil C. Williams and Joe D. Withrow present.

ABSENT: Mayor John M. Belk.

Sitting with the City Council as a separate body during the hearing on petition for zoning changes was the Planning Commission with the following members present: Chairman Tate, Commission Members Campbell, Kirk, Jolly, Marrash and Royal.

ABSENT: Commissioners Boyce, Ervin, Finley and Ross.

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INVOCATION.

The invocation was given by Reverend Jerry D. Baker, Minister of First Church of the Nazarene.

MINUTES APPROVED.

Upon motion of Councilman Withrow, seconded by Councilwoman Chafin, and unanimously carried, the minutes of the last meeting on Monday, August 9, 1976 were approved as submitted.

HEARING ON PETITION NO. 76-61 BY KILLIAN, KRUG AND ASSOCIATES FOR CHANGE IN ZONING OF PROPERTY ON THE SOUTH SIDE OF FENTON PLACE, EAST OF THE INTERSECTION OF FENTON PLACE AND PROVIDENCE ROAD.

The public hearing was held on the subject petition for a change in zoning from R-6MF to O-6(CD) on which a protest petition has been filed and found sufficient to invoke the 3/4 Rule requiring six affirmative votes of the Mayor and City Council in order to rezone the property.

Council was advised that the protest petition invoking the 3/4 Rule has been withdrawn.

Mayor pro tem Whittington stated he received a call on Friday from Beaumert Whitton, member of the Eastover Association, asking that this hearing be postponed again. He asked if Council would consider this request. Mr. Miller of the Eastover Association stated he has been in touch with Mr. Whitton and he no longer wishes to have the hearing postponed.

Mr. Bryant, Assistant Planning Director, explained the location of the property, the surrounding property, and the zoning and land uses in the area. He also presented slides of the property in question, and the surrounding properties.

Speaking for the petition was Mr. David Krug, one of the petitioners, who stated it is their intention to preserve the Reynolds-Gourmajenko home, which everyone knows as the El Villa. It is one of the finest historical landmarks in Charlotte and has been considered for designation both locally and nationally as an historic property.

Mr. Krug stated they feel the best way to preserve a historical monument is to create an economic value to justify its existence. They plan to renovate and restore the structure and to create for the public a fine, affordable eating facility. They plan to close off the entrance on Providence Road to vehicular traffic, thereby creating a pedestrian shopping plaza within the courtyard of the El Villa, featuring boutiques all around the villa structure, using the same architectural design as the El Villa.

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They plan to have parking enter through Fenton Place where the 0-6 (CD) zoning is. Their reasoning behind this is that they feel they would be directing parking to confines of the rear yards of the Villa. It would create a much better traffic circulation; it would avoid mass parking on Fenton Place and it would allow them to preserve the garden atmosphere in the rear of the property that has existed for over fifty years. Within this parking circulation, they plan a private social club with two tennis courts and a club house. They actually plan to move the white home that is adjacent to the conditional zoning back for a club house. Both the parking and the tennis courts will be completely shielded through existing and proposed brick walls, ligustrum fencing and other natural buffers. The parking will be for the exclusive use of the Villa, restaurants, shops and boutiques.

Mr. Sam Greason of W. Crutcher Ross and Associates, explained the overall development plan for the property. He stated they plan to develop quite an extensive amount of land to what they hope will be a sort of total living environment. It will include shopping, restaurants, recreation, parking and housing. They hope to do this in a way which would be compatible with the existing neighborhood. It will affect, basically, the neighborhood on Fenton Place. They plan to leave the property on Altondale in single family usage, although they do own three pieces of property which extend to Altondale.

The trees which are located over the entire property will be retained as much as possible in a hope to maintain much of the character which now exists around the Villa. Most important of all, in the entire development, they are going to try to respect the scale of the neighborhood, and not create anything which will disturb what they think is a very nice place right now. The major emphasis in their endeavors will be placed on restoring the Villa. There is a very nice courtyard out front which they are all familiar with; the beautiful old villa and its structures which surround it; in the back there is a very nice garden. All of these will be preserved in much the same character they are now. They hope to eliminate the cars which are now allowed to park in the front courtyard which has been used in the past for an entrance to the restaurant. By doing this, they will be able to create a shopping court out front, using some of the existing structures and also add a few structures around the outside limits of the walls which will be compatible with the architecture of the villa. The villa itself will be restored much to its existing appearance. In the courtyard they hope to create a very lively atmosphere where the people of Charlotte can come and enjoy a little bit of the past that has really not been available to them.

The villa has been allowed to run down over the last few years and they hope to rectify this by completely restoring it and the courtyard and portions of the garden in back. There is a bit of a problem with the parking because if they take it out of the front, they have to put it in the back and the villa actually extends from property line to property line. That means access to the parking will have to be through the villa. They plan to create a way to get to the parking by extending the beautiful arcade that already exists through the villa and through the garden to the parking lot.

The garden area is now very overgrown, but it does have a large pool which will probably be converted to some type of water garden - it will not be used for swimming, but more of a fountain type thing. They will maintain as much of the planting as possible and make a walled garden that could be used for different types of festivities. It will also provide a view from the restaurant which will be created in the villa. They hope this restaurant, while being a very fine one, will also be a very affordable restaurant, a place where people can go and enjoy lunch, enjoy the atmosphere that they have created and at the same time, come into an area which is so close to town.

He stated that the bulk of this project can be accomplished under existing zoning. They hope Council will approve the conditional zoning so that they will be able to maintain a better traffic pattern and create a more desirable development. They do plan to totally screen the parking to the

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residents on Altondale and to the side that comes to Fenton Place by a brick wall. There are already existing brick walls in the back of the villa which should screen much of the other development. The tennis facility will have ligustrum hedging which should also screen the parking.

The new paving which they propose to use is very popular in Europe and should provide not only a more pleasing appearance but will also reduce the run-off because the water can soak back into the ground and they will not have to go into a series of catch basins or run onto other people's property. At the same time the grass will deaden the sound from cars that will be created.

Councilman Withrow asked what the club and the tennis courts have to do with the villa? Do they plan that the club and the tennis courts will be a definite entity and will have members? Mr. Krug replied everything at the front of the villa will be open to the public. The club will be a small private social club, primarily for the benefit of the surrounding neighborhood. Councilman Withrow stated it will have nothing actually to do with the villa itself? Mr. Krug replied the only relation between them is that they hope this will provide a place where people can do more than just one thing. They can exercise, play a game of tennis, go and eat, browse and shop - just a coordinated community in which you can do many things and not just one thing.

Councilman Withrow asked about the times they would be open - at night? Mr. Krug explained that in the conditional zoning there are several requirements that if they have any lighting at all it would be a low-density lighting that is directly overhead rather than shining on an angle. The courts would not be used after 10 p. m.

Councilman Gantt stated to Mr. Krug that a couple of things had occurred to him. One of them is the property directly behind the development. He asked if they were the owners of that also? Mr. Krug replied yes. Councilman Gantt asked if they had any development in mind for that? Mr. Krug replied they do. As they were putting this development together, they have been working with all of the residents in the area and they asked the same question. What they have done is to try to combine a total environment including residential living. They plan to put fifteen of what he would like to call fine, yet affordable, condominiums in the area. It would not be involved in the conditional zoning. They have agreed with the homeowners to restrict the property on Altondale Avenue to single family usage by both deed restrictions and zoning.

Councilman Gantt stated that while he can appreciate the kind of design they have for pedestrian type court for shopping, one of the thing that has occurred to him is how much traffic would be generated down Fenton Place as a result of that. Have they looked at that? Mr. Krug replied yes they have. When they talk about pedestrian traffic, there is a tremendous amount of existing pedestrian traffic on Providence Road. He thinks they will have a tremendous amount of walk-in trade. At the same time, they are only talking about a total square footage of added boutiques of 6,000 square feet. Councilman Gantt asked if there is not space for 75 cars? Mr. Krug replied yes. Councilman Gantt asked if he did not think that amount of traffic into Fenton Place would cause a problem. Mr. Krug replied no he really does not. Being realistic, at night time there is an office building directly to the left of the villa. That used to be the only parking that the villa had. He has talked with the owner of that office building and as long as they observe the proper hours they will be allowed to use that for parking and he thinks people are going to park where it is closest, but they did want to provide adequate off-street parking without having to interfere with the office building parking lot.

Mr. Krug stated in the past few years this property has been quite a controversial issue; it has been brought up many times; at one point the villa was very close to demolition he believes. He stated they have tried to work very closely with the Eastover Homeowners Association and the residents of both Fenton Place and Altondale to develop a plan that would both preserve what they feel is a fine, historical site and at the same time

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create an atmosphere that he thinks the surrounding community can appreciate. He has a comprehensive letter from residents of both streets that does give them support; also a letter from Dr. Dan Morrill, who is a resident, lives on Middleton Place, a professor of history at UNCC, and the past president of the Charlotte Historic Properties Commission.

He stated they think this is the type of facility Charlotte can be very, very proud of. They are and they respectfully request Council's approval of this rezoning petition.

Mr. Allen Wells, 208 Altondale Avenue, stated four weeks ago he stood before Council and was really against this whole proposition. He thinks now the City Council and the Planning Commission can put to rest the Reynolds-Gourmajenko property. He and several others have talked with each individual resident and homeowner within Fenton and Altondale. One of the best things that has come out of this has not only been communication and compromise, they have worked together and he thinks they have the beginning of a good relationship in their neighborhood. It puts to rest, he hopes, the invasion of Eastover any further by business because the south lawn of the El Villa is a good dividing line and the architect in this particular case has established the south lawn and this is a good stopping point of any erosion of business into the neighborhood. All of the residents and neighbors adjacent to the property have had a say-so in what they have tried to accomplish. He stated he was totally against the whole project when it first started and he thinks most everyone else was. But, through compromise and through communication they have something that they feel will be an asset to their property and he hopes Council will consider it favorably.

Mr. Artie Newcomb, Jr., speaking for the Eastover Residents Association, stated the organization was established a number of years ago and their membership consists of approximately 500 families and they are dedicated to the preservation of their neighborhood. The El Villa partnership came to them first and asked for their approval of what they wanted to do. Frankly, they were delighted they wanted to preserve the home but they were concerned about some other things. Their main concern was the property to the rear of the property they wish to have rezoned. They wanted a final and total commitment for that property so that they could put this thing to rest for many years to come.

After many meetings of their board of directors, members of the Killian, Krug Associates, their lawyers, they have come up with an agreement on this property which he wants them to know was not done lightly. He has a deed restriction on Altondale to keep it single-family. It commits the back property to a much lower density of development than what it is presently zoned for. In other words they could put a lot more on it than they have agreed to according to their plan. Therefore, they withdraw their protest; they are in support of this proposal; they think it will put the area to rest for many years to come.

Mr. Irvin Jones, vice-president of the Eastover Residents Association, stated they are completely in agreement with the plans.

Councilman Withrow asked the City Attorney if this property is zoned for a certain density and the zoning is not being changed, would the contract hold? Mr. Underhill replied he has no idea what is in the agreement between the Homeowners Association and the developer. He assumes that is a private matter between them and those restrictions would be binding on the developers and on the Homeowners Association. The City is not involved in that agreement and properly should not be. The City does not get involved in restrictive covenants or deed restrictions.

Mr. Stewart Edwards stated the Eastover Association has negotiated a contract which they are satisfied with, covering the deed restriction. It is completely independent of any zoning and is not related to what Council is doing tonight. If Council rezones the property as requested, they will record this agreement.

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No opposition was expressed to the proposed change in zoning.

Council decision was deferred for a recommendation of the Planning Commission.

PROCEDURES FOR HEARING REQUESTS FOR CONDITIONAL USE PERMITS APPROVED, AND HEARINGS ON PETITIONS 76-11 AND 76-12 RESET FOR SEPTEMBER 16, AT 10:00 A. M.

The City Attorney referred to an attachment in the Agenda entitled "Recommended Rules of Hearing Procedures for Conditional Use Permit" and stated both Council and the Planning Commission had previously met to consider this document. He pointed out that at the request of Council and on his own initiative, they have suggested some revisions to the first draft of this document which Council looked at and a memo is attached which explains these revisions. The hearing was scheduled to be held on August 30. It cannot be held on that date because the newspaper advertisement of the date for public hearing was omitted when it was scheduled to be advertised and the law requires that hearings for zoning matters be advertised twice on two consecutive weeks. Because of a mistake on the part of the publisher the first advertisement was not published and it will be necessary for the City Council to set, during the course of this meeting, a new date for hearing these particular cases involving the request for shopping centers.

Mr. Ben Horack, Attorney, referred to Paragraph 13 of the document, stating the conditional use process now is involving rather drastically different procedures than had been employed in normal zoning changes. The first sentence in Paragraph 13 states "objections as to the admissibility of evidence may not be raised during the hearing." He doubts the wisdom of that. He thinks that these new procedures and the new process involved in conditional use puts a burden on all of them to minimize the burdens of these evidentiary quasi-judicial hearings. It is for that purpose that he is going to make a suggestion.

He doubts the wisdom of that first sentence because in effect, it seems an open invitation to encourage incompetent and irrelevant evidence which can only serve to prolong hearings and make for long records of proceedings which can be a burden upon the Clerk because they have to be transcribed, but more importantly a burden upon the Councilmembers and members of the Planning Commission in having to prolong the hearings and the time they spend in listening to particular conditional use applications.

He suggested that the first sentence be modified so that it does not preclude objections. He makes this point to expedite the hearing. He is not suggesting that, for example, a protestant participant who fails to object by reason of that failure, he shall then be held to waive his right subsequently to object to the admissibility of evidence, namely, its competence and relevancy. He does not mean that. Rather, he means to emphasize that it will really expedite hearings if Council's regulations will allow objections to be brought to the attention of the Council.

In making that suggestion, that does not mean necessarily that the Council forthwith, on the spot, must tell the neighborhood member or his representative to automatically sit down if the Council believes that that person is developing a line of evidence and testimony that has prospects of some relevance to the pertinent findings of fact that are involved in the forthcoming procedures or whatever the conditional use section requires. Therefore, he would suggest this first sentence to be modified to read as follows: "Objections and rulings as to the admissibility of evidence may be raised during the hearing, but failure to object thereto at the hearing shall not be deemed a waiver of the right to object subsequent to the hearing."

The last clause, he anticipates that if statements are filed with the Planning Commission as the regulations contemplate, or the City Council at a later date, as the regulations provide, those objections can be raised at that time. But, in the meantime, he thinks it would be a grave mistake to have an open invitation to a free-wheeling roaming of evidence that may not be relevant and Council, when objections are raised, with the help of the

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City Attorney to help to monitor those things, can expedite the hearing and make it more meaningful and ultimately save an awful lot of time.

Mr. Underhill stated what Mr. Horack has said is certainly a possibility Council might consider. That clause was put in because at the time they initially discussed this with the Council and Planning Commission they recognized that there had been no discussion on how Council wished to treat the matter of persons making objections to the admissibility of evidence. Their feeling was, since the general philosophy of these rules would be to permit access to the process by permitting people to speak so long as they follow their registration procedures, but with the clear understanding that any evidence or statements or testimony they give which is not material, competent or relevant to the standards you are considering, will not be considered, was the underlying premise of these rules.

What Mr. Horack is saying will accomplish part of what they want to do. They want to make it clear that if a person did not object at the hearing that if at a later point in time they wish to make an objection they would not be precluded from doing that. The language Mr. Horack suggested about failure to object would not constitute a waiver is one of the purposes they hope to accomplish by adding this new paragraph No. 13. Permitting objections, however, is going to require the chair to rule on those questions. That is a matter which they, frankly, do not know how the Council or Planning Commission feel about it. Mr. Horack is correct in that if the objections are permitted and those objections tend to weed out material or incompetently relevant evidence, then the hearings will be expedited. They will certainly be able to get more at the meat of what they are supposed to be considering and they will be taking some of the chaff out. He thinks it is a matter that Council and the Commission can decide as to whether they wish to permit objections or not. He has no strong recommendation one way or another.

Mr. Allen Tate, Chairman of the Planning Commission, stated he believes the consensus they reached at their last meeting was that since there would be potentially ten members of the Planning Commission and the members of Council sitting in this almost judicial like procedure what they would do would be to not allow objections; simply to allow the people on both sides free opportunity to express their feelings, but at any time a member of Council of the Commission wanted to, they could ask the City Attorney to rule on the admissibility of evidence, and therefore there could be as many as seventeen of them objecting to irrelevant or improper testimony; and the City Attorney would be ruling on it. The thing they were trying to do was to make it the least binding sort of situation, yet moving along as rapidly as they could. If they allow objections from both sides by people who are not necessarily trained, first of all they could conceivably object to every word, and the decision on the objection would have to be made by somebody in this body who has not had the training as a judge or that sort of thing to determine the objections and they are going to use the City Attorney to determine the admissibility of evidence, which he thinks is a fairly good procedure. As far as the Planning Commission is concerned, they would go along with the idea of not allowing objections, but continually asking for the evidence to be good and proper.

Mr. Horack stated he would think that they would welcome the additional monitoring that would come from the active participants. He re-emphasized what he had already stated that he does not envision that because an objection is made that therefore the Council must always, as it were, make a ruling on the spot. There is a very likely possibility that the Council may want to take a seemingly roaming type line of presentation upon some assurance that it will wind up with some pertinent facts to be found. He would like to think that the assistance in "keeping the eye on the ball" will serve to make for a more orderly procedure. Granted, there may be exceptions when the objections are made by those who are so completely untutored and "off the beam" that they do not know what the objections are about, but on balance he really thinks it would serve well and will not preclude the exercise of Council's wisdom to continue a particular line of testimony.

Councilman Williams stated there are still some political implications even though it is a quasi-legal procedure and he suspects that one of those political considerations is to give everyone the opportunity to a full and complete hearing, whether he be trained in the law or not, or trained in the rules of evidence. He thought of this after they initially discussed it. It is hard to disabuse a mind of incompetent evidence that has already been heard, and in some way the incompetent evidence should be called to the attention of the members who will be making recommendations or who will be deciding these matters, but at the same time, he can see how they could have one objection after another, not by Mr. Horack probably, but by some very enthusiastic lawyer who is representing his client very diligently who may object, object, object, and at the very least that is intimidating to a layman who is trying to say what he has to say.

He stated that at some point, though, the Board should be admonished as to what is competent and what is not competent. He thinks there is a rule of law that says that if you make a finding of fact based on some competent and some incompetent evidence, it is presumed you made the decision only on the competent evidence. That may cure the problem of hearing some incompetent and competent evidence as far as the requirements of the law are concerned. He is still concerned about the requirement that everyone not only getting a fair and full hearing but the feeling that he has had a chance to have his say.

Mr. Horack stated Council knows he recognizes the merit in the things Councilman Williams has said. It is simply that they all have here some hard choices to make and they are in the balance. He can agree that the objections could be disruptive, they could be harassing, but there is the other side of the coin which he has sought to emphasize. He does not know that a Council or someone sitting in their capacity in these conditional use proceedings that it is quite right to have an open invitation that everything goes. Yet, he recognizes their desire to let every citizen speak. He does believe that on balance, as he has already stated, they should put some sort of monitoring and limitations that you do not need to observe in normal zoning processes. At the very minimum, these procedures are going to require an awful lot of discipline from all participants including Council.

Councilman Williams asked Mr. Horack how he would feel about the registration of a motion striking out the testimony at the conclusion of hearing some constituent? He would have had his chance to say whatever he wanted to say, but he would be very definitely calling attention to the competency or incompetency of the evidence. Of course, you have not saved any time.

Mr. Horack replied, to be frank, it might give the lawyers a one-upmanship. In essence, that is being done in this process through the permissiveness of filing statements or briefs at two junctures - one with the Planning Commission and then with the Council. By another name, he believes they already have that in there. Councilman Williams stated except that it is not done at the time of the testimony.

Mr. Underhill stated that is one of the reasons they opted for this approach. Any party that participates in this process has two shots at providing written statements - one at the conclusion of the public hearing (within five days is what they are recommending now), and the other being after the Planning Commission makes its recommendation (within ten days) - and those comments can include such things as what weight or admissibility of the evidence that that particular participant wishes to advance as part of his statement or argument. That is another reason why they suggested that it be handled this way, although what Mr. Horack is presenting to them is a real question of policy that Council is going to have to resolve as to how they want the procedures conducted. It can be done either way.

Councilman Withrow stated he agrees but what he is afraid of is that a layman who is not trained and does not have the expertise but still in his statements there are going to be some truths, that if a lot of objections come it will make a layman nervous and you might not receive the truths that you would have received if he had gone ahead and spoken. Lawyers are...

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trained in this, but laymen are not and if he is stopped often it does away with his train of thought.

Councilman Gantt stated the kind of reaction he has is that he is being pulled into the courtroom and being made a judge and he does not want to be one. He asked if Paragraph 9 does not at least give them some control over a just totally free-for-all situation, and that is that they have a right to keep these hearings from being long and burdensome, and that they will not allow persons to present evidence or arguments which are unduly repetitive or which are presented in violation, which can be conceived to mean the evidence is not competent or at least not related to the rules of procedure they have. He asked if that had been overlooked or how they interpret it?

Mr. Horack stated he could offer more support for Councilman Gantt's thesis by referring to Paragraphs 6 and 7. It says "all persons participating in the hearing should only present competent material evidence during the hearing"; and "the purpose of any evidence presented at the hearing should be to demonstrate the existence or non-existence of a standard or condition defined in the applicable division of the code". The purposes to be achieved and the type of evidence which should be considered at the hearing are very clearly stated. The bottom-line responsibility of the Council and the presiding officer will be whether it will exercise its prerogative to hold in balance a completely or significantly irrelevant roaming into matters that have no pertinence to the matters involved.

Councilman Gantt stated the impression he gets is that seventeen people have an opportunity to make that point to the chair.

Councilman Davis stated what Mr. Horack says he thinks has a lot of merit and makes sense to him. It would tend to expedite hearings. It probably would lead to the necessity of having petitioner and respondent both represented by an attorney - there is no way around that. It would tend to eliminate free public expression, as Councilman Withrow stated, but there are property rights involved and they are entitled to the protection of due process. He does not see that they have any alternative but to afford this to them.

Councilwoman Locke stated she thinks objections would impede the hearings. There are seventeen people who would have an opportunity to see that it is repetitive and they have the City Attorney they can depend on. If the time comes eventually that they feel the objections can be made, then they can change this but for the time being she suggests they keep Paragraph 13 as it is and proceed with the procedures as they are written.

Councilman Gantt moved that the procedures be approved as presented by the City Attorney, and that the date of the hearings on zoning petitions Nos. 76-11 and 76-12 be re-set for Thursday, September 16, at 10:00 o'clock a. m. The motion was seconded by Councilwoman Locke.

Councilman Davis made a substitute motion to approve the procedures as amended by Mr. Horack. The motion did not receive a second.

Councilman Williams stated he is not sure he understands how the second sentence in Paragraph 13 squares with the first sentence. The first sentence says that objections may not be raised in the hearing, but in the second sentence it says objections as to these rules of procedure shall be raised in a prompt and timely fashion during the hearing.

Mr. Underhill stated maybe they did not state it very well, but what they are trying to accomplish is what he would characterize as a procedural objection. If a person participating in the hearing felt that the rules were being applied unfairly, for some procedural reason - the Mayor failed to recognize the right of cross examination of someone; he failed to swear in the witnesses. Anyone who wants to complain about that sort of thing, to make their complaint during the hearing so that there will be an opportunity to correct it. He calls that a procedural objection rather than an objection

to the admissibility of the evidence that may or may not come in during the hearing. For that reason, although it may not be stated as well as it could be, they have that sentence in there - to require that those sort of objections be made at a time when they can be corrected.

Mayor pro tem Whittington explained to Mr. Horack that what Council is trying to do is to make sure that as a body that will be hearing these particular types of petitions that they be absolutely fair to everyone, taking into consideration that most of the people will be involved in this kind of procedure for the first time and, like most of Council, know absolutely nothing about the law.

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

PUBLIC HEARING SCHEDULED FOR SEPTEMBER 20, ON PETITION FOR REVISIONS IN APPROVED B-1 SCD SHOPPING CENTER PLAN ON DELTA ROAD AT ALBEMARLE ROAD.

Mr. Bryant stated the subject plan represents a proposal by the developers of a planned shopping center facility that has for some number of years now had approval for development at the intersection of Delta Road and Albemarle Road. The plan as it was originally approved, under the B-1 S.C.D. type of zoning constituted a plan which over the years since its original approval, in 1970, indicated that a number of different uses would be placed in this area. Since that time a number of changes have been proposed in the actual arrangement of buildings, the types of usage that would go in them and a number of other types of changes.

The one they have before them now involves a portion of the property that is located on the westerly side of Delta Road Extension, south of Albemarle Road. The original plan in this instance indicated that a convenience food store would be built in the area behind what is now already constructed as a service station at the intersection of Delta and Albemarle Roads. The developers of the shopping center now desire to not develop that as a convenience food store but instead would like to erect a restaurant facility in lieu thereof. As such, the B-1 S.C.D. type of zoning control is a continuing design control and in order to depart from the original plan of development, it is necessary for them to have action by Council before that change can occur.

The proposal before them is to amend the plan of development for that shopping center and substitute a restaurant facility for a convenience food store at the location.

Councilwoman Chafin stated she has had a number of calls from citizens in this area who feel that they have not had an opportunity over the years to participate in any of the discussions that resulted in these changes. She stated she does not want to unduly delay action on this matter, but proposed that a public hearing be scheduled before making a decision on this type.

Mr. Bryant stated that this is an option which, of course, is available to Council. The zoning ordinance does not require that plan amendments under the conditional zoning process be submitted to a public hearing procedure, but Council does have that option of calling for one.

Mayor pro tem Whittington stated if there are people out there who think they have not been heard, then they ought to have a hearing on it. Councilwoman Chafin moved that a public hearing be scheduled on the revisions to the plan for Monday, September 20, at 7:30 p. m.. The motion was seconded by Councilman Gantt.

Councilman Davis stated he would like to hear some discussion on this because he thinks the change is so minor it does not necessitate the duress of a public hearing. He cannot imagine what kind of discussion would influence the ultimate decision.

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Councilwoman Chafin replied that the citizens feel that a great deal of change has occurred in that entire vicinity, particularly in traffic patterns and they feel that the location of an additional restaurant in that area would generate additional traffic which they do not particularly want. She would like to hear their position before making a decision on it. She thinks they may have some valuable input. She is not in a position right now to determine whether the restaurant ought to be there or not.

Mr. Cooler, Architect, stated he represents the owners of the shopping center. He thinks they should not lose sight of the fact that a restaurant was approved on this site back in 1967. They are proposing just to move the location of it. Councilwoman Chafin replied she understands that but she does feel that the citizens who live out in that area deserve an opportunity to be heard. She believes they tried to appear at the Planning Commission meeting and apparently it was too late, or they were not notified in time.

Mr. Bryant stated that no notification was given because the Planning Commission consideration was not a public hearing. Some of the representatives of that area happened to be present at the Planning Commission meeting for another matter and they did not have an opportunity to be heard at that time.

Councilman Gantt stated he seconded Councilwoman Chafin's motion because he thinks there have been some minor changes. He notes a restaurant and a change to a roller skating rink from a grocery store. He would support a public hearing on this as long as the citizens understand that it is not a public hearing to change the zoning from something other than a shopping center. It might be a good idea on a lot of these things to at least hear what the citizens' comments are in terms of the shopping center's impact on the neighborhood. Mayor pro tem Whittington asked Mr. Bryant how soon he could do this?

Mr. Bryant replied he would assume they would want to work it into their regular zoning hearing schedule and they are going to pass tonight the resolution establishing the hearing for September 20, so if they wish to they could add that to it.

Councilman Davis stated he will vote against it because he thinks it will be misleading to the public to indicate that they might change their minds on it. He thinks what they need to satisfy their desire for input would be a community meeting.

Mayor pro tem Whittington stated he respects that; he thinks what Council is just trying to do is to inform them of the plan and the change that has been made.

The vote was taken on the motion, and carried as follows:

YEAS: Councilmembers Chafin, Gantt, Locke, Williams and Withrow.
NAY: Councilman Davis.

COMMENTS BY CITIZENS ON ELIZABETH AVENUE CLOSING.

Mr. T. R. Ward, 1154 Elizabeth Avenue, spoke in opposition to the closing of Elizabeth Avenue. He stated he operates a business at this address. When Mr. Hellinger made statements in his remarks concerning the handicapped, he could not help but think that part of the program at Central Piedmont is training the handicapped and he would think that you would not want to protect them in the first block from the building and expect them to go up town and find their way around. He has observed the handicapped there - the blind - getting across the streets and he has not seen any of them yet that has had any undue trouble getting across. He thinks they do a magnificent job in doing that.

The second thing Mr. Hellinger spoke about was noise. He does not see how they are going to get away from noise regardless of where they go. What little noise would come from that street, with the way those buildings are

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constructed, he does not believe would interfere in any way with the classroom work of this school.

He stated he understands that this project was started by a Sociology Class at Central Piedmont, more or less as training for this class in how to present a petition of this kind, etc. It gained so much steam that they decided they wanted to see how far they could get with it. He thinks with as much taxpayers' money that has been spent on Elizabeth Avenue and in re-routing Kings Drive, he does not believe they would want to close Kings Drive, or something of that nature. Then, too, he understands that Elizabeth Avenue carries some 13,000 cars a day so they would be closing one of the main thoroughfares of this city. With Charlotte trying to progress and go forward he does not think we would want to shut off that traffic on Elizabeth Avenue. It is his understanding from the Engineering Department that the two streets on either side, 7th and 4th, were not designed to take care of this traffic.

They spoke of having a temporary lane for the fire trucks to Presbyterian Hospital, and for the ambulances, and for more bus lines to go through there, but if they are going to run that much traffic through there why not just leave it open to the people who desire to use it.

Another comment they made was that in March they made a survey of Mr. Pourlos' restaurant and that 300 people were from Central Piedmont Community College, 43 people were from other places. He thinks they should be congratulated for getting 43 people the way they were blocked off in there. This was during the time that Kings Drive was blocked at both ends and Elizabeth was blocked at both ends. Anybody that got in there then would have had to go out of their way to come in there and eat. That was an unfair observation.

He stated this street should be kept open because it is needed for the stadium in order for people to get in and out. They spoke of the number of people who had signed their petition, but if they will think for a minute, with 20,000 students, the longest length of time that any of them will be there is two years.

Mr. L. W. (Buck) Brown, Minnesota Avenue, stated he does not have any interest in Elizabeth Avenue, he does not own any property down there, but he has paid taxes in this city as long as anyone, he drove an automobile down Elizabeth Avenue in 1923 when there were two street car tracks. He cannot comprehend in his mind this Council giving serious thought to closing Elizabeth Avenue. It just does not make sense. This is one of the most used and one of the oldest thoroughfares and if they think about what it will do when you have to go over to 3rd Street to go east or over to 7th Street to go east. He thinks that Councilmembers are familiar enough with how important this street is to not even give this consideration. He did not even want to take up their time, but he urged that they not even give it any thought, considering what it would do to Charlotte.

Mayor pro tem Whittington stated that Council plans to refer this to the Public Works Committee, the Traffic Engineering Department and the Traffic Coordinator and they will report back to Council on their recommendations at the next scheduled Council meeting which will be on September 13.

COMMENTS ON AIRPORT EXPANSION BY CITIZEN.

Rev. Ralph Eanes, Covenant United Methodist Church on Tuckaseegee Road, spoke on the Airport Expansion. He stated he represents a group of concerned people who live in the area of West Mecklenburg High School, Wilson Junior High and the Tuckaseegee Elementary School. Several weeks ago about 100 people gathered at the Mulberry Presbyterian Church to discuss the new runway and the continued expansion of the airport and its effect upon their schools, churches, homes and community. Many in their community have seen their children graduate from West Mecklenburg High School, the same high school that they graduated from twenty-five years ago, so they and their children grew up in the community and they have shared it with new neighbors

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and they have seen new communities grow up in the area with new churches. Many of them, in fact, have grown up with the airport. Now they are afraid. They are afraid that the continued expansion of the airport will destroy their community and neighborhood.

He stated that a year ago this past June he moved to Charlotte from the Cherokee Indian Reservation. His first night on Tuckaseegee Road, he woke up at 2 o'clock and thought he was in the middle of an air raid. In the subsequent weeks he read in the paper that the City Council promised a public review of the airport expansion and they greatly appreciate such an opportunity because they feel that all citizens whose schools and homes are being affected should be able to present facts in addition to the facts that those in charge of the expansion will present.

He stated he realizes that the City Attorney has recommended that Council withhold a public review until the court suit is acted upon, but the group with him tonight and others in their community are here to urge them to indeed hold a public review - a hearing that is well advertised in advance, two or three weeks notice to concerned citizens who do not have large office staffs to prepare their case because they too want to have a chance to prepare their case. They would like a public hearing planned in the evening with TV coverage; they would like adequate time for all the public to present facts. They hope it will not be like the Wendover tree situation where the public sector got a few minutes at the end of a long, long session and presented their case around midnight. He would like, in fact, to be informed personally by letter prior to the public review so that he might inform members of his community - he will give his address to someone tonight before he leaves.

He stated they know that within a few short weeks many of them in the West Mecklenburg community will, in fact, be new constituents. They hope that they will become a part of a city which is concerned about all of its citizens - old ones, new ones, those who fly, those who live near the airport; those on the east side and the west side. They have some real concerns. A little while ago the Department of Housing and Urban Development declared that their community was an impacted area because of the airport expansion and they fear that FHA and VA loans will be withheld from people in their community. Their schools are already suffering from noise pollution and are in grave danger. They read recently that Wilson Junior High School may be closed; that the West Mecklenburg and Tuckaseegee Schools would have to be closed in against the noise; and they are concerned that their schools may die, and when the schools die our communities die and when a community dies, Charlotte suffers. They have lived with the airport a long time and they fear that further expansion will push them beyond endurance. The Mecklenburg Health Department, in an addendum in its report, is concerned over the present noise levels; they are concerned about their future tax money being used to maintain their community schools just barely above unacceptable levels. The school board, they know, is greatly concerned about the impact and expense of closing and relocating schools. They are concerned about the total plan of expansion for the airport, but they feel that the public may not have been adequately informed about the master plan of the expansion. In short, they are struggling to keep their community intact but they are fearful of the future and they want to have a part with Council, and with all the others, in making plans and decisions that greatly affect their personal lives and their future. He urges Council to plan a public review so that they, too, can present their feelings and facts from their point of view. They would like to have some support on the Airport Advisory Committee with neighborhood members without industry connections. In short, they will soon be a part of this City and they do not want to be a noisy wasteland; they want to be a real part of the City and not just statistics of water and sewer and taxes.

Mayor pro tem Whittington stated to Rev. Eanes that Council would take his request under advisement, but because of the situation they are in with the Federal Courts that is the best they can do tonight.

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REVISIONS IN CONDITIONAL PLAN ON WEST SIDE OF PROVIDENCE ROAD NORTH OF SARDIS ROAD APPROVED.

Councilman Gantt moved that the revisions in the subject plan be approved as recommended by the Planning Commission. The motion was seconded by Councilwoman Chafin, and carried unanimously.

PETITION NO. 76-9 BY C. A. WILLIAMS AND DAVIS FULLER FOR A CHANGE IN ZONING OF PROPERTY ON THE WEST SIDE OF SHARON ROAD, SOUTH OF THE INTERSECTION OF SHARON AMITY AND ALBEMARLE ROAD, DENIED.

Upon motion of Councilwoman Locke, seconded by Councilwoman Chafin, and unanimously carried, the subject petition for a change in zoning from R-9MF to B-1, on which a protest had been filed sufficient to invoke the 3/4 Rule was denied as recommended by the Planning Commission.

AMENDMENT TO SITE PLAN AT THE NORTHWEST CORNER OF INTERSECTION OF NEWELL-HICKORY GROVE ROAD AND MILTON ROAD, APPROVED.

Councilman Withrow moved that Petition No. 76-54 by Exxon Company, USA for amendments to a B-1 SCD Site Plan be approved in accordance with the revised site plan as recommended by the Planning Commission. The motion was seconded by Councilman Williams.

After explanation of the revised site plan by Mr. Bryant, Assistant Planning Director, the vote was taken on the motion and carried unanimously.

PETITION NO. 76-57 BY BOWMAN AND ELLIOTT ENTERPRISES FOR A CHANGE IN ZONING OF PROPERTY ON THE NORTHWEST CORNER OF THE INTERSECTION OF TUCKASEEGEE ROAD AND PARKWAY AVENUE, DENIED.

Councilwoman Chafin moved that the subject petition for a change in zoning from R-6MF to B-1 be denied as recommended by the Planning Commission. The motion was seconded by Councilwoman Locke, and carried unanimously.

PETITION NO. 76-58 BY W. I. HENDERSON FOR A CHANGE IN ZONING OF PROPERTY ON THE SOUTH SIDE OF COUNTRY CLUB LANE, EAST OF THE INTERSECTION OF COUNTRY CLUB LANE AND MATHESON AVENUE, DENIED.

Upon motion of Councilwoman Locke, seconded by Councilman Withrow, and unanimously carried, the subject petition for a change in zoning from R-12 to R-15MF(CD) property fronting 100 feet on the south side of Country Club Lane, about 210 feet east of the intersection of Country Club Lane and Matheson Avenue, and on which a protest petition had been filed sufficient to invoke the 3/4 Rule was denied as recommended by the Planning Commission.

RESOLUTION SUPPORTING A PLANNING COMMISSION GRANT APPLICATION TO THE NATIONAL ENDOWMENT FOR THE ARTS FOR A STUDY OF ALTERNATE USES OF OLDER STRUCTURES IN CENTRAL BUSINESS AREA, ADOPTED.

Councilman Gantt moved adoption of the subject resolution, which motion was seconded by Councilwoman Chafin.

Councilman Davis asked if this application has been discussed with the Arts and Science Council? Mr. McIntyre, Planning Director, replied it has not been discussed in detail with them, but it is being submitted to their representative with the expectation they will endorse it.

Councilman Davis stated he would like to make that a condition of approval because this is one thing the Council has indicated previously that we would want to involve the Arts and Science Council more in the decision making process.

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The vote was taken on the motion and carried unanimously.

The resolution is recorded in full in Resolutions Book 12, at Page 27.

CONTRACT WITH JOHNSON C. SMITH UNIVERSITY TO ENGAGE IN PLANNING AND EXECUTION ACTIVITIES RELATED TO A DEVELOPMENTALLY DISABLED SPECIAL ACTIVITIES PROGRAM FOR FIVE POINTS COMMUNITY DEVELOPMENT AREA YOUTH.

Councilman Gantt asked if this contract is a continuation of the program brought to Council last year. That this is a relatively small amount of money to handle 75 students, particularly in view of the fact he notes only two people will be employed to handle it. He wonders whether or not they are using physical education students as assistants? Mr. Sawyer, Director of Community Development, replied he is not sure whether students will be employed or not. The coach, Mr. Cox, will be in charge of the program, and is the staff member they have been dealing with, although the contract is with the university. The contract calls for the university to employ qualified staff. He cannot answer the question in detail now, but he will investigate it.

Councilman Gantt stated he is concerned because they set fairly high goals in the program, and 75 disabled youngsters is not a small number to deal with. It is a well-written contract; he is amazed they are going to do all those things with the amount of dollars they have been allocated. Mr. Sawyer stated the youths in this program will not be totally disabled. They will be developmentally disabled, some physical impairment, and some visual impairment. They do have pretty high standards set; but each student will be evaluated when he comes into the program, and his abilities will be raised by the program. It is a small amount of money for that many students, and averages out about \$470 per student over the ten month period. The majority will be in the program from four until nine and they may not be at the same time; some will be in during school hours.

The motion was made by Councilwoman Chafin, seconded by Councilman Gantt, and unanimously carried approving the contract with Johnson C. Smith University.

CONTRACT WITH CONSOER-TOWNSEND AND ASSOCIATES FOR ENGINEERING, REPORT PREPARATION, DESIGN AND INSPECTION SERVICES FOR SECOND AND THIRD YEARS COMMUNITY DEVELOPMENT PROGRAM, AUTHORIZED.

Motion was made by Councilman Davis and seconded by Councilwoman Chafin to approve the subject contract in the amount of \$200,000 to extend the existing contract from August 26, 1976 to June 30, 1978.

After explanation, the vote was taken on the motion and carried unanimously.

ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF CHARLOTTE, NORTH CAROLINA BY ANNEXING POLICE AND FIRE TRAINING ACADEMY PROPERTY.

The public hearing was held on the petition to annex the 158.76 acres of Police and Fire Training Academy property located at the intersection of Beam Road and Shopton Road.

No one spoke for or against the petition.

Councilwoman Chafin moved adoption of the Ordinance to extend the corporate limits of the City of Charlotte, North Carolina, by annexing the 158.76 acres of property. The motion was seconded by Councilman Withrow, and carried unanimously.

The ordinance is recorded in full in Ordinance Book 23, at Page 297.

245-X

RESOLUTION APPROVING AN LEAA SUBGRANT APPLICATION FOR FEASIBILITY STUDY ON A DIGITAL COMMUNICATIONS SYSTEM FOR THE POLICE DEPARTMENT.

After explanation by Police Chief Goodman, Councilwoman Locke moved adoption of the subject resolution for a study at an estimated project cost of \$80,000 with \$72,000 to come from federal funds, \$4,000 from state funds and \$4,000 from local funds. The motion was seconded by Councilman Williams and carried unanimously.

The resolution is recorded in full in Resolutions Book-12, at Page 28.

ORDERS AUTHORIZING \$11,675,000 SANITARY SEWER BONDS AND \$4,825,000 WATER BONDS, APPROVED ON FIRST READING.

Councilman Williams introduced the following two orders authorizing \$11,675,000 Sanitary Sewer Bonds and \$4,825,000 Water Bonds.

THEREUPON, on motion duly made by Councilwoman Chafin, seconded by Councilman Withrow, and unanimously carried, the City Council designated Mr. J. B. Fennell, Director of Finance, as the officer to make and file with the Clerk the sworn statement of debt of the City, which is required by The Local Government Bond Act, as amended, to be filed before the public hearing on the orders which were introduced at this meeting.

THEREUPON, the Director of Finance filed with the Clerk, in the presence of the City Council, the sworn statement of debt as so required.

THEREUPON, the Order entitled: "ORDER AUTHORIZING \$11,675,000 SANITARY SEWER BONDS" was passed on the first reading.

THEREUPON, the Order entitled: "ORDER AUTHORIZING \$4,825,000 WATER BONDS" was passed on the first reading.

THEREUPON, on motion duly made by Councilwoman Locke, seconded by Councilwoman Chafin, and unanimously carried, the City Council fixed 3:00 p. m., September 13, 1976, as the hour and day for the public hearing upon the foregoing orders, and directed the Clerk to publish each of said orders together with the appended note, as required by The Local Government Bond Act, as amended, in the Charlotte Observer, not later than the sixth day before said date.

The ordinances are recorded in full in Ordinance Book 23, beginning at Page 300, and ending at Page 302.

ORDINANCE NO. 247-X APPROVING THE APPROPRIATION OF \$16,500 OF NON-TAX REVENUE FOR THE PURPOSE OF PROVIDING FUNDS SO THAT THE CITY CAN INFORM AND EDUCATE THE PUBLIC ON THE FACTS ABOUT THE NOVEMBER 2 BOND ISSUE.

Motion was made by Councilwoman Chafin, and seconded by Councilman Williams to approve the subject ordinance.

Councilman Williams asked what revenue is non-tax revenue? The City Manager replied under the law anything other than real estate property taxes.

Councilman Davis stated during the last sewer rate hearing the Council specified that we wanted more involvement by the Community Facilities Committee in not only rate decisions but decisions that might bring about a rate increase. He made a substitute motion that they approve Item (f) with the stipulation that no funds be expended until the full Community Facilities Committee meets and advises Council on the form content of the advertising material. The motion did not receive a second.

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Councilwoman Locke stated what he is asking the Community Facilities Committee to do is approve the written material that goes out? Councilman Davis stated he really voted for (a) through (e) even with the knowledge that the Community Facilities Committee has not had an opportunity to consider this.

Mayor pro tem Whittington stated what he understands Mr. Davis is trying to do is to make sure that the Community Facilities Committee is involved in the information that Council and the public will get to vote on on November 2. Councilman Davis replied that is right, he would like their recommendation on this.

Mr. Burkhalter suggested if that is what they are interested in, they have a public hearing on these bonds, they can ask them to appear. He stated they need to get to work on some of this material.

Mayor pro tem Whittington stated his concern, as well as some of the other Councilmembers, is that CFC ought to be more involved in this decision.

Councilwoman Chafin stated she did not quite understand the intent of Councilman Davis' motion. Councilman Davis stated he would prefer that the entire Community Facilities Committee had met on all these items and had a recommendation before Council on it tonight, so that they would know that they are going forward with their approval.

Mayor pro tem Whittington asked Councilman Davis if he is aware that the CFC is going to meet with the Planning Director on September 17 to do just what he is talking about? Councilman Davis replied yes, but that would be after the fact and they would have already voted to set this in motion. Councilwoman Locke stated they have already voted to do it anyway. Councilman Davis stated they had not approved spending any money to advertise the bond issue and have not approved the form and content of this material. He thinks the manner in which it is presented to the public is important and it is important that they have the backing of the CFC if they expect the bonds to pass.

Councilman Williams asked when the vote by Council to hold the bond referendum will occur - on September 13, the day of the hearing? If so, then he would like to have the Community Facilities Committee consulted prior to that vote because that is the final vote of submitting it to the electorate.

Mr. Underhill stated that is correct. Once they have gotten to that point, after the hearing if Council is still of a mind to proceed with the bond issue, then they would approve the bond orders on second and final reading. Once they have done that they put the machinery in motion to put those on the ballot and all steps necessary to conduct a bond referendum. That is the point of no return.

Councilman Davis stated he would accept that with the provision that no money be spent on advertising until they know what their recommendations are. He understands this is non-tax revenue, water and sewer revenues. Mr. Burkhalter stated it would be from the Utility Fund. Councilman Davis stated they are expending revenues that are within the purview of the CFC without their knowledge and recommendation. This is contrary to what they voted to do during the sewer rate hearings and in order not to delay the progress of these items that have to be set in motion in order to meet this November 2 voting deadline, he is willing to go ahead and approve the motion with the sole stipulation that before they begin spending the \$16,500 of utility revenue recommending a bond issue based on a certain type of presentation, that Council be sure they have the backing of the CFC. He thinks it would be disastrous if they went to market with the bond issue and Council and CFC were not in agreement on how it would be presented.

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Councilman Gantt stated if he understands him correctly, Councilman Davis is not only asking for some policy from the CFC with regard to their position on the bond vote, but what he wants is to have whoever prepares the educational material present that material to the CFC prior to even the final vote on it by Council so that they can make a judgment as to whether the material is fit or within the realms of being educational. He stated he agrees with the first premise which is that they ought to at least give Council some position as to how they feel about this particular bond referendum. He does not know whether they are any more qualified to make a judgment as to whether or not the material that is going to be presented is educational.

It was generally agreed that this is irrelevant. They want to get the Community Facilities Committee's recommendation, but they do not see where that has anything to do with appropriating this non-tax money to educate the public.

Councilman Davis stated suppose we go forward and have \$16,000 worth of material printed saying that this would not cause an increase in sewer rates or an increase in taxes and suppose the CFC issued a public statement to the contrary.

Councilman Withrow asked Councilman Davis if he would agree that prior to the public hearing on September 13, that they ask the Community Facilities Committee to endorse what they have done here and that the City Manager let them look over the information. All of this \$16,000 will not be spent before September 13 because there is a lot of advertisement to go out, and they are not going to put it out until they are sure Council passes this on the 13th.

Councilwoman Chafin stated she is sure that Mr. Guerrant who no doubt will be responsible for preparing most of these materials will not complete any of his copy until such time as he has heard final statements on the part of Council and heard the reaction from people at the public hearing which will include the Community Facilities Committee. She would hate to tie Councilman Davis' provision to the approval of the \$16,500.

Councilman Davis stated in the interest of time he would withdraw his stipulation. He is willing to approve it as it is. He thinks that Council should be aware that from a practical standpoint anything they do had better have the approval of the Community Facilities Committee and they will have a hard time merchandising it to the public.

Councilman Williams asked if there was any necessity on voting on Item (f) tonight; any necessity to vote on it before September 13?

Mr. Burkhalter replied yes, there is. They cannot sell this bond issue; they can only inform. They must have a very strong campaign and the Mayor will have to appoint a chairman and get a committee to working and this sort of thing. He must be able to discuss with these people what they propose to do. This is the part that the City can play and they would like to be able to tell them yes we can. If Council does not pass this they can not say it until the 13th. They are not going to spend any of the money until they know they are going to have the bond issue. They are not going ahead and print up this information and not have their approval on the 13th. But they would like to be able to commit themselves to these people working in it that they will inform the public.

Councilman Gantt asked what is the precedent for using non-tax revenue for educational purposes in bond issues? Mr. Underhill stated he cannot talk about precedent but he can tell them that is the only lawful form of statement that can be made in relation to a bond referendum - it is a proper use of funds to use funds for educational and informative purposes. The information they put out must be objective, must be factual and it cannot urge a position. That is the consistent position that they have taken in anything that comes out that the City of Charlotte plays any part in or finances.

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The promotional advertisement effort that has always been done in this community, since he has been City Attorney, has been done by organizations which are outside the city family, so to speak.

Councilman Gantt stated he has a problem because he feels this is probably an item created by the news media. He wonders how, in fact, they would inform the public as to what is going on. Mayor pro tem Whittington stated he thought they had done this one time before. Mr. Burkhalter stated he did not know where they appropriate special money whether they have done it. In this particular case, we just do not have the funds in promotion activity in this department. Mayor pro tem Whittington stated it has always been done by the private sector before. Councilman Locke stated there is really not time to do that now. Mr. Burkhalter stated the City has always given out information on every bond issue, completely objective material.

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

The ordinance is recorded in full in Ordinance Book 23, at Page 303.

Councilman Williams stated he really does want to have some input from the Community Facilities Committee prior to the 13th of September if they are expected to vote on this on that day. Please do not put him in the box of having to vote on it without having heard from the CFC. Mr. Burkhalter replied he did not know whether they would be able to do it or not. They have been trying to meet with them for some time. The chairman says they are going to be on vacation and the 17th is the earliest he can get them together.

Councilman Williams replied that they will have voted by the 17th to submit this to the electorate.

Councilman Chafin asked Mr. Burkhalter if the Community Facilities Committee had been involved at all in these discussions. Mr. Burkhalter replied the Chairman has, but the committee has not. Councilwoman Chafin asked what the Chairman's position is?

Mr. Bobo, Assistant City Manager, stated he met with the Chairman about two weeks ago, informed him about the annexation, the referendum for the Utility Department and he indicated his approval and said that he thought that the committee itself would be in favor of it. He saw no problem with it except that there might be some questions the committee might have about the financing, the annual debt service and those type of things, but he did not see any problem and he would call them together as soon as possible, but that the 17th would be the earliest possible time that he could get them together. Mr. Bobo was requested to see if they could get the committee together before then even with one or two absent, so that Council has their recommendation before the 13th.

RESOLUTION AUTHORIZING THE EXECUTION OF A MUNICIPAL AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE RECONSTRUCTION OF THE EAST MOREHEAD STREET BRIDGE OVER SOUTHERN RAILWAY.

Motion was made by Councilman Gantt, seconded by Councilwoman Chafin, and unanimously carried, adopting subject resolution authorizing the execution of a Municipal Agreement with the North Carolina Department of Transportation for the reconstruction of the East Morehead Street Bridge over Southern Railway.

The resolution is recorded in full in Resolutions Book 12, at Page 29.

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LEASE WITH FAIRFAX CORPORATION FOR OFFICE SPACE IN CAMERON-BROWN BUILDING AUTHORIZED.

Councilwoman Locke stated the Public Works Committee met and reviewed the proposed leasing agreement; they determined the needs of the City government. The Committee's recommendation is to proceed to lease for three years the Cameron-Brown Building and the Committee would like staff to present to Council the proposed buildings - City Hall chambers plus a five-story building and a twelve-story building. They would like for Pease Associates to come to Council and present their recommendations of how it could be purchased, a purchase agreement or revenue bonds, whatever. They would also like the County to be in on this and staff was instructed to go to the County and ask them to what extent they would like to participate. The Committee's recommendation is that they proceed with the three-year lease on Cameron-Brown.

Councilwoman Chafin stated she thinks that the committee made its decision to recommend to Council that the lease with Cameron-Brown be approved for three very important reasons: (1) It is the best space available to us within the perimeters of the Government Plaza and this Council has reaffirmed its commitment to the concept of the Government Center; (2) It certainly makes sense from a purely economic perspective - staff presented some very good statistics to bear this out; (3) A three-year lease is in keeping with what they hope will be Council's decision to move ahead on the new chamber and municipal building.

Mr. Hopson, Public Works Director, stated there is no escalation in this lease; it will terminate at the end of three years this September so it will all come out equal at that time. There is no escalation clause.

Councilwoman Locke stated they also asked an important question that if the buildings are not completed by then, the City will have a six months option. Mr. Hopson replied he is sure they will work with the City at that time.

Councilman Withrow stated he saw where we were going to spend so much money for air conditioning for the computers. He asked if this is to go into the Cameron-Brown building? Mr. Hopson replied that item is on the agenda tonight; it is \$13,000 to \$14,000. Councilman Withrow asked since the lease is for three years, could this be put off? Or do we have to have it? Mr. Hopson replied as late as today he received a report on one of his programs and due to hot weather it is all fouled up. Without it we are in real trouble during the hot weather.

Councilman Gantt stated he did not have the opportunity to meet with the Council's committee because he was on vacation. It did come to his attention that when we agreed on the leasing policy at the last Council meeting, there was some concern on the part of some Council persons that we were overlooking some particular parts of that leasing policy that might be objectionable from the standpoint of fairness. His understanding in introducing the motion at that time was to say that he was just generally not in agreement in a procedure that would enter into competitive bidding. He understands we are not involved in competitive bidding in our leasing policy as it stands now. However, he would want to recommend that in leasing of future properties for the City that the specifications of what the City is interested in be publicly advertised by the Real Estate Department. There is an air of suspicion that hangs over the process, or at least it was suggested in reading the minutes of the last meeting, that we may be in a compromising position if, in fact, proposals for leasing City owned offices are channeled through what may be construed to be a competitor. He would hope the Real Estate Department would handle the receipt of all proposals; and when the City is in a position to require additional office space, or to renew a lease, short of the competitive bidding process, that the specifications on what the City is interested in be publicly advertised, if that is possible. Mr. Underhill, City Attorney, replied he knows of no legal problems if that is what Council wishes to adopt as its policy. There is no legal requirement that it be done. They can make that a part of a policy for handling leasing of office space.

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Councilman Davis stated at the previous meeting Council was presented one agenda item that included three divisions. First was Mr. McIntyre's presentation; then one by Mr. Pease on the Governmental Plaza; and a presentation on the Cameron-Brown lease. He asked that they be separated to avoid confusion to somewhat related items. Council ended up discussing all of them at once. He thinks Council dispensed with the Governmental Plaza Concept very quickly and voted unanimously in favor of it. The lease and the procedures for arriving at a lease caused some problems. There is much overlap between these two items, and Council ended up with motions, substitute motions, and motions to defer, and finally deferred it to a committee. We have heard the Committee report and we are back essentially with the original proposal. In the confusion that took place at the last meeting, some may have interpreted a negative vote on the Cameron-Brown lease as a vote against the integrity of the Governmental Plaza, which he does not think is the case. It is possible that some who voted to approve the present policy of leasing interpreted that vote in favor of the Governmental Plaza concept, which is not necessarily the case.

Councilman Davis stated personally he has no particular concern as to what building space or office we lease or buy. But he is concerned with the policy and procedures under which we consummate these transactions. There are several questions he would like to resolve before voting on a lease.

Two weeks ago this Council voted unanimously to approve the Governmental Plaza concept. Yet, the last three leases we have approved, and in fact the Cameron-Brown lease may be number four considering it all one lease, none are in the Governmental Plaza area. Two of the four leases are not even contiguous to the Governmental Plaza area. Does this fairly represent Council's policy? On the competitive bids, the federal and state governments both utilize competitive bids; they both lease office space, substantially below what the City of Charlotte does. He understands there are federal offices in the Executive Office Building, where we also have space, and, he understands, they pay about \$1.00 per square foot less than we do. In the same building, and they have muddled through the bureaucratic maze, and arranged office space in a building within rock throwing distance of City Hall, a building locally owned, cheaper than we can do it ourselves. This does not make sense. He has to ask the question if this Council really wants to promulgate policy against competitive bids when it is so effectively used by other governmental agencies.

He stated the present staff procedure does utilize a semi-exclusive agent which he thinks should be modified. We have a real estate specialist; he is competent to write specifications and advertise them, and see they get into the hands of landlords who have rental space, and receive the replies directly. This would result in a great response to advertising for bids. The procedure for utilizing a semi-exclusive agent did result somehow in the fact there was no public notice of the City's desire to lease office space. Many potential landlords of large inventories of office space were not contacted. To this day they do not know what specifications the City has in mind. Some landlords who could have made proposals were reluctant to do so because of having to submit their proposals through a competitor.

Councilman Davis stated our comprehensive plan encourages the use of public transit. Our present real estate leasing policy emphasizes on-site free parking, and thereby discourages use of public transit. He stated he thinks it is patently unfair for the Council to go out and execute real estate leases under such a nebulous and contradictory policy and guidelines. It places the staff in a position of making seemingly arbitrary judgments on impossibly varied and fluctuating criteria. It leaves the Council open to charge of playing favorites and using the tax dollar to do it. Our lease activities involve 99,000 square feet of office space, at a rental amounting to nearly \$600,000 per year. It involves real estate commissions of nearly \$30,000 a year. This one three-year lease involved with the Cameron-Brown Building involves one and a quarter million dollars. That is 12,500 one hundred dollar bills. That is enough to stack 1,785 before every Councilmember here. If we were spending 1,785 hundred dollar bills of our own, he thinks we would be much more diligent. He does not think we are being as careful with the public's money as we would with our own.

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Councilman Davis stated he thinks we should have a policy that is fiscally responsible, and one that provides for direct accountability. He has no particular preference for or against the Cameron-Brown Building or any other office space. But before he votes to approve another lease he would like these policies discussed and Council to decide whether or not the present policy is the one it wants to promulgate. The policy should provide for the negotiation of these leases in the public view with procedures known to all. He stated he made his position clear at the last meeting and again tonight. He thinks there are several things Council can do.

One, if they want additional time to consider these leases, he thinks an extension could be arranged with the present landlord to extend the leases three or six months under the same terms we are in there now. Second, we should consider this is the best time in the last 20 years to lease or buy office space in Charlotte. The decision we make can save the taxpayers a lot of money if we make the right one. Third, any decision should show some consideration for the cost effectiveness. We have had no material presented us to give any comparison of what we are paying to go into the Cameron-Brown Building compared to what else is available. Last, we should remember we are going to become involved in a lawsuit right now over the school system business. We have to remember good intentions are no longer enough to absolve us of responsibility. We have to exercise the authority we have, and we have to be sure we do not exceed our authority. He stated we can delegate authority; but we cannot delegate responsibility.

Mayor pro tem Whittington requested Councilwoman Locke to restate her motion and to state the money involved in the lease.

Councilwoman Locke moved that Council approve the three-year lease with Cameron-Brown at \$5.89 per square foot with no escalation. The motion was seconded by Councilwoman Chafin.

Councilman Withrow stated about all the leases that come before Council are going to run out in about two weeks or a month. It really puts the City Council on the spot. That he does not agree with everything Mr. Davis has said here tonight; but there are some things he does agree with. That is we should let it be known by the news media or some other media that we are going to renew office space - giving the number of square feet - and put into the advertisement what is required; and that anyone who would like to send a proposal to the City should do so. Then he thinks City Council should be notified of what has happened; the space available and the prices. He does not agree with what we have been doing wholeheartedly; he did not agree with us going from the Equity Building down to the Cameron-Brown Building to start with, and he voted against it. Now everything is down there, and we are fussing about it again. That he thinks the procedures we use cause the fuss. He thinks we need to look over the procedures and change them.

Mayor pro tem Whittington stated the point is Council has had no procedures at all up to this point, and it is time we get one after this is resolved tonight.

The vote was taken on the motion, and carried as follows:

YEAS: Councilmembers Locke, Chafin, Gantt and Withrow.
NAYS: Councilmembers Davis and Williams.

Councilman Withrow stated he has stated he would vote for this provided at the end of three years we would go ahead with the recommendation of the Public Works Committee because we had said when we reached \$500,000 a year we could afford to build. He hopes in approving this three-year lease we go ahead because he knows if we move it will be \$100,000 and there will be all this air conditioning for the computers with other buildings. Councilwoman Locke stated staff is going to bring the information to Council as quickly as possible so that we can get started on it.

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Councilman Davis stated in line with Mayor Belk's suggestion he went by to visit with the architects and received a briefing on the Governmental Plaza concept and also on the plans for the five and twelve story buildings which Mrs. Locke referred to. Mr. Pease's estimate of the cost of these buildings in 1977 dollars comes to \$22.0 million. Councilman Davis stated we could probably buy either one or two buildings in downtown Charlotte for \$6.0 or \$7.0 million and provide the same facilities. Councilwoman Locke stated that is the total for the three buildings. Councilman Davis stated the twelve story building would cost \$13.0 million, and the second building \$7.5 million. That includes \$500,000 for a covered parking area.

Councilman Withrow stated he brought up before about looking at the NCNB Building. Since that time there are other buildings available. He would like for the staff to go and research the office space in Charlotte with the idea of buying a building if necessary - if we can get a building at the right price, and go ahead and move all our facilities into this building. It might be we cannot afford an office building. Councilwoman Locke asked that Council wait and see the presentation, and then make that decision. Councilman Withrow stated he would like staff to research all buildings in Charlotte that we feel we could buy. Get a price on the total building, and what it would cost us. Councilwoman Locke asked that staff be given that charge after the presentation about the office complex. Councilman Withrow stated he would like for us to do this on our own without a real estate agent. Let our people do this. Councilwoman Locke stated the presentation will be made within the next three or four weeks. Councilman Davis stated buying the building will become academic if we sign the three year lease. Councilman Withrow stated it does become academic. We are not fooling ourselves. Councilman Davis stated he is afraid it would be a waste of staff's time after the approval of the leases.

Mayor pro tem Whittington stated he does not agree at all that it would be a waste of staff's time. He thinks what Council has done is make a commitment in the Cameron-Brown Building for three years. We made a commitment to reaffirm our position on the Governmental Plaza; and Mrs. Locke and Miss Chafin have said tonight that the consultants will come back to Council in about six weeks with a proposal to build either a five or twelve story office building, plus Council chambers. What Mr. Withrow is asking for is an alternate to be presented to Council where we could buy one office building downtown for half of what they are talking about the consultant would propose. He thinks Council has to have this information before taking another position about office space. To do anything less than that, he does not think they are being honest with the public. While he cannot vote tonight, if the time comes and he has an opportunity to vote again, he is not voting for any more rental space in the Governmental Plaza until some of the things that Mr. Gantt and Mr. Davis have mentioned time and time again that should be done, and presented to this Council before the vote.

Councilwoman Locke stated she is asking that Council wait until the presentation is made. Mayor pro tem Whittington stated he does not want to wait. He wants to do what Mr. Withrow requests. That he is asking for the alternate, which would be a building downtown, to come before Council so there will be two decisions to make at that time.

Councilwoman Chafin stated her only problem is that at this point this Council has affirmed the Governmental Plaza concept. Mayor pro tem Whittington replied Mr. Withrow is asking that Council have some alternate to think about when the recommendation comes from the consultant.

ESTABLISHING OF ASSISTANT PERSONNEL DIRECTOR POSITION AUTHORIZED.

Motion was made by Councilman Gantt, and seconded by Councilwoman Locke, to establish the position of Assistant Personnel Director, as follows:

- (a) Ordinance No. 248-X deleting one Personnel Analyst I position and substituting one Assistant Personnel Director position.

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(b) Resolution amending the City's Classification and Pay Plan establishing the position of Assistant Personnel Director.

Councilman Withrow stated usually when you cut out a working position and hire an administrative position, we do not get a lot of work done. He hopes this is not what we are doing in this case.

Mr. Burkhalter, City Manager, stated the Personnel Director does not have an assistant. Council has assigned some very stringent responsibilities to this department; and they feel the need of some additional strong leadership in this department. Council will be able to appreciate this when they begin to see some of the things they are doing. He is spending hours now in some of the work of the Personnel Department; soon Council will see the results of soon as they are working on the Affirmative Action Program, and a number of other things they are doing that Council has instructed them to do which cannot be done overnight, and which require the type of supervision one man cannot give to it. That he thinks it would be very helpful to do this.

Councilman Davis stated he shares Mr. Withrow's concern; that he is going to vote for this as it is a small item. He stated after Council votes on this, he would like to ask the City Manager to try his best to try to save us this \$6,000 somewhere else.

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

The ordinance is recorded in full in Ordinance Book 23, at Page 304.

The resolution is recorded in full in Resolutions Book 12, at Page 30.

CONTRACT AWARDED TO THE DOWD PRESS, INC. FOR TRANSIT SYSTEM SCHEDULES AND MAPS.

Councilwoman Locke moved award of contract to the only bidder, The Dowd Press, Inc., in the amount of \$15,192.00, on a unit price basis, for transit system schedules and maps. The motion was seconded by Councilman Williams, and carried unanimously.

CONTRACT AWARDED A. Z. PRICE AND ASSOCIATES, INC. FOR ADDITIONS TO AIR CONDITIONING SYSTEM, M. I. S. DEPARTMENT.

Upon motion of Councilman Gantt, seconded by Councilwoman Locke, and unanimously carried, contract was awarded to the low bidder, A. Z. Price and Associates, Inc., in the amount of \$13,555.00, for additions to air conditioning system, M. I. S. Department.

The following bids were received:

A. Z. Price & Associates, Inc.	\$13,555.00
Moore Air Conditioning Co.	13,855.00
Mechanical Contractors, Inc.	13,948.00
Air Masters, Inc.	14,321.00
Jackson Refrigeration	15,563.57
P. C. Godfrey, Inc.	16,000.00

ZONING PETITION HEARING DATE CHANGED FROM SEPTEMBER 27 TO SEPTEMBER 20.

At the request of the City Manager, Councilwoman Chafin moved that the date for the hearing on zoning petitions be changed from September 27 to September 20, at 7:30 P. M. The motion was seconded by Councilwoman Locke and carried unanimously.

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COUNCIL MEETING SCHEDULED FOR MONDAY, SEPTEMBER 27, DISPENSED WITH AS MAJORITY OF COUNCIL WILL BE OUT OF TOWN.

Mr. Burkhalter, City Manager, stated the Mayor and a majority of Council will be out of the city on Monday, September 27, 1976, and he would suggest Council dispense with the scheduled meeting on that date.

Motion was made by Councilwoman Chafin, seconded by Councilman Withrow, and unanimously carried, to dispense with the meeting on Monday, September 27, 1976.

CONSENT AGENDA AUTHORIZED AFTER REMOVAL OF AGENDA ITEM NO. 24.

Councilman Gantt stated he has a question about Agenda Item No. 24 under the consent agenda, and asked that it be removed and considered as a separate item.

Motion was made by Councilwoman Locke to approve the consent agenda as listed with the exception of Agenda Item No. 24. The motion was seconded by Councilman Davis, and carried unanimously.

- (1) Settlement in the case of City of Charlotte vs. Boyete A. Neal and wife, Catherine H. Neal, in the amount of \$1,200.00, for the Long Creek Sanitary Sewer Outfall Project, Parcel 11.
- (2) Loan to Glen A. Wingate and wife, Cynthia H. Wingate, in the amount of \$23,750 for improvement and restoration of property located at 314 West Eighth Street, in the Fourth Ward Urban Redevelopment Project Area.
- (3) Ratification of the sale of City-owned two-story frame house, located at 325 West Seventh Street, to the L. Tyson Betty family at \$100.00, which has been moved on to a new lot in the Fourth Ward Area.
- (4) Ordinance No. 250-X transferring funds from the General and Utilities Fund Balances, re-establishing appropriations for maximum inventory levels.

The ordinance is recorded in full in Ordinance Book 23, at Page 306.

- (5) Ordinances ordering the removal of weeds, grass, trash and rubbish from properties in the City at the following locations:
 - (a) Ordinance No. 251-X for 312 West Park Avenue.
 - (b) Ordinance No. 252-X for 4200 Rochelle Lane.
 - (c) Ordinance No. 253-X for vacant lot adjacent to 905 Rodey Avenue.
 - (d) Ordinance No. 254-X for corner Greenleaf Avenue and Elliott Street.
 - (e) Ordinance No. 255-X for 1920 Parson Street.
 - (f) Ordinance No. 256-X for vacant lot at corner Simmons Street and Midland Avenue.
 - (g) Ordinance No. 257-X for vacant lot adjacent to 629 Pennsylvania Avenue.
 - (h) Ordinance No. 258-X for vacant lot adjacent to 1014 E. Independence Boulevard.
 - (i) Ordinance No. 259-X for vacant lot 1400 block of East Independence Boulevard.
 - (j) Ordinance No. 260-X for 712 Matheson Avenue.
 - (k) Ordinance No. 261-X for vacant lot adjacent to 1225 Sharon Amity Road.
 - (l) Ordinance No. 262-X for vacant lot adjacent to 1225 North Sharon Amity Road.
 - (m) Ordinance No. 263-X for vacant house at 3700 Medallion Drive.

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- (n) Ordinance No. 264-X for 4601 South Boulevard.
- (o) Ordinance No. 265-X for 2700 West Boulevard.
- (p) Ordinance No. 266-X for 647 Pennsylvania Avenue.

The ordinances are recorded in full in Ordinance Book 23, beginning at Page 307, and ending at Page 322.

- (6) Streets taken over for continuous maintenance by the City:
 - (a) Gulf Drive, from Hovis Road to 725 feet east.
 - (b) Meade Court, from 200 feet north of Peary Road to 200 feet south of Peary Road.
 - (c) Lemontree Lane, from 1,000 feet west of Foxcroft to 1,123 feet west of Foxcroft.
 - (d) Old Woods Road, from Woodlawn Road to 660 feet south.
 - (e) Penway Court, from Old Woods Road to 180 feet east.
 - (f) Rome Court, from Old Woods Road to 120 feet east.

- (7) Encroachment agreements with North Carolina Department of Transportation permitting the City to:
 - (a) Construct a 10-inch water line connecting to an existing water line in Monroe Road to serve Delmar Printing Company.
 - (b) Construct a proposed 6-inch and 2-inch water main in Beverly Circle.

- (8) Property transactions:
 - (a) Acquisition of 15' x 43.46' of easement from William Edward Lofty and wife, at 2525 Pickway Drive, at \$200.00, for sanitary sewer to serve Pickway Drive. (Annexation Area II (7).)
 - (b) Acquisition of 30' x 278.31' of easement at 1010 Belmorrow Drive, from Pach Construction Company, Inc., at \$378.00, for Gum Branch Outfall.
 - (c) Acquisition of 30' x 102.93' of easement from Frederick E. Barwick, III, and wife, at 115 Sedgwick Terrace, at \$600.00, for Gum Branch Outfall.
 - (d) Acquisition of 30' x 147.5' of easement at 221 Fielding Road, from Henry C. Ramsey and Sue L. Ramsey, at \$400.00, for Gum Branch Outfall.
 - (e) Acquisition of 30' x 508.15' of easement at 1351 Valleydale Road, from Burgess Cook Love, Heirs, at \$1,000.00, for Gum Branch Outfall.
 - (f) Acquisition of 30' x 332.17' of easement at 121 Edgerly Court, from Roy L. Green and wife, at \$1,000.00, for Long Creek Outfall, Phase II.
 - (g) Acquisition of 30' x 71.07' of easement at 220 block Rayecliff Drive, from Urphie F. Beaty and E. M. Beaty, at \$150.00, for Paw Creek Outfall, Phase II.
 - (h) Acquisition of 30' x 250.47' of easement at 2108 Toddville Road, from D. R. Lane and wife, at \$750.00, for Paw Creek Outfall, Phase II.
 - (i) Acquisition of 30' x 86.36' of easement at 4839 Thrift Road, from Wendell Edward Mathis and wife, at \$810.00, for Paw Creek Outfall, Phase II.

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- (9) Resolution providing for public hearing on Monday, September 20, 1976, at 7:30 o'clock p. m., on Petition No. 76-62 for zoning change.

The resolution is recorded in full in Resolutions Book 12, at Page 32.

- (10) Contracts for construction of sanitary sewer lines:

- (a) Contract with Ralph Squires Construction Company for construction of 630 linear feet of 8-inch sanitary sewer lines to serve Timber Creek No. 2-B, outside the City, at an estimated cost of \$9,450.00. The applicant will construct the entire system at his own proper cost and expense, and the City will own, maintain, operate the system and retain all revenue, all at no cost to the City.
- (b) Contract with D. M. E., Inc. for construction of 4,220 linear feet of 8-inch sanitary sewer main to serve Country Roads Subdivision, inside the City, at an estimated cost of \$63,300.00. The applicant will construct the entire system at his own proper cost and expense, and the City will own, maintain and operate said system, and retain all revenue, all at no cost to the City.

- (11) Special Officer Permits for a period of one year each:

- (a) Renewal of permit to Robert Dale Blackwell for use on the premises of Charlotte Park and Recreation Commission.
- (b) Issuance of permit to Timothy Brian Weber for use on the premises of Charlotte Park and Recreation Commission.

COST OF LIVING ADJUSTMENT FOR RETIRED FIREMEN, AUTHORIZED.

Councilman Gantt asked if this cost of living adjustment is the same item Council discussed at its last meeting; and what action was taken at that time? Mayor pro tem Whittington replied it was authorized to be placed on the agenda for this meeting for approval.

Councilman Gantt asked if that agreement was to pay \$17,000 the first year, and it jumps up to some \$50,000 plus in the next year's budget for five years? The Budget Director replied it does go up to \$50,000. The City Manager stated if this is not done, this would be the only group who would not have some sort of cost of living increase.

Councilman Davis stated he is going to vote for this as Council was unanimous in wanting to help these retired firemen who are the one group without a cost of living adjustment. Council should be aware that the total cost of this under today's dollars is \$236,000 if it was done in one lump sum. Mayor pro tem Whittington stated when he made the motion at the last meeting, his intent was for the 39 firemen who retired prior to January 1, 1972. Anyone since then would not be affected by this. Councilman Davis stated they should keep in mind we have an additional obligation for substantial unfunded liability in the firemen's retirement system, which we will have to pay out. This was discussed by Council several months back. He asked when this will come to Council? The City Manager replied the Finance Director is working on that.

Motion was made by Councilman Davis, seconded by Councilman Gantt, and unanimously carried to approve the cost of living adjustment for retired firemen, as follows:

- (a) Resolution authorizing an annual cost of living increase for members of the Charlotte Firemen's Retirement System who retired prior to January, 1972.

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- (b) Ordinance No. 249-X amending the 1976-77 Budget Ordinance transferring \$17,080 from the Contingency Appropriation to provide for an annual cost of living adjustment to Firemen retired prior to January 1, 1972.

The resolution is recorded in full in Resolutions Book 12, at Page 31.

The ordinance is recorded in full in Ordinance Book 23, at Page 305.

NOMINATIONS TO COMMUNITY FACILITIES COMMITTEE.

Councilman Davis placed in nomination the names of Ms. Nancy Johnston and Mr. Robert Beck for reappointment to the Community Facilities Committee for two year terms each.

REQUESTS AND COMMENTS OF VARIOUS COUNCILMEMBERS.

Councilman Gantt stated he had a question of Mayor Belk regarding the Charlotte Area Fund requests for certification in their matching funds. Someone stated this has been taken care of.

Councilman Gantt stated in reading the minutes of the Park and Recreation Commission he noticed they have approved the plans for the Northwest Park and the Sugar Creek Park. He asked the City Manager to have them bring these plans to Council prior to bids being taken.

Councilwoman Chafin requested that at the earliest possible date in September an item be placed on the agenda; it is one that may not be popular but it is one this Council is going to have to resolve - that is the Monroe Road satellite facility. There continues to be a great deal of discussion in the community about this item, and she thinks Council needs to resolve it once and for all.

Mayor pro tem Whittington stated he tried to get this resolved, and was advised not to do it until after it became a part of the City of Charlotte because the County of Mecklenburg would have to make the decision. Councilwoman Chafin stated she believes there is enough community discussion on it that Council needs to make some sort of determination now. The City Manager stated the whole question now is whether or not to annex it because it will not be in the general annexation. The reason it was brought up was to decide whether to annex or not to annex.

Councilwoman Chafin stated she hopes the public realizes in spite of Council's long discussion tonight on the involvement of the Community Facilities Committee in the bond referendum that this Council is very much committed to the concept of annexation. That we are not having a referendum in November on annexation; but a referendum on general obligation bonds to extend water and sewer services to the newly annexed residents, keeping in mind that eventually these residents would receive such services anyway under a city-county system. This is merely speeding up the process and doing it in the most economical way available. If the referendum is defeated, then she would expect this Council to go ahead with revenue bonds to do this.

Councilman Withrow stated in talking about annexation, he read a lot of comments over the last annexation that we did not cooperate with some of the people working for the county. That he is talking about the fact we should have absorbed county policemen and not put them in the same shape as before of having more police than needed, and that was what caused the morale problem. Also he thinks we should let the county employees know we are going to look to them first to hire as city employees - engineers, building inspectors, also we might absorb some of the volunteer firemen who might want to come into the Fire Department. He thinks we should look and let the county people know that we are going to try to absorb some of the people and give them jobs.

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COUNCIL'S COMMITTEE ON PUBLIC WORKS AND PLANNING TO MEET MONDAY, AUGUST 30.

Councilwoman Locke stated she would like for the Public Works Committee to meet on Monday, August 30, at 2:00 p. m. on the Elizabeth Avenue request.

COMMENTS BY MAYOR PRO TEM WHITTINGTON.

Mayor pro tem Whittington stated he handed to Mr. Withrow earlier some information on finances as it relates to city and state government, Schedule B, which has been shot down and shot up all these years and nothing been done about it since it was written into the State Laws about 1900. The Legislative Committee of the N. C. League is going to begin a series of meetings now, plus the League meets in Charlotte in October. He thinks it behooves us and our Finance Committee to begin to do what we can to alert the State that we need funds, or at least need the privilege of getting new funds if we can get permissive legislation from the State Government. He stated if Council does not object, he would like to ask the Finance Committee to begin to work on such programs with our Legislative Committee and with the North Carolina League of Municipalities.

Second, Council has just been through a review of the Police Department by the Budget and Evaluation Office. He would like to propose to Council that this same Budget and Evaluation Office do a similar study on the Department of Public Works. After that report is finished then have such a meeting as was held on the Police Department so that Council would have the opportunity of being dovetailed into the evaluation of that department. The City Manager stated this is talking about a multi-thousand dollar study which may take all kinds of time which he is not sure staff is able to do at one time. That studies are now underway for this year; but if Council waits, they can. Mayor pro tem Whittington asked if they can have it for budget, he would like to have one on the Public Works. The City Manager stated he does not have any objections to doing Public Works, administratively for example; but they should not confuse sanitation collection with street maintenance. That perhaps a systematic approach would be the sensible thing to do.

Councilman Davis stated staff may already have a series of procedures they are going through to keep this audit committee busy. That he would like to see the Public Works Department given some priority on that list because it is a large one. But he would like to ask Council to consider having a discussion on the possible establishment of some type of audit committee that reports directly to Council. And do that prior to going through another expensive study. Council is responsible for a lot of things, but does not have a lot of resources to deal with them. He thinks most Boards that handle the type of money Council does, and the type of responsibility, has some type of audit and evaluation service reporting directly to them.

The City Manager stated he feels compelled to speak up. This has some reflection on staff's work and second, it is not a fact that we do not have a direct report to Council. We have an independent audit, and Council receives a complete financial report auditing by an independent auditor made directly to Council. Councilman Davis replied a financial audit, yes; but he means an audit of the various activities we have such as performance, delivery of service and cost effectiveness and that type of thing.

Councilman Withrow stated he hopes this Council never takes away from the powers of the City Manager, or that it gets some outside expertise or outside people to come in and circumvent the City Manager. If the City Manager does not give Council what it wants, and what it desires, then Council has the prerogative to fire him, and he would vote to fire him if he did not do this. As long as he gives Council the information it desires, he is satisfied.

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LETTER OF OPPOSITION TO GARAGE FACILITY NEXT TO McALPINE CREEK.

Mayor pro tem Whittington requested the following letter be read into the minutes:

"August 12, 1976

Hon. James Whittington
4231 Darwin Circle
Charlotte, N. C.

Dear Mr. Whittington:

Must the garbage depot be built right next to the McAlpine Greenway we all want. The depot might cause the County to scrap the whole project due to fear of excessive flooding. Please don't let that happen.

Thank you.

Sincerely,

Peter Lucas"
199 Providence Square Drive

OFFICE OF CITY ATTORNEY AUTHORIZED TO TAKE ACTION NECESSARY TO PROTECT THE CITY'S RIGHT TO RECOVER FROM THE SCHOOL BOARD UNDER THE 1974 CONTRACT FOR SUMMER JOBS PROGRAM.

Mr. Underhill, City Attorney, stated he would like Council to consider authorizing his department to take certain actions tonight in relation to the 1974 School Summer Job Program that has been discussed recently.

The City received the final audit report from the Department of Labor several weeks ago. Our reponse which is due in 30 days will be due on or about Labor Day - around the 4th, 5th or 6th - in Atlanta. We have requested from the Charlotte-Mecklenburg Board of Education, since they operated all the programs in question for us, their review and analysis of the audit report. They have cooperated and have provided us with certain information. On Friday they provided us with an official response adopted by the Board of Education at its meeting last Wednesday evening.

The City Attorney's office, Manager's office and the Manpower Department are in the process of reviewing what has been submitted by the School Board, and they are in the process of preparing the official response to the Department of Labor so that it will be in their hands at the time they requested.

There is a legal problem. One of the programs the Title III program operated in the summer of 1974 was done under contract as were all these programs, and that contract expired by its terms on August 30, 1974. It has been the consistent position of his office that we have clear, unambiguous contracts with the Board of Education to perform certain services and programs for us. It is his legal opinion if the City is called upon by the Department of Labor to pay back any funds which were granted to the City under the Grant Agreement, the City has a legal right to proceed against the Board of Education if necessary to seek reimbursement for any funds we might be required to pay.

One of the things they have been looking at throughout this whole process is "what if?" kinds of questions. What if the City ultimately has to bring lawsuit against the Board of Education to recover funds we might be called upon to pay to the Department of Labor? One of the things you look at are the statutes of limitation involved. By statute of limitation, the law sets forth in the general statute a certain time period in which you can bring certain actions - certain lawsuits, types of lawsuits. If you do not bring your lawsuits within those time periods then you are barred from

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proceeding. The purpose is for people to proceed in a timely fashion to bring the matter of litigation. Mr. Underhill stated what we would be talking about would be if we were to sue the Board of Education would be lawsuits based upon the language in the contract and what services they were required to provide for us. In North Carolina the general statute of limitation for contract actions is three years, except contract actions brought against cities and counties. In that case, the statute of limitation is two years.

He stated they will notice he said cities and counties. The question then becomes one of interpretation. Is a Board of Education a separate, independent entity, or is it considered to be an agency of the county; or is it considered to be an agency of the city if you had a city Board of Education, which we do not have here. They researched this situation to determine what statute of limitation might apply. They have contacted the Attorney General's office, and they have received two opinions from them. One that the three year statute applies, and another the two year statute applies.

Mr. Underhill stated in his office they think that the three year statute of limitation does apply here; but in order to protect the City's legal rights and to preserve whatever rights we might have to recover any funds that the Department of Labor might call upon the city to pay, he is going to ask Council to authorize his office to take whatever action is necessary, including the filing of a lawsuit if that is necessary, to protect the city's right to recover under the 1974 Summer Jobs Program contract. The reason being that the two years will expire at the end of this month, and Council does not meet again until September 13. It is very unfortunate that he has to ask Council about this before even making a response to the Department of Labor, and before getting some resolution by the Department of Labor on our response, and our contentions in this matter. If we file a lawsuit and the matter is resolved so that we do not have to proceed against the Board of Education, we have a right to ask for a dismissal of that lawsuit. But in order to protect ourselves from being barred by a statute of limitation's claim if it is raised, to be on the cautious side, he will ask Council to authorize him to take the action to bring a lawsuit on behalf of the City on the 1974 Summer Jobs Program contract.

Motion was made by Councilwoman Locke and seconded by Councilwoman Chafin to give the City Attorney the authorization to bring the lawsuit on behalf of the City.

Councilman Williams asked how much is involved? Mr. Underhill replied they operated three programs under three separate contracts. The Summer of '74 program question cost was \$368,775.57 - that is a part of the total \$956,000 plus or minus involved in this. That is the only contract we have any problems with. The other contracts ran into 1975, and even if the two year statute is applicable, we still have time left on those to pursue whatever remedies or rights we might have with the Department of Labor. He stated he recommends this to Council out of an abundance of precaution just to protect our legal rights to pursue our remedies if it becomes necessary.

Councilman Gantt stated he would like to ask another "what if" question. It seems in all he has read no one has actually said yet that we have to pay the money back. He asked if that has specifically been stated? Mr. Underhill replied the City will make a response, and the Department of Labor looks to the City as the Grant Agreement was between the City of Charlotte. Once the response has been made, then the contracting officer will make a determination within 30 days, and he can determine, based upon what form our response takes, to uphold the position of the auditors to modify it, or totally reverse it, or what have you. He has a fair amount of discretion. If the City is dissatisfied with the Contracting Officer's decision, it can ask for a hearing before a specially appointed hearing officer by the Secretary of Labor. You can proceed from there to an appeal to the Secretary of Labor himself.

Councilman Gantt stated his question is, what if, in fact, there is really going to be no requirement, will we simply dismiss the lawsuit? Mr. Underhill replied we can file the lawsuit, and not actively pursue it until we

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get some reading as to how the Department of Labor will view our response and what sort of treatment we can receive from them. If the question becomes mute, then we can have the lawsuit dismissed.

Councilman Gantt stated he is going to vote in favor of the motion only because he sees it as something more procedural than anything else. That he does not think we are going to gain much out of this by one agency of government trying to extract funds from the other, although he thinks we may have to protect our legal position. He would much prefer that more people start talking about sitting down and going through a procedure, even if we have to appeal to the Secretary of Labor to see if we can get out of having to pay these funds back. No one in Charlotte gains by this. If the School Board has to pay \$1.0 million back they are going to have to get it from us. If we have to pay the \$1.0 million and we cannot recover it from the School Board someone is going to suffer. He fears what the government will do is not take any funds from us, but maybe take it from some other federal program like Revenue Sharing that we are entitled to get funds from. That this might hurt other low income people such as Community Development Revenue Sharing if they take it from other programs. He will vote for the motion only because he sees it as a procedural kind of thing. His feeling is that we, along with the School Board, look for ways that we can resolve this, so that we do not have to pay those funds back.

Councilman Davis asked if there is some possibility there will be some liability for some individuals to come out of this - either members of the School Board or City Council, or individuals in the program? Mr. Underhill replied he would hate to make a blanket statement of no; but from what he knows about the situation, and what we are talking about now, we are talking about a breach of contract act. We are not talking about proceeding personally against anyone insofar as what the City would intend to do in pursuit of its legal remedies. What the Board of Education might do with its personnel he has no way of knowing. One thing that should be made very clear because the Department of Labor people made the statement to them, and he has tried to make it every opportunity he gets, is they found no evidence of criminal misconduct at all in this program. It is for that reason, unlike some other programs they had audited, where criminal misconduct was suspected and apparently later proved, but in this case there has been no allegation either by the Department of Labor, nor by us that there is any criminal misconduct involved at all.

Councilman Davis asked if it would be appropriate for Council to make any move towards cautioning the School Board about entering into contracts with people concerned with it, contract for dismissal; they said at one time there may be some other changes. Does this affect that? Mr. Underhill replied he would be very reluctant to advise the School Board on what they should do. We are under a contractual relationship with them. What the City has to look to is performance and satisfaction of its contract. From a legal standpoint that is the consideration you are involved with.

Councilman Davis stated he thinks it is important that we go through the process and establish just what did happen to the public's satisfaction.

Mayor pro tem Whittington stated he has discussed with Mr. Underhill two letters Mayor Belk wrote to Superintendent Rolland Jones on August 9 and on August 9. He requested the City Clerk to read the two letters into the minutes:

"August 5, 1976

Doctor Rolland W. Jones
Superintendent of Schools
701 East Second Street
Charlotte, N. C. 28202

Re: Audit Report U. S. Department of Labor

Dear Doctor Jones:

Pursuant to the request of the Board of Education, the City of Charlotte requested a 45-day extension to reply to the audit report of the City's CETA program prepared and submitted by the

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U. S. Department of Labor. This request for a 45-day extension was denied in a letter dated July 28, 1976 from L. L. Lindsey, Regional Administrator For Audit, U. S. Department of Labor. A copy of Mr. Lindsey's letter is enclosed for your information. A copy of this letter was previously furnished to Mr. William Sturges, Board Attorney, on Monday, August 2, 1976.

Although Mr. Lindsey's letter states that the final audit report is to be transmitted to the City, we have not yet received the report. Our understanding is that the final audit report differs only slightly from the draft report previously furnished.

As of this date, the City has still not received the response of the Board of Education to the audit report as we had previously requested. Since a copy of the audit report was first delivered to you on May 25, 1976, the City must insist that the written response of the Board of Education be transmitted to us as soon as possible.

Your prompt attention and response to this matter will be appreciated.

Sincerely,

JOHN M. BELK"

"August 9, 1976

Doctor Rolland W. Jones
Superintendent of Schools
701 East Second Street
Charlotte, N. C. 28202

Re: Final Audit Report U. S. Department of Labor.

Dear Doctor Jones:

Enclosed is a copy of the final audit report of the CETA grants for the 1974 and '75 programs. As you know this audit report was prepared by the Audit Division of the U. S. Department of Labor.

The City has been given 30 days in which to respond to this audit report which, according to our calculation, means that the City's response is due on or about September 7, 1976. Since the Charlotte-Mecklenburg Board of Education administered the programs in question through sub-contracts with the City of Charlotte, it is vital that we have a response from the Board as to the findings contained in the audit. Please transmit the response of the Board of Education to the Mayor's office not later than Monday, August 23, 1976.

Sincerely,

John M. Belk"

Mayor pro tem Whittington stated he thought it was important that these letters be made a part of the minutes because when all of this began we had not received this audit and still have not received it, and he thought for that reason the letters should be a part of the minutes.

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

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ADJOURNMENT.

Upon motion of Councilwoman Chafin, seconded by Councilman Withrow, and
unanimously carried, the meeting adjourned.



Ruth Armstrong, City Clerk