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 Joint Hearing

A joint meeting of the City Council of the City of Charlotte, North Carolina, and the Board of County Commissioners of Mecklenburg County, was held in the Commissioner's Room, Fourth Floor County Office Building on Wednesday, January 6, 1971, at 3:00 o'clock p.m., with County Commissioner M. W. Peterson presiding.

PRESENT FOR THE CITY: Mayor John M. Belk, and Councilmen Fred D. Alexander, Sandy R. Jordan, Milton Short, Jerry Tuttle, James B. Whittington, and Joe D. Withrow.

Absent: Councilman John Thrower.

Also present were City Attorney Henry W. Underhill and Acting City Manager Paul Bobo.

PRESENT FOR THE COUNTY: Commissioners Campbell, Lowe and Peterson.

Absent: Chairman James M. Martin and Commissioner Harris.

The Charlotte-Mecklenburg Planning Commission sat with the City Council and, as a separate body, held its public hearing on the petition to amend the zoning ordinance and subdivision ordinance regulating apartment communities and land use controls, with the following members present: Chairman Tate, and Commissioners Albea, Blanton, Godley, Moss, Ross, Sibley, Toy and Turner.

Absent: None.

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INVOCATION.

The invocation was given by Commissioner Claude L. Albea.

HEARING ON PROPOSED AMENDMENT TO THE ZONING ORDINANCE AND SUBDIVISION ORDINANCE REGULATING APARTMENT COMMUNITIES AND LAND USE CONTROLS.

The public hearing was held on the proposed amendments by the Planning Commission to the zoning ordinance and subdivision ordinance pertaining to the development of multi-family for apartment purposes.

Mr. Fred Bryant, Assistant Planning Director, stated his remarks are going to be brief due to the fact that this has been in process for some lengthy period of time. As far as staff participation is concerned, it has been almost a three year period.

He stated there have been a number of hearings, meetings and conferences on this subject, including two full public hearings by the Planning Commission, and one previous public hearing before the combined groups of individuals.

Mr. Bryant stated while they have been engaged in this for some period of time, the problem has not been subsided. In a report the Planning Commission presented some time ago, they brought attention to the fact that in 1961, only 26.3% of the dwelling units permitted in the city and perimeter areas consisted of multi-family units. In 1965, this figure had

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risen to 62.8%. Now, we have just completed the calendar year of 1970 and the records of the Building Inspection Department of the City indicate that 73.7% of all units permitted in 1970 were multi-family units. This figure does not include duplexes.

He stated during the last six months of the calendar year 1970, 78.5% of all units permitted were multi-family in nature. This means that almost 80% of all dwelling units permitted in this area in the last six months were not receiving any overall site review; almost 80% of all dwelling units permitted were not required to conform to any overall pattern of neighborhood development, and almost 80% of all dwelling units permitted were not required to fit in to any circulation system. That these are some of the few reasons we should be concerned about multi-family projects in construction.

Mr. Bryant stated this means about 4 out of every 5 dwelling units which were permitted in the last six months have had no sort of overall review of this nature. He stated the sources of concern which the Planning Commission has had all along are still occurring. For example, within the last month, they have had occasion to discuss property involved in dealing with multi-family housing where at least on two occasions, the accomplishment of the thoroughfare plan may very well be blocked because of the lack of any control over multi-family construction. In at least one case, there was a disregard of flood plain, and the use of flood plain land may occur. That they are still hoping to get cooperation in these instances. They are not a closed issue as yet. The key word here is "hope"; that all the Planning Commission can do here is hope for cooperation; they have nothing to back them up and say that some of these things must be observed.

He stated another incident occurred which shows these regulations are workable. Within the last week, they have given preliminary subdivision approval to the first phase of a street plan that is related to one of the largest multi-family projects ever to be started in our county. In this instance, the developer voluntarily agreed to submit his plan for review by the Planning Commission under these proposed regulations and went one step farther than the regulations because in all instances the buildings he proposes will not fall within 300 feet of either a public or a private street as proposed in the regulations. That zoning was partially granted in unofficial recognition and reliance of the plans which the developer had chosen to show to them. The point is that these regulations have proven to be workable.

Mr. Bryant stated in the Planning Commission's activity in checking these plans, the developer found the site planner on their staff who was reviewing the plans, was able to make some concrete suggestions in terms not only from the city's standpoint but in terms of parking lot arrangements, driveway entrances and in relationships that proved to be quite satisfactory both to the developer and to the Planning Staff.

He stated he would like to call attention to a few changes that have occurred in the regulations between the time they were heard at the last public hearing and now. That all present have received from the Planning Commission statements relative to comments which were made in opposition to the changes at that hearing including a listing of about three changes in the regulations which the Planning Commission did agree to subscribe to. They are: (1) It was agreed that a requirement which was in the proposal for a turn-around at the end of all private streets, that is prior to the time they become a parking lot, could be eliminated. (2) The original proposal stated on private streets (access drives), upright curb and gutter would be required. After discussion and after consideration of the objectives they had in

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asking for this requirement, the Planning Commission agreed that it would be possible to reduce that to only an upright curb. In other words, eliminate the combination curb and gutter installation. (3) In relation to the much discussed Paragraphs 5 (d) and (e) which were the paragraphs which related to some of the guide lines for the preparation and review of the plans, there were some revisions in this written report and basically these two paragraphs were combined as follows:

"Site Planning in proposed developments shall provide protection of the development from potentially adverse surrounding influences and protection of surrounding areas from potentially adverse influences within the development. The site plans shall be designed giving adequate consideration to the size and shape of the tract, to the topography and necessary grading, the reasonable preservation of the natural features of the land and vegetation, the size and relationship of building to the character of and relationship to the adjoining properties. Building arrangements should discourage the creation of long alley ways between the rears of buildings and should discourage the orientation of the front entrance of a residential building towards the rear entrance of another residential building. Consideration should be given to the location and arrangement of recreation and parking areas, the nature and extent of screening, street design and open space design and utilization both in the preparation and evaluation of the site plan and its relations to the surrounding areas."

Mr. Bryant stated these are the only three changes to this point which have been recommended by the Planning Commission from the original version heard at the last hearing.

Mrs. Christina Edmonds stated she is a private citizen and became interested in this when she found there were not regulations in Charlotte which was quite unfortunate for her and her husband. That she felt she would be derelict in her duties and responsibilities if she did not come today and state perhaps these regulations will help protect the citizens in the future in Charlotte from undergoing the same misfortune she has gone through.

She stated if these regulations are passed, they will not benefit her as an individual because there is a good chance she and her husband will be transferred within the next few years. But the three years she has been in Charlotte she has come to love Charlotte and feels these regulations are in the best interest of the whole city. That the question is not whether the regulations are needed as after three hearings everyone agrees these regulations are needed. All you have to do is drive around Charlotte and see what has happened in some incidents because there are no regulations.

Mrs. Edmonds stated she does not really feel the question is are these regulations the best ones that can be devised by the Planning Commission; they have been working on these plans for three years and they are professionals; they have been appointed by the Council who should have faith in the ones they have appointed. That the question really is - are you going to vote on the regulations and decide they are the best for Charlotte on a whole, or are you going to let the fact that the builders are very upset by it influence your decision? She stated she is asking this group, as representatives of everyone in the City of Charlotte, not just the builders, to consider all the citizens and to consider the ecology of Charlotte. That she believes they will decide what is best for Charlotte.

Mrs. Marie Wonsey, speaking for the League of Women Voters of Charlotte - Mecklenburg, stated they support the Planning Commission in its effort to assure that multi-family housing provides safe and pleasant conditions. That certainly everyone can now see lack of consideration for surrounding properties, for appearance, for drainage, for access and for other amenities which might make such properties an asset to the whole community.

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She stated the percent of multi-family housing will necessarily increase along with our rapid urbanization. That it is essential that we use our utmost skill in our planning and our building. That the League may not know anything about building houses but they know a lot about living in them, and they do not want their town in as bad a condition as some cities get in.

Mr. Edward Easton III, representing the Charlotte Section of the North Carolina Chapter of the American Institute of Architects, stated he is a registered architect and the 1971 Chairman of the Environmental Design Committee of the Charlotte Section. He stated this Committee has examined the current proposed regulation at some length and in particular has attempted to focus their study on those areas of specific responsibility to which they have been assigned; that is, design in the environment in which we all must live.

He stated first he would like to state the committee's full endorsement. There was little doubt among these professionals the abuses of good practice clearly visible in our city indicate the need for governmental intervention. That the committee adopted a resolution which contains three suggestions for improvement - two minor and one major change.

Mr. Easton stated the major suggestion deals with an objection to these regulations that has been heard from many; mainly, that good design will perish at the hands of an iron clad numerical rule which will be enforced rigidly. That they, design professionals, are no more interested in having their hands tied than any developer or builder, but they do recognize there are some who will always use freedom to their own advantage at the expense of their fellow citizens and their environment - yours and mine. He quoted the following resolution which was accepted by his committee and endorsed unanimously on January 5, 1971 by the Executive Committee of the Charlotte Section of the North Carolina Chapter of the American Institute of Architects:

"Whereas, for the improvement of our environmental quality, it is obvious that a new approach is necessary for multi-family development in Charlotte and Mecklenburg County.

Therefore, the Environmental Design Committee of the Charlotte Section of the NCAIA unanimously endorses the passage of the proposed multi-family development regulations."

He stated the committee makes the following suggestions with the endorsement and urges the Planning Commission to include in the regulations:

- (a) That the means of providing pedestrian circulation in the proposed development be indicated on a preliminary site plan prior to its review.
- (b) To facilitate the review of the design process under Section 1-3(7) prominent natural features be indicated in the site plan prior to its review. This would include major creeks, rocks and more detailed contour to give more information.
- (c) That in order to permit innovation and quality design, variations from these standards which are in keeping with the spirit and intent of the regulations and which tend to improve the quality of the total environment may be permitted upon the approval of the Planning Commission.

Mr. Easton stated they believe this last suggestion to be critical for the encouragement of good design and well-planned projects. They deeply hope these regulations or any regulations, not set limits to increase design and planning quality. Let us have minimums to restrain the profiteer, the fast dollar man, even to assist the legitimate builder who seeks to maximize his property, but let us concurrently seek to award quality and when it occurs, innovation.

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That it could be argued that this places an excessive arbitrary power in the hands of the Planning Commission. Even if this were true, which it is not, he personally would argue that if we accept the proposition that a public office is a public trust, a comparable degree of trust must be vested in our public officials to do right and not just avoid doing wrong.

He stated if the governing bodies deem future revisions to be necessary, the Charlotte Section of Architects offers its services to help reach an acceptable solution to all.

Mr. Robert Botsford, President of the Charlotte Section of the North Carolina Chapter of the American Institute of Architects, stated the Charlotte Section of the American Institute of Architects recommends that the Charlotte Section of Architects be appointed to invite a representative from the Planning Commission, the Home Builders Association, Charlotte Apartment Association, Charlotte Mortgage Bankers Association, Charlotte Realty Board, Charlotte Chamber of Commerce Housing Committee, and the interested members of the public to meet together and review proposals of various groups submitted for apartment regulations and to coordinate the various items into a compatible ordinance for the benefit of all the citizens of the area.

Mr. Randolph Norton, 5201 Sardis Road, stated he is appearing today on behalf of the Providence Road Development Improvement Association, an association who has appealed to this group before and now calls attention to four things. First, the need for such an ordinance is unquestionable. Even the opponents of the proposed ordinance see the need for this ordinance; the fact that they are submitting a substitute ordinance again underscores the recognition of need out of which this proposed ordinance grows.

Second, the delay in adopting and implementing this ordinance is permitting the ugly apartment "horse" to get out of the regulatory "barn", thus jeopardizing the character of many established neighborhoods.

Thirdly, their association suggests this ordinance as proposed is in no way unchangeable. It is highly changeable, and experience in implementing it will dictate the changes as we go along.

Fourth, their association is in no sense "anti-apartment". They accept the fact that portions of their own neighborhood are zoned for apartment development; there are hundreds of homeowners who look to this group as protectors of their interest and the interest of the public; hundreds of homeowners who pay hundreds of thousands or millions, of dollars in taxes. They believe the guidelines of the regulations, by which this group can provide this protection for the public's interest are clearly set forth in the proposed ordinance. That they earnestly and respectfully request adoption of this ordinance without delay and after the implementation of this ordinance and under the guidelines of this ordinance, let experience guide us toward a better city and a better town in which we can all live.

Mr. Jim McDuffie stated he would like this group to assure him that they are regulating apartment buildings to protect the interest of residential communities so they can have proper space between the buildings; they will have playground areas; that the streets will be added; that driveway entrances will be proper.

He stated northeast Charlotte has more apartment complexes than any other area in the city and he could not believe, until he read the proposed ordinance, that there were not already more strenuous regulations than there are. That he just cannot believe this group would allow apartment developers, many of them out-of-town owners, to come in and build every square inch allowed.

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He stated the public is wondering if this group really has their interest at heart when these regulations have been needed for years. He stated hundreds of apartments have sneaked in while this has been discussed and he would hope they can get this voted through today.

Mr. Ben Horack, attorney representing the Charlotte Home Builders Association, passed around a substitute ordinance regarding multi-family dwellings, and asked the Council and Commission to study it and adopt three changes.

That No. 1 is a memorandum which is simply a capsule explanation of the changes recommended by the Home Builders Association. He stated the second item is the substituted ordinance proposed by that association and the third item is the ordinance as recommended by the Planning Commission.

Mr. Horack stated the Charlotte Home Builders Association would like to go on record as being very much interested in getting a workable ordinance with reference to apartment development, so there is no quarrel with the overall objective of the Planning Commission as far as the desire to improve the design and development and layout of apartment development and related matters.

He stated the developers have evidenced that interest in the past with tennis courts, swimming pools, bicycle trails and air conditioning, which is simply another way of saying that the industry itself and most certainly their local association has a vital interest in promoting improvements.

Mr. Horack stated the association does not suggest that there are not plenty of apartment developments, some of them recent, that have fallen not only short of the ideal, but in varying material respects have fallen short of the mark as to what ought to be done and what ought to be done voluntarily. It is found to be a bit discouraging if statements in the press are reasonably correct to the effect that the Planning people on the one hand have commended the many very fine developments of apartments that have been involved in our community whereas at the same time suggested there is no apartment development which would satisfy the requirements of this ordinance.

The main concern of the Association is that the proposed ordinance is designed to reach out too far in its control over apartment developers; that in their desire and zeal to eradicate some of the referred to abuses in apartment development, they feel the reach out has been too great. That it has been mentioned if this body does not go ahead and vote, then it indicates a lack of faith or a lack of trust, in public officials and that they should not delay a moment.

He stated the objections of the Home Builders Association are in two generalized categories with reference to some specific standards that are prescribed in the Planning Commission's recommendation. As already indicated the primary objection is not the objective but the method employed. They feel the proposed ordinance has vested in the Planning Commission too much discretion, too much control over the design, development, layout, identifiable standards and guidelines. The retention of this broad power and control on the part of the Planning Commission is accomplished by a combination of methods. One it undertakes to subject this department of element ordinance to the broad division of the subdivision ordinance which gives in some respects, very wide control over the development of single family developments. Such things as control over the details and site plans, streets and development.

Mr. Horack noted several revisions in the Planning Commission's original ordinance and the ordinance presented today. He explained in detail the changes in the two documents.

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After discussion, Mr. Horack stated the association has no objection to alleviating the abuses regarding apartments, but that is no excuse for charging forth with a basic ordinance which creates a blank check which can go over to suggestive evaluations of whomever is administering the thing at the time.

Mr. Lex Marsh stated he is in favor of about 75% of the proposed ordinance; he is indifferent to about 15% and he is vehemently opposed to about 10%. That his company owns and operates about 1,000 apartments; that he thinks his tenants are 1,000 times as important as he is and he thinks he is relatively unimportant.

He stated about 80% of Charlotte's residents are going to be apartment dwellers in the future at the current rate of construction as compared to single family housing. It might be said therefore in the interest of tenants and the public are pretty well in line if 80% of the public is living in apartment units, aren't we all in the same category? He does not feel it makes a lot of difference to the tenants if he goes broke, but it is important for prospective tenants that his company and other developers be allowed and encouraged to build another 1,000 units in the next few years.

Mr. Marsh stated in the City of New York there is a battle in the courts, tenants vs. owners; it is the most over-regulated area in the country without any doubt; they still have rent controls as a carry over from the World War II days. That today they have the most chaotic situation and the greatest scarcity - that it is harder to find an apartment in New York than in any area in the entire country.

He stated in the year 1962 there were 10 times as many apartments permitted as was the year before last; the rules were tightened up drastically; the builders quit building - that was not in the interest of prospective tenants; that was not in the interest of the public because ninety percent of the people in New York live in apartments. How can you disassociate the interest of the tenant from the interest of the public?

Mr. Marsh stated there has been a great overwhelming physiological change in the past few years; it is an accelerated thing that threatens to overcome every other consideration that goes through the minds of the average tenants - that he is referring to security and privacy. Security is the all important element of apartments today. That he makes a practice as a business matter of going to California and Florida each year to study apartments. The thing that has impressed him the most is that almost all the apartments advertised, offered and emphasized the security element. The larger apartments are properly policed so that when someone makes a call there, he identifies himself and gives the name of the person he wants to see. That he appreciated this security measure and this is what the public really wants.

He stated the traffic hazard is minimized by a private street. One reason is because the traffic load is minimized. If this proposed ordinance is adopted, we are going to play right into the hands of criminals and away from the best interest of tenants and he submits the best interest of tenants is the best interest of the public.

Mr. William A. Trotter stated he is in the home building business and Chairman of the Committee associated with this particular problem; that his membership is unanimously in agreement on this particular subject because the matter is of such importance to the community and may have such specific and direct knowledge of what the effect of the proposed ordinance would be.

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He stated finding a home for your family is an emotional experience and people are not quite themselves but have a definite plan for their home. The first thing they learn is there are going to be some compromises; that our pocketbooks are not going to stretch and we are not going to be able to buy what we want to buy. We are going to have to compromise and possibly remain where we do not want to be for a good many years to obtain this dream house; some of us never attain it.

Mr. Trotter stated this compromise is the essence of their profession; whether in apartments or single family. They have to effect this compromise for people; everyone would like 10 acres of land ^{and} 4 bedrooms; they have to find what people want and what they can pay for. This is their role; that they represent the purchasing agent for families yet unborn. He presented a drawing to show an example of what the proposed ordinance would require for apartment houses.

Mr. Jerry Workman, Manager of the Apartment Division of Ervin Company, stated they all agree some changes are needed in the apartment ordinance, regarding setback and width between buildings, and in most cases, we have reached some sort of agreement. The two areas which they have not been able to agree on are public streets and the undefined restrictions and power placed in the hands of the Planning Staff. That he is talking about the restrictions to be placed on the builders in any undefined manner. He urges that this group consider their alternate proposal, give due consideration, and pass it.

Mr. Tom Cox, Manager of Dwight Phillips Company, stated he has been a staunch advocate of planning and zoning for the City of Charlotte for years but the placing of this much power in the hands of individuals can be a deadly thing for the developers. The developers do not disagree with 90% of the proposed ordinance but let us not leave the approval or disapproval of permits to the personal whims of any individual, whether he is on the staff now, or in the future, because his capricious acts or deeds could make or break any project that might be forthcoming.

Dr. Reginald Hawkins stated he is somewhat confused after reading this ordinance regarding the social and economic implications. That he is concerned about what this will do to builders and sponsors in the area of low-income houses. These people cannot afford to pay \$200 or \$250 per month for an apartment. It is already most impossible to find a builder to build apartments for the type of people that he is talking about under government or private sponsorship because of the price of land. What about these people? He is not against the ordinance per se but is asking that there be a consideration in this ordinance to make sure that we do not have everybody out of the market who is interested in low-income housing for people who live in the City of Charlotte.

Mr. Frank Rose stated he is a private citizen with a lot of faith in Charlotte and he speaks for a majority of Charlotte when he congratulates the Planning Commission for the emphatic 6-2 vote on November 12, approving the final ordinance draft on uniform regulations of construction of apartment complexes; that the Planning Staff has worked for nearly three years, starting back in December 1967, to come up with what they thought was the best for the City of Charlotte.

He stated he owns no real estate except his home and has no axe to grind, but he wrote a letter on July 26, 1968 to the Planning Commission because he was alarmed when he read of the lack of proper regulations regarding apartment complexes; that three years have gone by since attention was first given by the Planning Staff to this serious problem. In addition, some 22 recorded Planning Staff Conferences and Meetings were held; in the past nine months, there have been 5 public hearings and 4 separate conferences with various organizations involved. In addition to that, from March, 1970 until December 8, there have been 7 Observer and TV editorials urging this governing body to pass these regulations as revised

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and long overdue. During this delayed action, builders have raced to beat the Code; in August permits were granted for 565 new apartments, in September, 1968; in October permits were granted for 1,230 new apartment units; in November 437; December 545; for a grand total in five months of 2,845 new apartment units. Many of these will not be built for perhaps a year or two but because these permits were obtained prior to the adoption of the new ordinance, it will not apply on these 2,900 apartment units yet to be built.

Mr. Rose stated the 365,000 taxpayers this governing body represents hope and pray they will enact the city and county ordinance as requested by the Planning Commission as it is in the best interest of Charlotte-Mecklenburg.

Mr. Bill Allen, representing the Charlotte Apartment Association, stated he would like to suggest that the two objectives sought here be split apart. First, we are trying to regulate the design of the apartment and, secondly, we are trying to prescribe a method of getting public streets across private land. He would like to suggest that the question of public streets be put off until it can be considered in conjunction with industrial parks, office parks and shopping centers, where it more properly belongs and go ahead and get the question of apartment design and control of regulation out of the way.

That his organization would be glad to sit down with the Planning Board and with others and talk about the question of streets later but this should be divorced from apartment design.

That no one in this room questions the need for control of apartments; the only question is how. There are two ordinances before this body and the philosophies behind these two ordinances are as different as night and day. The one submitted by the Home Builders and other allied groups is an ordinance that prescribes the regulations in black and white and makes them crystal clear in no uncertain terms; the ordinance submitted by the Planning Commission is nebulous, subjective, a blank check which gives no protection or guarantee of equal protection of law and due constitutional process.

Mr. Allen stated land use and zoning are important but not nearly as important as the basic principles of due process and equal protection. These take precedence over land planning, and zoning. That fortunately we can have both by adopting the industry's ordinance. Builders will have the security of advanced planning, builders can buy land and make plans; bankers can make commitments; realtors can sell packages with the assurance that they can be carried out. This is like a ticket on a one way railroad, good this one day and this day only, and in this direction, because you do not know who will be sitting on the Planning Board, or the Commission, or the Council tomorrow.

He stated there is also the question of legislation versus administrative functions. That this governing body is composed of legislators and he suggests it is improper for them to function as an administrative body concerning itself with the location of every driveway, every walkway and every piece of shrubbery; that is best left to an administrative body. It is their job and duty to write law for the administrator to administer.

Mr. Allen stated the first to suffer from the proposed ordinance will be the low-cost housing. They are the first victims because with low cost housing the builder is hard-put to comply with regulations that you do not know in advance what they mean. This restrictive, punitive code will reduce the total number of houses because of the delay to the builder in building it but by putting obstacles in his way.

Also speaking against the proposed ordinance were Mr. Chester Brown, representing the Charlotte Mortgage Bankers and Mr. Morris Seavers, a local surveyor.

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ORDINANCE ON PROPOSED AMENDMENT TO THE ZONING ORDINANCE AND SUBDIVISION ORDINANCE REGULATING APARTMENT COMMUNITIES AND LAND USE CONTROLS TO BE PLACED ON BOTH CITY AND COUNTY DOCKETS FOR ACTION JANUARY 18, 1971.

Councilman Whittington moved subject ordinance be placed on the City and County Dockets for action on January 18, 1971. The motion was seconded by Councilman Jordan, and carried unanimously. The County Commissioners also voted to place this on their docket for January 18.

COMMITTEE NAMED TO REPORT BACK TO CITY AND COUNTY BOARDS BEFORE JANUARY 18, 1971.

Councilman Whittington moved that a member of the City Council, a member of the County Commissioners, a member of the Planning Staff and a member of the Home Builders Association get together and see if any of these disagreements can be agreed upon in perhaps a more moderate way, or a more strenuous way, before the meeting of the 18th and report back to these Boards before the 18th of January. The motion was seconded by Councilman Withrow and carried unanimously.

ADJOURNMENT.

There being no further business, the meeting was adjourned.

Louise Comfort

Louise Comfort, Deputy City Clerk