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A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, in the City Hall, on Monday, April 6, 1964, at 3 o'clock p.m., with Mayor Brookshire presiding, and Councilmen Albaea, Bryant, Jordan, Smith, Thrower and Whittington present.

ABSENT: Councilman Dellinger,

* * * *

INVOCATION.

The invocation was given by the Reverend Thurman B. Stone, Pastor of Calvary Baptist Church.

MINUTES APPROVED.

Upon motion of Councilman Whittington, seconded by Councilman Albaea, and unanimously carried, the Minutes of the last meeting of the City Council on March 23rd were approved as submitted.

CITY ATTORNEY REQUESTED TO GIVE DETAIL REPORT TO COUNCIL AT NEXT MEETING RELATIVE TO THE DISCONTINUANCE OF WATER SERVICE TO RESIDENCE OF C. W. COPPALA, JR. AND SUBSEQUENT ACTIONS IN CONNECTION THEREWITH.

Mr. C. W. Coppala, Jr. appeared before Council with regard to having no water service at the present; the water having been discontinued when his bill was not paid when due. He stated he is a plumber and on returning home in the afternoon found his wife and seven children had been without water since noon; that he received no answer when he phoned the City's Water Department Emergency Department so he turned the water back on, which is a very logical and simple thing to do. That he had to go to work at 6 o'clock the next morning and had no opportunity to pay his bill, but he did so the following morning and was told his bill was not \$15.60 plus \$2.00 reconnection charge as he expected, which is the normal procedure, but in this instance was \$22.60, that he asked why and the lady said when he turned the water back on the charge was \$5.00. That he protested the \$5.00 charge, which he had never heard of before and he has been a plumber in Charlotte all of his life, but he found later it is in the City Code, and reads as follows:

"Chapter 16, Sect. 15 of the City Code, Unauthorized Turning on of Water. Should the water have to be cut off from any premises by the Water Department for non-payment of a bill or bills or for any other cause and should the water afterwards be turned on without authority of the Water Department the service pipe shall be disconnected and a charge of \$5.00 will be made and collected from the consumer for reconnecting before the water will be turned on and service restored."

Mr. Coppala stated further the point he wishes to make is this charge would not be applicable unless his water service had been disconnected by the City. He advised that he exhausted all conversation with the Water Department without getting any satisfaction, and thought possibly the Council would straighten out the matter.

That he went to the extent of requesting McCall Bros to dig a well in his yard for his use, and two members of the Health Department came out and

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stopped the drillers and told them even if they drilled the well and put the top on it, he could not connect to it. He stated he knows the Health Department had no authority to do this, as the contract was entered into between him and Mr. McCall and there is no power on earth to legally stop him from drinking the water, watering his yard with it or doing anything he wishes with it except selling it. That he wants the Council to know he has been without City water service for practically a month, and he wants to know if it is Council's conclusion that he must pay this \$5.00 fine?

The City Attorney advised that on the basis of the facts presented to him by the Water Department, he upheld the enforcement of this section of the Code.

Mr. Coppala asked what the facts were that were presented to the City Attorney so that he can argue them, and Mr. Morrissey stated he does not think it is appropriate to get into an argument in this matter, that he will be pleased to discuss it with Mr. Coppala in his office following the meeting. Mr. Coppala stated he came to discuss it in open meeting, and Mr. Morrissey made some decision on it other than provided for in the Code and he would like to know what it was and where he went wrong; that he does not want to have to kill another day from work to come up here. Mr. Morrissey stated there may be a difference in Mr. Coppala's version of the facts and the Water Department's version of the facts with respect to the cutting off of the service.

Mr. Coppala stated he received a Bill from the Water Department which precipitated this whole thing, the Bill said "Overcharge-no billing", very cryptic. That he phoned the Water Department that he did not understand it and how much had he been overcharged and how much did he owe, and the lady who answered the phone told him that frequently they were unable to read the meters monthly as was popularly supposed by the public and in such case the bill is estimated, and when the billing is not correct, it is corrected and in his case it was corrected as they had overcharged him considerably, because it completely took care of the December bill and the January bill and he still had enough credit so that his February bill was only \$3.60 with the sewer charge, which he had never received a billing for. But the following month he had a \$6.00 water charge, which made a total of \$12.00, which added to the \$3.60 for February made \$15.60, which he never received.

Mayor Brookshire stated to Mr. Coppala that since it is only a matter of \$5.00 that he does not have a clear understanding about and is somewhat resentful of, he personally would be glad to give him the \$5.00 so that the matter may be disposed of to his satisfaction. That the City is right in its enforcement of its ordinance, and the Council has no other choice, and he will be glad to present him the \$5.00 and would like him to go away felling happier about the situation than he is now.

Mr. Coppala stated he resents the offer very much, and if the \$5.00 charge is paid in any way he will be very resentful, because he does not feel that it has been necessitated and it is not a legal charge and no person should pay it, and he does not think a legislative body should set a fine.

Councilman Smith moved that the Council waive this \$5.00 charge in this instance without going into the facts at all. The motion was seconded by Councilman Jordan.

The City Manager stated he would respectfully question this procedure. That the Water Department, based on the facts as he knows them, was correct in their action.

Mayor Brookshire asked the City Attorney if the motion is in order and if the Council has the prerogative. Mr. Morrissey advised he does not think the Council can waive the application of this provision as to an individual case; they will have to amend the ordinance uniformly applicable to everyone.

Mr. Coppala stated that is exactly what he wishes to have done, to amend the ordinance and word it so it will be a fair charge rather than a fine.

Councilman Bryant offered a substitute motion that since the Council does not know the facts in the case, they are not able to rule on any type on it as far as Mr. Coppala's testimony is concerned; that they be given the facts and the way that it happened as far as the City is concerned, and what the law is, and then they will consider it as they are unable to argue it pro or con as the situation is now. That the facts be given the Council by Mr. Morrissey for their consideration next Monday. The motion was seconded by Councilman Albea.

Councilman Smith stated that he was trying to expedite the matter, and as it is Mr. Coppala still doesn't have any water. Mr. Coppala stated he does have water, he has not been without water and expects to continue to have it. Councilman Smith stated then if Council is not going to waive the \$5.00 charge, they will have to indict him for using City water illegally. Mr. Coppala stated he is not using City water illegally. That he wants to say just this, if he cannot get a legal ruling here he can get it from the Attorney General.

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

Mr. Coppala asked if he will be given an opportunity to offer rebuttal when Mr. Morrissey gives the report to Council? Mayor Brookshire stated that Mr. Coppala will be welcome to come back next Monday.

ORDINANCE NO. 238-Z AMENDING CHAPTER 23, SECTION 23-8 OF THE CITY CODE
CHANGING ZONING OF PROPERTY FRONTING ON WEST TRADE STREET AND ON ROZZELLS
FERRY ROAD, SOUTHEAST OF BELLHAVEN BOULEVARD.

Councilman Whittington asked for a point of clarity from the City Manager, City Attorney or Attorney for Mr. Wardell, stating he was of the opinion Council approved the request of Mr. Wardell for change in zoning from B-2 to I-1 of the property fronting on West Trade Street and on Rozzells Ferry Road, and set a hearing initiated by the Council for the third Monday of this month to consider all of the property under discussion.

Councilman Albea asked if this petition has gone back to the Planning Commission for their action, he was under the impression that was the purpose for postponing it for two weeks.

Mr. Ben Horack advised that the Petition before Council today was postponed for two weeks and in the meantime the area running concurrently with this property is, on motion of the Council advertised for a hearing on April 20th. He stated they have a dead line of April 10th in which to work out an arrangement with Mecklenburg Laundry, and unless something can be done today it will be water over the dam for his client.

Councilman Jordan moved the adoption of an Ordinance Amending the Zoning Ordinance changing the property of Mr. W. A. Wardell fronting on West Trade Street and on Rozzells Ferry Road (being Lots 17-26, 33 and 34, 79-84 and 89 in Block A of Eleanor Heights), from B-2 to I-1, and on motion of the City Council on March 23rd hearing will be held on April 20th on the adjoining property. The motion was seconded by Councilman Whittington.

Mayor Brookshire asked the City Attorney if Council can rezone to a lesser classification than requested? Mr. Morrissey replied that Mr. Jordan's motion is entirely appropriate at this time to change that which was petitioned for and Council will then be acting on the petition before it.

Mr. Horack read a letter addressed to the Mayor from the Reverend St. Clair, Pastor of Faith Methodist Church, thanking the Mayor and Council for granting his request on March 23rd to withdraw the name of the Church from the list endorsing the change in zoning, until after the meeting of the Church Fathers that afternoon. He stated that the District Locations Committee of the Methodist Church concurred with Faith Methodist Church in the approval of the rezoning of the property and asked that he communicate the information to the Council; that he is most happy to concur in the request of Mr. Wardell to have his property rezoned from B-2 to I-1, as it would seem best for the Church, a Laundry being a neat business and would not be operating on a Sunday.

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~~Councilman Smith stated he would like to get the ruling of the City Attorney straight in this instance he asked if the Council could not approve two of these lots and leave one of them out? Mr. Morrissey stated that is correct.~~

Councilman Smith asked the City Attorney to give Council a ruling as to where three lots are requested rezoned, can Council rezone only two of the lots, leaving the third lot as presently zoned? Mr. Morrissey replied the Council cannot do so under the present law.

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

YEAS: Councilmen Jordan, Whittington, Bryant, Smith and Thrower.
NAYS: Councilman Albea.

The ordinance is recorded in full in Ordinance Book 14, at Page 4.

PETITION NO. 64-14 FOR CHANGE IN ZONING OF LOTS AT END OF OLINDA STREET EAST OF KILDARE DRIVE DISAPPROVED.

Councilman Albea moved that the Petition of Mr. Robert C. Powell, Jr., for a change in zoning from R-9 to R-9MF of lots at the end of Olinda Street east of Kildare Drive be disapproved as recommended by the Planning Commission. The motion was seconded by Councilman Whittington.

Councilman Smith stated the petitioner has a cul-de-sac in this property, that looks like it backs up to business property and he cannot see any detriment to the whole area of duplexes rather than single family houses.

Councilman Albea stated it is a single-family section except the corner lots.

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

YEAS: Councilmen Albea, Whittington, Bryant, Jordan and Thrower.
NAYS: Councilman Smith.

CONTRACTS AUTHORIZED FOR APPRAISAL OF THIRTY TRACTS OF LAND FOR RIGHT OF WAY FOR NORTHWEST EXPRESSWAY.

Upon motion of Councilman Bryant, seconded by Councilman Jordan, and un-animously carried, contracts were authorized for the appraisal of the following land for right-of-way for the Northwest Expressway:

- (a) Contract with Alfred E. Smith for the appraisal of three tracts of land on N. Brevard Street.
- (b) Contract with D. A. Stout for the appraisal of five tracts of land on Johnson and Canton Streets.
- (c) Contract with O.D. Baxter, Jr. for the appraisal of nine tracts of land on Morrow, Plum and Long Streets and Independence Boulevard.
- (d) Contract with Lionel D. Bass, Sr. for the appraisal of six tracts of land on West 11th, Graham, Long, Plum and Morrow Streets.
- (e) Contract with Robert R. Rhyne, Sr. for the appraisal of two tracts of land on College and West 11th Streets.

(continued)

- (f) Contract with James L. Varnadore for the appraisal of four tracts of land on McDowell, Long and Crockett Streets and Independence Boulevard.
- (g) Contract with James L. Varnadore for the appraisal of one tract of land on North Graham Street.

RIGHT-OF-WAY AGREEMENTS AUTHORIZED WITH SOUTHERN RAILWAY COMPANY, NORFOLK-SOUTHERN RAILWAY COMPANY AND STATE HIGHWAY COMMISSION.

Motion was made by Councilman Whittington, seconded by Councilman Albea, and unanimously carried, authorizing the following Right-of-way Agreements:

- (a) Agreement with the Southern Railway Company for the installation of a 12" water main beneath their tracks at a point west of Nations Ford Road at Peachtree Street, in connection with the proposed North-South Expressway.
- (b) Agreement with State Highway Commission for the installation of a 12" water main in a portion of Peachtree Drive and a 2" main in Wally Road, in connection with the proposed North-South Expressway.
- (c) Agreement with Norfolk-Southern Railway Company for the construction of two 8" sanitary sewer lines under their tracks south of Mile Post 383.
- (d) Agreement with the Southern Railway Company for the installation of an 8" water main beneath their tracks in Minuet Street.

CONTRACT AUTHORIZED WITH CONCRETE SUPPLY COMPANY FOR INSTALLATION OF WATER MAINS IN MINUET LANE.

Councilman Albea moved approval of a contract with Concrete Supply Company for the installation of 1,750 feet of water mains and one hydrant in Minuet Lane at an estimated cost of \$8,500.00. The City to finance all costs and Applicant to guarantee an annual gross water revenue equal to 10% of the total cost. The motion was seconded by Councilman Thrower, and unanimously carried.

CONSTRUCTION OF SANITARY SEWER MAINS IN VARIOUS STREETS.

Upon motion of Councilman Bryant, seconded by Councilman Smith, and unanimously carried, the construction of sanitary sewer mains was authorized at the following locations:

- (a) Construction of 90 feet of sanitary sewer main in Old Monroe Road, inside the city limits, at the request of Mr. Arthur Smith, at an estimated cost of \$420.00. All cost to be borne by the Applicant, whose deposit of the entire amount of the cost will be refunded as per terms of the contract.
- (b) Construction of 144 feet of sanitary sewer main in Barclay Downs, inside the city limits, at the request of Jackson Engineering Company, at an estimated cost of \$725.00. All cost to be borne by the Applicant, whose deposit of the entire amount of the cost will be refunded as per terms of the contract.
- (c) Construction of 270 feet of sanitary sewer main in Linwood Street, inside the city limits, at the request of Texaco, Inc., at an estimated cost of \$1,740.00. All cost to be borne by the applicant whose deposit of the entire amount of the cost will be refunded as per terms of the contract.

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- (d) Construction of 125 feet of sanitary sewer main in Custer Street, inside the city limits, at the request of D. C. Gibson, at an estimated cost of \$440.00. All costs to be borne by the Applicant, whose deposit of the entire amount of the cost will be refunded as per terms of the contract.

DOCUMENTS IN OFFICE OF CITY CLERK AUTHORIZED DESTROYED.

Motion was made by Councilman Thrower, seconded by Councilman Albea, and unanimously carried, authorizing the destruction of the following documents in the office of the City Clerk, which are obsolete and of no further use or value to the City, the consent of the State Department of Archives & History having been obtained by the City Clerk in accordance with the provisions of GS 121-5:

CONTRACTS - dated 1922 through 1953, that have been completed covering the purchase of commodities, equipment, supplies and construction of water and sewer lines.

LEASES- dated 1917 through 1959, that have expired or been cancelled.

OATH OF OFFICE -
dated 1909 through 1961 of City Officials, Members of School Board and Commissions whose terms have expired.

PETITIONS - dated 1913 through 1958 where actions have been completed.

STREET IMPROVEMENTS -
dated 1916 through 1953, where actions have been completed.

ANNUAL REPORTS -
dated 1930 through 1957.

APPRAISERS REPORTS -
dated 1926 through 1951.

ANNUAL AUDITS OF CITY ACCOUNTS -
dated 1929 through 1946.

CITY LIMIT EXTENSION PETITIONS -
dated 1949 through 1958.

CLAIMS AGAINST THE CITY -
dated 1930 through 1958 where action completed or statute of limitation has expired.

POLICE AND FIREMEN CIVIL SERVICE PERSONNEL FILES -
dated 1933 through 1953 of personnel no longer in the employ of the City by reason of retirement, dismissal, resignation or death.

ISSUANCE OF SPECIAL OFFICER PERMITS AUTHORIZED.

Upon motion of Councilman Jordan, seconded by Councilman Whittington, and unanimously carried, the issuance of the following Special Officer Permits was authorized:

- (a) Issuance of a Special Officer Permit to John W. Parks, 1209 Arthur's Lane, for use on the premises of the Federal Reserve Bank for a period of one year.

- (b) Renewal of Special Officer Permit to Frank W. Haas, Supt. of Cemeteries, for use on the premises of Elmwood, Evergreen, Pinewood, Fifth Street and Oaklawn Cemeteries.

TRANSFER OF CEMETERY LOTS.

Motion was made by Councilman Jordan, seconded by Councilman Thrower, and unanimously carried, authorizing the Mayor and City Clerk to execute deeds for the transfer of the following cemetery lots:

- (a) Deed with Mrs Margaret H. McCorkle, for Lot 272, Section 3, Evergreen Cemetery, at \$283.50.
- (b) Deed with Mr. Morris R. Ritch, Sr. for Lot 492, Section 6, Evergreen Cemetery, at \$240.00.
- (c) Deed with Mrs W. H. Webster, for Graves 1 and 2, Lot 122, Section 2, Evergreen Cemetery, at \$120.00.
- (d) Duplicate deed to Dr. F. O. Hawley, for Lot 92, Section S, Elmwood Cemetery, at \$3.00.

REAPPOINTMENT OF T. A. LITTLE TO THE AUDITORIUM-COLISEUM AUTHORITY.

Councilman Jordan moved that Mr. T. A. Little be reappointed to the Auditorium-Coliseum Authority for a period of 5 years from the expiration of his present term on April 25th. The motion was seconded by Councilman Albea, and unanimously carried.

CONTRACT AWARDED T. A. SHERRILL CONSTRUCTION COMPANY FOR STREET IMPROVEMENTS ON BRUNSWICK AVENUE AND REMBRANT CIRCLE, AND TRANSFER OF FUNDS FROM EASTWAY DRIVE PROJECT FOR BRUNSWICK AVENUE IMPROVEMENT.

Councilman Thrower moved the award of contract to the low bidder, T. A. Sherrill Construction Company, for street improvements on Brunswick Avenue and Rembrandt Circle, as specified, in the amount of \$35,380.00, on a unit price basis, and the transfer of \$14,079.50 from the Eastway Drive Project, Capital Improvement Code 537.3, for the Brunswick Avenue improvement. The motion was seconded by Councilman Albea, and unanimously carried.

The following bids were received:

T. A. Sherrill Construction Co.	\$ 35,380.00
Crowder Construction Company	37,313.00
Blythe Brothers Company	38,616.25
D. W. Flowe & Son, Inc.	45,095.75

CONTRACT AWARDED ABRAM'S AERIAL SURVEY, INC. FOR TOPOGRAPHIC MAP EXTENSION.

Upon motion of Councilman Jordan, seconded by Councilman Smith, and unanimously carried, contract was awarded the low bidder, Abram's Aerial Survey, Inc., for topographic map extension for the Engineering Department, as specified, in the amount of \$2,655.00, on a unit price basis.

The following bids were received:

Abram's Aerial Survey, Inc.	\$ 2,655.00
Hunting Mapping, Inc.	3,053.00
Aero Service Corporation	3,551.00

CONTRACT AWARDED EARCO PRODUCTS DEPARTMENT OF KOPPER'S COMPANY, INC. FOR 955,000 GALLONS OF EMULSIFIED ASPHALT.

Motion was made by Councilman Albea, seconded by Councilman Jordan, and unanimously carried, awarding contract to the only bidder, Earco Products Department of Kopper's Company, Inc. for 955,000 gallons of Emulsified Asphalt, as specified, in the amount of \$99,507.22, on a unit price basis.

CONTRACT AWARDED CROWDER CONSTRUCTION COMPANY FOR CONCRETE WORK IN CONNECTION WITH THE ADDITIONS TO THE FIRE STATION LOCATED AT DOUGLAS MUNICIPAL AIRPORT.

Councilman Thrower moved the award of contract to the low bidder, Crowder Construction Company for concrete work in connection with the additions to the Fire Station located at Douglas Municipal Airport, as specified, in the amount of \$1,368.00. The motion was seconded by Councilman Bryant, and unanimously carried.

The following bids were received:

Crowder Construction Co.	\$ 1,368.00
Frank H. Conner Company	1,587.00
Byrum Concrete Construction Co.	1,617.50
C. W. Gallant, Inc.	1,940.00

CONTRACT AWARDED BADGER METER MFG. COMPANY FOR 1,200- 5/8 INCH WATER METERS.

Upon motion of Councilman Bryant, seconded by Councilman Jordan, and unanimously carried, contract was awarded the low bidder, Badger Meter Mfg. Company for 1,200 5/8 inch Water Meters, as specified, in the amount of \$34,261.92, on a unit price basis.

The following bids were received:

Badger Meter Mfg. Co.	\$ 34,261.92
Neptune Meter Company	34,608.00
Hersey-Sparling Meter Co.	34,694.52
Rockwell Mfg. Company	35,040.60.

CONTRACT AWARDED HERSEY-SPARLING METER COMPANY FOR 50 - 1 INCH WATER METERS.

Motion was made by Councilman Jordan, seconded by Councilman Albea, and unanimously carried, awarding contract to the low bidder, Hersey-Sparling Meter Company, for 50, 1-inch Water Meters, as specified, in the amount of \$3,162.10, on a unit price basis.

The following bids were received:

Hersey-Sparling Meter Company	\$ 3,162.10
Neptune Meter Company	3,172.40
Rockwell Mfg. Company	3,213.60
Badger Meter Mfg. Company	3,216.17

CONTRACT AWARDED BADGER METER COMPANY FOR 50 - 1 1/2 INCH WATER METERS.

Councilman Albea moved the award of contract to the low bidder meeting the specifications, Badger Meter Company, for 50, 1 1/2 inch Water Meters, as

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specified, in the amount of \$6,175.36, on a unit price basis. The motion was seconded by Councilman Jordan, and unanimously carried.

The following bids were received:

Badger Meter Mfg. Company	\$ 6,175.36
Rockwell Mfg. Company	6,236.65
Hersey-Sparling Meter Company	6,339.65
Neptune Meter Company	6,707.88

The bid of Gamon Meter Division of Worthington Corporation in the amount of \$6,117.68 did not meet specifications.

CONTRACT AWARDED BADGER METER MFG. COMPANY FOR 50 - 2 INCH WATER METERS.

Upon motion of Councilman Bryant, seconded by Councilman Smith, and unanimously carried, contract was awarded Badger Meter Mfg. Company, the low bidder, for 50 - 2-inch Water Meters, as specified, in the amount of \$9,281.33, on a unit price basis.

The following bids were received:

Badger Meter Mfg. Company	\$ 9,281.33
Rockwell Mfg. Company	9,418.84
Hersey-Sparling Meter Company	9,535.23
Neptune Meter Company	9,777.28

The bid of Gamon Meter Division of Worthington Corporation in the amount of \$9,640.29 did not meet specifications.

CONTRACT AWARDED SOUTHERN FLOORING & ACOUSTICAL COMPANY, INC. FOR SUSPENSION CEILING IN COURT ROOM IN POLICE BUILDING.

Motion was made by Councilman Jordan, seconded by Councilman Bryant, and unanimously carried, awarding contract to the low bidder, Southern Flooring and Acoustical Company, Inc. for the installation of a Suspension Vent Tile Ceiling in the Court Room in the Police Building, as specified, in the amount of \$1,239.00.

The following bids were received:

Southern Flooring & Acoustical Co., Inc.	\$ 1,239.00
Tomlinson Engineering Company	1,440.00
Acoustics Incorporated	1,528.00

ACQUISITION OF PROPERTY FOR RIGHT-OF-WAY FOR THE NORTHWEST EXPRESSWAY AND SANITARY SEWER EASEMENTS.

Councilman Jordan moved the acquisition of the following property for right-of-way for the Northwest Expressway, and easements for Sanitary Sewer construction. The motion was seconded by Councilman Smith, and unanimously carried.

- (a) Acquisition of 5,577 sq. ft. of property at corner of North Graham Street and West 10th Street, from Annie B. F. McCoy, at a price of \$26,299.00, for right-of-way for the Northwest Expressway,

- (b) Acquisition of 7,048 sq. ft. of vacant land at 615-17 East 11th Street, from Novella C. Shore, at a price of \$5,750.00, for right-of-way for the Northwest Expressway.
- (c) Acquisition of 7,350 sq. ft. of property at 816 North Davidson Street, at a price of \$6,350.00, for right-of-way for the Northwest Expressway.
- (d) Acquisition of 1,359 sq. ft. of property at 707 North Pine Street, from Clarence C. Dees and Annie Lee Dees, at a price of \$7,500.00, for right-of-way for the Northwest Expressway.
- (e) Acquisition of 22,100 sq. ft. of property at North Tryon Street and 12th Street, from Wachovia Bank & Trust Company, at a price of \$151,500.00, for right-of-way for the Northwest Expressway.
- (f) Acquisition of 9,900 sq. ft. of property at 615 Sunnyside Avenue, at a price of \$20,150.00, from R. S. Smith and Mildred H. Smith, for right-of-way for the Northwest Expressway.
- (g) Acquisition of 16,892 sq. ft. of vacant land on Kendrick, Canton and Maxwell Streets, from Woodrow Hough and Mildred Blakeney Hough, at a price of \$3,000.00, for right-of-way for the Northwest Expressway.
- (h) Acquisition of 3,720 sq. ft. of vacant land on North Graham Street, from Mrs Clayton Mayhew Coone Bradley, at a price of \$4,500.00 for right-of-way for the Northwest Expressway.
- (i) Acquisition of 21,000 sq. ft. of property at 306 West 12th Street, from Investors Realty Company, at a price of \$21,000.00, for right-of-way for the Northwest Expressway.
- (j) Acquisition of 3,960 sq. ft. of property at 317-19 West 12th Street, from William Whitman Spearman, Arlene B. Spearman and Mildred Spearman, at a price of \$5,700.00, for right-of-way for the Northwest Expressway.
- (k) Acquisition of 4,040 sq. ft. of property at 900 North Pine Street, from Mildred R. Ranson, at a price of \$8,000.00, for right-of-way for the Northwest Expressway.
- (l) Acquisition of 7,500 sq. ft. of property at 509-11 Beaumont Avenue, from Mary Doris Huneycutt, at a price of \$12,500.00 for right-of-way for the Northwest Expressway.
- (m) Acquisition of 7,306 sq. ft. of property at 812 North Davidson Street, from Mrs Bessie H. Robinson, etvir R. E. Robinson, at a price of \$5,650.00, for right-of-way for the Northwest Expressway.
- (n) Acquisition of 5,445 sq. ft. of property at 316 East 12th Street, from W. F. Little and Susie C. Little, at a price of \$4,400.00, for right-of-way for the Northwest Expressway.
- (o) Acquisition of 4,752 sq. ft. of property at 520 East 12th Street, from Mrs Gertrude G. Short, at a price of \$4,600.00, for right-of-way for the Northwest Expressway.
- (p) Acquisition of easement 25' wide and 81.85' long in Melbourne Court, from Winfred W. Keeler and wife, Sarah M. Keeler, at a price of \$40.92, for Melbourne Court Sanitary Sewer Trunk Line.
- (q) Acquisition of easement 25' wide and 119.18' long, in Melbourne Court, from Evelyn Joyce Bridges, at a price of \$63.45, for Melbourne Court Sanitary Sewer Trunk line.

- (r) Acquisition of easement 25' wide and 119.69' long, in Melbourne Court, from Glenn M. Forrest and wife, Janet L. Forrest, at a price of \$119.69 for Melbourne Court Sanitary Sewer Trunk line.

ROUTING OF EASTWAY DRIVE-WOODLAWN ROAD CIRCUMFERENTIAL ROAD THROUGH MYERS PARK CLUB PROPERTY AND PURCHASE OF PROPERTY EAST OF THE HIGHWAY PROPOSED BY CHARLES ERVIN, PRESIDENT OF ERVIN CONSTRUCTION COMPANY.

Mr. Charles Ervin, President of Ervin Construction Company, appeared before Council in regard to the proposed Eastway Drive-Woodlawn Road circumferential Road. He presented the Mayor, Council and City Manager booklets which he stated indicated some of the studies they have made with respect to the Road. Mr. Ervin said that his company investigated various routes to see if some reasonable proposal could come up that would be amenable both from the standpoint of the people concerned and the cost, which they did out of a sincere community interest, as it appeared the center section of the proposed Road was the subject of much concern.

He stated that it appears in looking at it, the original route proposed by the Commission is the route which by the time it reaches Myers Park Golf Course hits a stumbling block at that point. That the Federal Bureau of Roads has indicated this is the preferred routing of the Road but the cost of crossing the Golf Course has been the major factor involved. That going further his Company asked themselves would it be possible to obviate some of this cost, or what the best route is to keep the Road away from the schools, and that would least effect residential property. That in doing that, they asked themselves what would happen if the road went through the Golf Course and what could be done with the resulting property. Approaching it purely and simply from the standpoint of a community interest because they do not own any property in or near this location, they have felt if the Road were to come through there, there might be a possibility that the property east of the Road being top-flight residential property, plus whatever right of way was purchased for the Road, might perhaps give the Myers Park Country Club enough funds with which they could purchase outlying land and build a golf course and perhaps retain their base facilities as they now are with their Club House, etc remaining as it is.

Mr. Ervin stated their only reason for getting into this matter at all was out of a feeling of trying to bring something together of community interest, knowing it has been a real problem for the Highway Commissioners, the City Council members and everyone else concerned. That in the booklet presented Council they have included a copy of a letter to the President of the Myers Park Country Club in which they stated if this plan were to come about, they, as builders, would purchase the property east of the Road or highway, or if the Club does not see fit to sell the property to his Company, they will turn over to the Club folks all of the surveying and engineering data they have made, which indicates the residential lots that could be constructed on the property, the development cost, et cetera if the Club wishes to have it. That they also advised in their letter if the Club people wished to discuss the sale of the property to his Company, they will be glad to talk with them at any time they call upon them.

He stated as he has previously said, the only reason for their getting into this at all was trying to bring about some reasonable solution, and he realizes in so doing his Company is placing themselves in a very controversial position perhaps, but he believes that everyone in the city and everyone connected with this proposed Road has the same desire and that is to get the Road properly placed and to go ahead with the progress of the City. Mr. Ervin said he can understand anyone not wanting the Road in front of his home, that he would

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prefer not to have a four-lane highway in front of his home but this is part of life. That being a long-time member of the Myers Park Club and living within five minutes of it, he can appreciate ones preference to have a Club close at hand, but any time he refrains from commenting on a controversial problem he feels he would be stepping down and not being the good citizen he could be. So, this is the results of their studies; all they have done is to put a little crack in the door for the City Council members to consider and for the property owners to consider, and see if there is some possibility of getting together where heretofore there has been no such possibility.

Councilman Jordan asked Mr. Ervin if he has talked with the Myers Park Club people? Mr. Ervin stated he has not, that all they have done is to indicate if the Club would like to sell a portion of their property his Company is ready to negotiate with them toward purchasing it. That they have written them indicating just that, which letter was mailed today.

Councilman Smith stated he thinks Mr. Ervin should be commended for his public-spiritedness for giving the Council something else to consider on this route, which is a possibility and all the engineers have recommended this route.

Mayor Brookshire stated he is sure all of the Council would have him thank Mr. Ervin for his public interest and his efforts in this direction, and he is sure Mr. Ervin realizes this is one of many possibilities that Council has already discussed and is continuing to study, also that any negotiations for the purchase of the property discussed by him would have to be conducted with the Myers Park Club people.

Councilman Bryant asked Mr. Ervin if in case the Club did want to consider such a thing but did not desire to keep as much property as indicated here, would he be interested in purchasing more of the Club property? Mr. Ervin replied that they would be interested, without being presumptuous, and this again forces the complete prerogative of the owners as the Mayor has indicated, and they do not want to be presumptuous. That they will purchase either the parcel he has indicated, or the whole parcel including the Club House if they would like to sell it.

Councilman Smith stated he thinks it should be made clear that Mr. Ervin made this study and survey at the request of the City Officials.

Mayor Brookshire thanked Mr. Ervin and stated he is hopeful that as long as Council has this under consideration it might be helpful not only to the Council but to the Myers Park Club folks in the event anything could be negotiated with them.

COUNCIL REQUESTED TO ADOPT RESOLUTION STATING THE BURGER KING IS NOT A DRIVE-IN RESTAURANT AND NO ACTION TAKEN UNTIL HEARING ON APRIL 20TH ON AMENDMENT TO ZONING ORDINANCE DEFINING A DRIVE-IN RESTAURANT.

Mr. John Shaw, Attorney, stated he appeared before Council several months ago with regard to the Burger King as to whether it is a Drive-In restaurant; that Council has pending before them an Amendment to the Zoning Ordinance, which if passed, they think will leave them about where they are now. That the Amendment as pending states:

"Restaurant with drive-in service. An establishment designed in whole or in part to cater to or accomodate the consumption of food and/or beverage in automobiles on the premises of such establishment."

and they say it does not apply to them, and the Chief Building Inspector's Deputy says it does. That they, therefore, with this language pending before Council - the City's language - would like to get some locations if we may in B-1 territories. That they have a large heated area in the winter time and a large air conditioned area in the summer time but have no provision whatsoever nor do they intend to nor will their franchise let them, for any service to automobile people who will come in. That the only viciousness in their operation, if such there may be, is they have a lot for parking space, which they had to have under the existing ordinances of the City.

Councilman Smith asked what Mr. Shaw is suggesting that the Council do? Mr. Shaw stated he is suggesting that a resolution be passed stating that the Burger King is not a drive-in. Councilman Smith asked the City Attorney where that puts him? Mr. Morrissey stated it puts him at 180 degrees for Mr. Shaw, which he well knows. That the amendment once adopted is up to the Board of Adjustment and not the City Council. Mr. Shaw stated if the Council adopts the ordinance as drawn, and its interpretation should go along with it, it would be very persuasive upon the Board of Adjustment or, if not, in the Court of Law.

Councilman Smith stated from his personal observation he does not think the Burger King is the Council's conception of what a drive-in restaurant is - that a drive-in restaurant is a place serving the cars, with people taking food to their automobile. The Burger King has a restaurant set-up, they do not serve people in the cars, as he has observed, it is all done inside the building. If Mr. Shaw has to wait until the Board of Adjustment acts on it, and he will have no appeal to the Council - that he personally has no interest in the Burger King and has never eaten there, but he cannot see, and this is a hazy distinction he recognizes, holding up the Burger King as a drive-in, and he wishes there was some way the Council could take them out of the drive-in status.

Councilman Bryant asked if the Burger King would be willing to prohibit eating in cars? Mr. Shaw stated he does not know how it could be done, a customer comes into the restaurant and buys his food and if he wishes to take it out to his car and eat it, there is nothing the restaurant people can do about it. Councilman Bryant suggested that the food not be wrapped and put on a tray that is retained. Mr. Fox with the Burger King Restaurant, advised sandwiches would not hold up unless they are wrapped.

Mayor Brookshire stated he thinks the Planning Commission has attempted to give a clear definition of a drive-in and Councilman Thrower stated he does not think it is a clear definition, and he does not think there is anyway you can tell a person where he can eat the food he has purchased.

Mr. Morrissey stated he does not think there is anything the Council can do until the hearing on April 20th on the amendment.

Mr. Shaw stated they have found out from the administrative department what their ruling will be based on this definition if it is adopted, and his client's opportunities are getting less and less to secure locations for additional restaurants. If the Council would say the Burger King is not a drive-in restaurant, they could get started, and get some options on some locations.

Councilman Smith stated he thinks this is an area where the Council is prone to pass the question on to the administrative people to decide. That he thinks possibly the Council should shoulder this responsibility, and he would not object to passing a resolution that the Burger King, as presently operated, is not a drive-in restaurant in its interpretation of the law. That there

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has to be some rule to go by and it is the Council's thinking that this is not a drive-in, and the Council is the one making the law, not our administrator who gives the permit. Council's intent is all important in passing ordinances.

Councilman Thrower stated he believes the Burger King would not be considered a drive-in since they have inside eating facilities.

Councilman Jordan stated at the Burger King you have to go inside to get your food, while at the usual hamburger place you stand at a window and get it.

Mayor Brookshire asked the City Attorney if Council would be within its rights to interpret the present ordinance for Mr. Shaw? Mr. Morrissey replied that it would not. The function of the Zoning Board of Adjustment is quasi-judicial, created for that purpose and the function of the City Council is legislative. That Mr. Shaw knows his remedy well. Pursuing the remedy that he suspects Mr. Shaw trusts would be more fruitful than the other, altho that would remain to be proven of course, the normal function of the Board of Adjustment is the interpretation of the language.

Councilman Bryant stated the only thing the Council could do would be to draw an amendment as Mr. Shaw said. Mr. Morrissey stated he would have to agree. An amendment could be written for the Burger King but there are an infinite variety of this type of establishment for which Council would probably be asked to write additional provisions, which would make the administration of the zoning ordinance difficult.

Councilman Whittington asked the City Attorney to comment on the amendment on which the Council will hold a hearing on April 20th by which the Council was trying to give this particular type of business some leeway. He asked if it was the City Attorney's thought at that time the Council was doing that?

Councilman Bryant commented that he does not believe it was ever said when this amendment was brought up that it was done with the idea of making a leeway for the Burger King; the Council merely asked for a better interpretation of what a drive-in is, without the intent of giving any particular organization a break.

Mr. Veeder asked Mr. Shaw what relief he thinks the Council could give him today if it were willing to do so? Mr. Shaw stated he started into this with the idea of a mandamus and when he got into it he found a weakness in the zoning law; that the City absolutely has no definition of the operation to guide the administrative body, and in his opinion that makes the law defective. So he came to Council and asked for some instructions and Council seemed to agree and asked for a study to be made to attempt to plug this weakness, as he saw it, in the zoning law. Now we have a definition that he does not think has much, they can still meet it because they are not designed in whole or in part for curb service, but as it stands now under the law, or as it may be changed if it is changed in accordance with the holy writ that Council has advertised, an expression by this Board that an operation such as the Burger King now has where you have a building designed with a steam heated area for dining in the winter and airconditioned space for dining in the summer and no provision for outside service, that is not a drive-in restaurant as the City Council in adopting this ordinance intended it to be, then he will have Mr. Morrissey on the bottom of the pile.

Mr. Morrissey stated as he understands Mr. Shaw's remarks, he is suggesting the application of the doctrine of legislative intent to a municipal

ordinance, and so far as he knows our Courts do not even apply that to State legislation but interpret them as they are written, not as the legislative body may have thought they were writing it or intended to have written it.

Mayor Brookshire stated unless Council wishes to do something on its own initiative, we will have to wait until the public hearing on April 20th.

CITIZEN STATES MEMBERS OF COUNCIL OWNING PROPERTY ON BELT ROAD ROUTE SHOULD NOT RENDER DECISION ON QUESTION OF ROUTE.

Mr. Stephen Hawes stated he would like to know just when Council plans to make a decision on the so-called Belt Road, or if they plan to make one? Mayor Brookshire stated those are good questions. Councilman Albea stated they are going to make one sooner or later. Mr. Hawes asked if they plan to follow the Smith report or call in another group of experts? And furthermore, if people living on these roads are going to qualify or disqualify themselves as being impartial or not? That he frankly says he is not; that he represents property owner's on several of the routes but it's his feeling if Council is going to render a decision, they have no right in rendering a decision if they own property on that route.

Mrs Carolyn Hawes asked if the Belt Road was going to take into consideration a safety factor from the standpoint of the children attending the schools, which has been foremost in these public discussions, will the safety of the children when you pick this route up from the east side and place it on the west side of the school, what's going to happen to the safety value there? That she thinks this should be taken into consideration and to those who have children in the school area from the west it should be pointed out why at a higher cost it should be taken from the east and dropped on the west, because she believes from a casual observation of a housewife a terrific number of children are going to be entering school from the Selwyn Avenue area, and if we must have the Belt Road then we must have it, but are we going to have a decline or a construction.

Mayor Brookshire stated let's just say wherever the Belt Road goes maximum precautions will be taken in both design and construction to afford all the safety that can be provided.

Mrs. Hawes stated she knows that or it would never have been brought up in the first place, but is that going to be achieved at a higher cost than the one already submitted by the Highway Department? Mayor Brookshire commented that three routes were submitted by the Highway Commission. Mrs Hawes stated that property in the Myers Park Club area now is moving very slowly because of this impending route and she does not believe that anyone is going to pay a high price for a lot in the Myers Park area and put a \$50,000.00 house on it.

COUNCIL COMMENDED ON DILIGENCE IN EXPLORING ALL ROUTES FOR THE BELT ROAD ROUTE.

Mrs. Evans, a resident of Sharon Road, commended the Council for trying to solve something that is everyone's problem, and said she thinks they are being wise in trying to solve something to which the answer is not an easy one. That the fact Council is exploring every route before making a decision on the Belt Road is for the betterment of Charlotte and she feels if they do not do this and the Belt is put around Charlotte and residential property is damaged, downtown Charlotte will suffer, and Council will not be putting

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a belt around Charlotte but will be putting a noose. That people who live in these high-residential areas will be moving out and will be using the outlying shopping centers, and downtown Charlotte will suffer. That she feels Council should seriously consider putting the Belt Road somewhere that the property is waste land.

Mayor Brookshire expressed his appreciation to Mrs Evans for her understanding of the problem before Council.

RESOLUTION APPROVING A SUPPLEMENTARY AGREEMENT BETWEEN THE STATE HIGHWAY COMMISSION AND THE CITY OF CHARLOTTE RELATING TO PROJECT 8.16537, NORTHWEST AND NORTH-SOUTH EXPRESSWAYS.

A resolution entitled: Resolution Approving a Supplementary Agreement between the State Highway Commission and the City of Charlotte Relating to Project 8.16537, NORTHWEST and NORTH-SOUTH Expressway, was introduced and read, and upon motion of Councilman Whittington, seconded by Councilman Thrower, and unanimously carried, the resolution was adopted. The resolution is recorded in full in Resolutions Book 4, at Page 368.

ADJOURNMENT.

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

Lillian R. Hoffman

Lillian R. Hoffman, City Clerk