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A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, City Hall, on Monday, February 28, 1972, at 2:00 o'clock p.m., with Mayor John M. Belk presiding, and Councilmen Fred D. Alexander, Sandy R. Jordan, Milton Short and Joe D. Withrow present.

ABSENT: Councilmen James D. McDuffie and James B. Whittington absent at the beginning of the meeting.

The Charlotte-Mecklenburg Planning Commission sat with the City Council, and, as a separate body, held its public hearings on the zoning petitions, with Chairman Tate and Commissioners Albea, Boyce, Finley, Godley, Moss, C. Ross, J. Ross, Sibley and Turner present.

ABSENT: None.

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INVOCATION.

The invocation was given by Councilman Milton Short.

MINUTES APPROVED.

Upon motion of Councilman Jordan, seconded by Councilman Withrow, and unanimously carried, the minutes of the last meeting, on Tuesday, February 22, 1972, were approved as submitted.

RESIGNATION OF PATRICK N. CALHOUN FROM CITY COUNCIL ACCEPTED WITH REGRET.

Councilman Jordan moved that Council accept Councilman Patrick N. Calhoun's resignation from the City Council with regret. The motion was seconded by Councilman Short, and carried unanimously.

Following is Mr. Calhoun's letter of resignation:

"February 22, 1972

The Honorable John M. Belk
Mayor of Charlotte and
The Charlotte City Council
600 East Trade Street
Charlotte, North Carolina 28202

Gentlemen:

It is with sincere regret that I tender my resignation as a member of the Charlotte City Council, effective immediately.

As explained in the attached statement, I wish to remove all possibilities of any problems that might jeopardize the successful completion of the proposed redevelopment of Charlotte's downtown area. My advisers are agreed that the best way to do this is simply to resign.

I am sorry to sever our relationship because I have enjoyed working with each of you. I believe strongly, however, that the importance of what the Mayor and Council are trying to accomplish for our city in the redevelopment project far transcends any personal feelings or ambitions I might have.

Sincerely yours,

(Signed) P. N. Calhoun
Patrick N. Calhoun"

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COUNCILMAN ALEXANDER LEAVES MEETING.

Councilman Alexander left the meeting at this time and was absent for the hearing on Petition No. 72-6 by C. D. Spangler Construction Company for a change in zoning of property west of Beatties Ford Road and south of I-85.

Mayor Belk stated there were four members of Council present to begin the meeting and Councilman Alexander withdrew and asked the City Attorney for a ruling.

Mr. Underhill, City Attorney, stated Councilman Alexander was present at the opening of the meeting and he can still be present for the purpose of constituting a quorum. However, if at any point in time, Council comes to take a vote, then you will have to stop the meeting. But for the purpose of continuing the hearing, it is alright to go ahead.

HEARING ON PETITION NO. 72-6 BY C. D. SPANGLER CONSTRUCTION COMPANY FOR A CHANGE IN ZONING FROM R-6MF TO B-1 OF A PARCEL OF LAND WEST OF BEATTIES FORD ROAD AND SOUTH OF INTERSTATE HIGHWAY 85.

The scheduled hearing was held on the subject petition.

Mr. Fred Bryant, Assistant Planning Director, stated this represents a request for a change in zoning in an area that at present is undergoing some changes as far as the road system is concerned. It is in an area near I-85 and Beatties Ford Road interchange. The subject property is located in an area in which a new service road is being placed. The Beatties Ford-Interstate 85 interchange is undergoing some rather drastic changes as part of the Interstate-77 - I-85 project. The service road for Beatties Ford Road now parallels I-85 and comes up into Beatties Ford Road and it is being relocated to a point considerably south of the present interchange area, and will intersect Beatties Ford Road at a point opposite Gilbert Street. The subject property is located on both sides of the relocated service road. The property is vacant and is adjoined on the west by single family residential housing fronting on Senior Drive; to the south it is vacant property for a short distance up to the property which now belongs to the House of Prayer. There is a service station in front of the property on Beatties Ford Road; west and to the rear of the property is the West Charlotte Community Center; and then the West Charlotte Senior High School. University Park Baptist Church is located at the corner of Keller Avenue and Senior Drive, and a shopping center is located in the area between Keller Avenue and comes down to LaSalle. The new Fire Station No. 18 is located on Keller Avenue. Along Beatties Ford Road is a variety of principally retail types of commercial establishments in the general vicinity. Around the subject property immediately is single family uses to the west, vacant land to the south and north, and one service station structure to the east along Beatties Ford Road.

He stated along both sides of Beatties Ford Road the zoning is principally business zoning, beginning at LaSalle Street. The subject property is adjoined on the Beatties Ford Road side and Interstate-85 side by existing business zoning; it is adjoined to the south by R-6MF; to the west, along Senior Drive is a pattern of single family residential zoning.

No one spoke for or against the petition.

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

COUNCILMAN ALEXANDER RETURNS TO MEETING AND COUNCILMAN MCDUFFIE ENTERS MEETING.

Councilman Alexander returned to the meeting at this time, and Councilman McDuffie came into the meeting.

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HEARING ON PETITION NO. 72-7 BY W. T. COZART AND JAMES W. COGDELL FOR A CHANGE IN ZONING FROM R-12 TO O-15 OF A TRACT OF LAND ON THE NORTHEASTERLY SIDE OF RANDOLPH ROAD BEGINNING AT WENDWOOD LANE AND EXTENDING IN THE DIRECTION OF BILLINGSLEY ROAD.

The public hearing was held on the subject petition.

The Assistant Planning Director advised this request consists of approximately 11 acres of land located on Randolph Road. The property is predominately fronting on Randolph Road, although a small amount of frontage is on Wendwood Lane; the property is vacant; it is adjoined on the intown side by one single family residence on Randolph Road. That the Randolph Clinic is located on Randolph Road and Billingsley Road in the area. Along Billingsley are single family residences, and a church. To the south of the property are large acreage tracts occupied by single family residential structures. Across Randolph Road is a residence at the intersection of Meadowbrook Road, and basically vacant land for the remainder of the opposite side of Randolph Road.

Mr. Bryant called attention to the heavy dashed lines on the map and stated it reflects the approximate location of the Wendover Road-Eastway Drive Belt Road proposal. He stated the subject property is zoned R-12 as is everything on the map from that point south along Randolph Road, Wendwood and Churchill. Adjoining the subject property to the north and along Billingsley Road the zoning is R-6MF. The line separating the multi-family zoning from the single family zoning lies along the northern property line of the subject property.

Mr. John Ingle, Attorney for the petitioners, stated they have entered into a contract to purchase this property. The present owners of the property are the Charlotte Scottish Right Bodies and the request is to rezone the property from R-12 to O-15.

Mr. James Cogdell, one of the petitioners, pointed out the proposed Belt Road, and stated he would also like to call attention to the dotted line. That he personally has gone out and made a survey in the community, and discussed with the people in the community the facts of what they would like to do with the land. In doing so, out of approximately 55 families in the community, they talked to approximately 33 and all concurred they would like the type of planning for the area.

Mr. Cogdell stated they plan a medical complex for the growing portion of Charlotte; that it will be about the largest in the southeast and will be a medical co-op where all the doctors in the Mecklenburg County area can use an office. It is totally medical related to doctors' offices. The individual doctor would have a private practice in this building. In lieu of one large building, the architects have designed four small buildings. Along the property line on the southern part of the property is a small creek. Between the creek and the first parking area is a heavily wooded area that will be left in its natural terrain. A little up the road they have also given another heavily wooded area. This is a natural buffer between the residential community across Randolph and the community on the south side of Randolph Road. The buildings on the north side of the property have been designed with equal setbacks to the Randolph Clinic. The buildings will be two, three, four and five stories, with basically all the roof elevations to be equal in height due to the topo of the land sloping downward. The first two buildings will be two and three stories and as they move back four stories with possibly the last building five stories. This is a five year project. The two smaller buildings on the front will be constructed first. They have asked for O-15 zoning as it will blend to the landscaping and to the community. A lot of the land will be donated to landscaping and for parking and for its natural beautification.

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Mr. Ingle stated they plan to render a full line of medical services. There are about 14 or 15 doctors' offices or clinics out Randolph Road. It is just a little over a mile from both Presbyterian and Mercy Hospitals. This would be an asset to the community and an asset from the standpoint of medical services to be rendered in the community.

Mayor Belk asked if the petitioners will give the land to widen Randolph Road for egress and ingress into this property? Mr. Ralph Brice, Architect, replied they have discussed this with the engineers, and one of the proposals is that Randolph Road will be straightened out. By widening and straightening the road it will benefit the center as well as the highway. The owners have agreed to this. Also there is a possibility of working out a parking agreement with the Randolph Clinic and this would allow some traffic to go in and out on Billingsley.

Mayor Belk asked if the Park & Recreation option has run out on this property? Mr. Ingle replied Mr. Walker, Chairman of the Commission was supposed to be here. That the Park & Recreation Commission had an option on the property last year, and they made application to HUD for matching funds to locate a park in the area to serve this community. There were three suggested sites for this park. One of them was this particular property, and another was on Craig Avenue and another on Sharon Amity. That he has talked to Mr. Walker and he says the one on Craig Avenue was second choice of the Commission; that it is available and is somewhat larger and would be less expensive for the Commission to obtain. That as far as Park and Recreation is concerned this would be a suitable alternative for this park site.

Councilman Alexander stated if Park & Recreation has released its option on this property, then for the record someone from the Commission should come before Council and say this has been done, and why it has been done.

No opposition was expressed to the proposed change in zoning.

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

Later in the meeting, Mr. Ace Walker, Chairman of the Parks & Recreation Commission appeared before Council and stated this property was initially scheduled as a site for a community center and district park by the Park & Recreation Commission, and was the subject of an application to the Department of Housing and Urban Development for matching funds. The Commission, as a whole, is fully aware of everything that has developed in the past 60 days relating to this site. The original option was for six months and it expired in September. At that time, it seemed to the Commission that six months was adequate and they expected to make in May or June an application to HUD and had reason to believe the application would receive preliminary approval within 60 days. As it turned out the parks portion of the Housing and Urban Development funding programs was pre-empted by the Nixon legacy of park programs, and there was a complete turnover of the administrative over-lay involved in it. They issued a new set of regulations; they moved the administrating office from Atlanta to Greensboro and in the process our application was not acted upon. There was no indication that it was in any way deficient; it was simply not acted on. In September, in the case of the Randolph site and other sites under option, the Commission attempted to obtain extensions and did so on all the options. Time passed and no results were forthcoming from HUD and in December, the 11th was the expiration date of this particular option, an effort was made to obtain an extension, and they were not able to do so. This would have been the second extension of the option if they had been able to obtain it.

Mr. Walker stated they ultimately boiled the southeast section down to two sites. Both sites were within the perimeter recommended by the Planning Commission staff as the location of a community center. The second site which was the first choice of a minority of the Commissioners is farther out in the Randolph-Cotswold area; it is near Walker and Craig Roads. The site on Randolph Road is about 1/2 mile from the center of Grier Heights Subdivision, and the other site is about 1-1/4 mile from

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that location. It is equally accessible; the ground cover and topography do not leave a lot to be preferred between the two. The reason a majority of the Commission initially preferred the Randolph Road site was because it was the opinion the people in the Grier Heights community were less mobile than other sections, and that the doubt about the location should be resolved in favor of the proximity to that section. On the other hand there was a minority of three out of seven commissioners who favored the other site, and they are now proceeding to look seriously at the other site with a view to locating the park, and the community center there, in the event they find that the Randolph Road site, as it appears, is no longer available to them on reasonable terms.

Mr. Walker stated there is an acceptable alternate site, and one that is preferable to three out of the seven commissioners, and they are looking into the possibility of arranging some sort of transportation for the people from Grier Heights area into this community center. He stated the Park Commission does not have any official position in favor of or in opposition of the zoning petition in this particular case. They do not believe it is their place to have an official position.

Councilman McDuffie asked if it will be necessary to amend the request to HUD? Mr. Walker replied we do have to amend the request; that he hopes that application is not as far away from approval as it has been. That he understands from Mr. Connerat that we can amend the request.

Councilman Alexander stated since it was community knowledge that the Randolph Road site was preferable as a park location, and since the community feels that will be where one will be located, he asked if it would not be wise to call a community meeting and let the people know what the situation is.

Mr. Walker replied he is under instructions from his Commission to do just that. The only thing he has been in doubt about is the timing. That he felt it was premature to do it before now; but he intends to get in touch with Mr. Polk and other leaders in the Grier Heights area to see if they will arrange a community meeting so they can explain how this matter has developed, and explore ways of making this new facility more acceptable to the people in the area.

Councilman Alexander suggested that this be done as quickly as possible.

Mr. Joe Millsaps, representing Randolph Clinic, stated he is also speaking for the ABC Board to some degree. That they are next door towards the city and are not opposed and are interested in bargaining with these people.

HEARING ON PETITION NO. 72-8 BY T. W. SAMONDS, JR. FOR A CHANGE IN ZONING FROM O-6 TO B-1 OF A PARCEL OF LAND 220' X 174' BEGINNING 65 FEET WEST OF SHARON ROAD AT A POINT OPPOSITE COLTSGATE ROAD.

The scheduled hearing was held on the subject petition.

Mr. Fred Bryant, Assistant Planning Director, stated the requested area to be rezoned does not physically front on Sharon Road, but is associated with Sharon Road from an ownership standpoint. It has on it a residential structure; to the rear is basically the area of SouthPark Shopping Center. South of the property is a strip of vacant land and a service station at the intersection of Fairview and Sharon Road. North of the property is a dog kennel which has been operated in the area for a number of years. Beyond that is a residential structure which is vacant. Across Sharon Road is principally vacant land, with Coltsgate Road being the street running from Sharon Road and there are a number of single family structures along that road. To the south of the property, beyond the Gulf Service Station, are two more service stations.

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Mr. Bryant stated there is B-1 and B-1SCD zoning around the intersection of Fairview and Sharon Road; all the area encompassed by SouthPark Center is zoned B-1SCD. The subject property and the property north of it is zoned O-6 as is the property on the east side of Sharon Road. Along Coltsgate there is residential classification. With the exception of the small area shown on the map, the property on the west side of Sharon Road is zoned business, and the property along the east side is zoned office, with business zoning beginning near Fairview and continuing southward from that point.

Mr. Robert Perry, Attorney, stated he represents the owners of the property as well as Hardees who has an option to develop the property with a Hardees Restaurant. The only objection to this could be traffic. Hardees do tend to generate some traffic, and at peak hours there is some turning in and going out. At present a part of Sharon Road is being broadened to a very wide road, and at some time in the near future it will be extended right past the property in question. That he does not feel the shopping people are in any way objecting to their petition. He stated Hardees does not plan to build their usual facility at this location; this is designed and will be further re-designed to blend in with the SouthPark motif and the appearance of that shopping center.

Mr. Perry stated at Morrison Boulevard a big Esso Service center is being built. He pointed out the Texaco Station, Gulf Station, Humble Oil Station, and Union 76 Station. Lined up are the City National Bank, the North Carolina Savings and Loans, and then the SouthPark Shopping Center area. He stated they are not asking for rezoning up to Sharon Road. One of the reasons is the fact this will require them to build this building back. There is also the question of the effect from the standpoint of a protest petition. The facts are that a protest petition could have been entered by Mrs. Porter, but no such protest petition has been filed. This property is bounded on all sides by either O-6 of a rundown nature where the Kennel is located; on the other side is B-1SCD for the Shopping Center. They feel from a traffic standpoint that it cannot be demonstrated that this will have any unfavorable effect to the area. Traffic will be there; the only question will be at the peak hours with the turning in and leaving. Police officers are provided at other facilities. That if there is any effect on traffic at all it will be local traffic. He stated they feel they are not in a business property, and there is no logical reason for this property to be zoned office institutional. There is a great deal of vacant property on the other side of Sharon Road which does not require protection; that property is zoned office institutional; it is restricted against development for that purpose; that he does not feel there is any danger of any residential property being built there. If it were built there after the rezoning, it would be done with full knowledge that one more small business has been established in the neighborhood. This will provide a much needed short order facility which will not only provide food service for the people in the neighborhood, but also the people in the shopping center.

Mr. Crutcher Ross asked how they propose to enter the property? Mr. Perry replied the only way it can be entered is from Sharon Road. Mr. Perry then presented a sketch of the proposed building which he explained. He stated the building will be built on the very back of the property, with some parking to the rear.

Mr. Lloyd Caudle representing Mr. & Mrs. A. A. Porter and several of the residents of Coltsgate Road stated these residents of Coltsgate are probably the ones most directly affected by this petition, and they do oppose the rezoning.

Mr. Caudle stated the logic escapes him as to why they choose to ask that a piece of property be rezoned off Sharon Road, and that a 65 foot parking strip adjacent to Sharon Road not be included in the petition when the traffic flow into and out of the facility would be Sharon Road. For all practical purposes the allowance of the petition would be tantamount to rezoning the strip.

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Mr. Caudle stated from the SouthPark Shopping Center area to the service station is zoned O-6. The petition does not seek to rezone that entire strip but only a portion of it. That it does not make for good planning to zone in a piecemeal manner such as that. On the east side of Sharon Road is office institution so there is a situation where for a distance of approximately 400 to 500 feet on both sides of Sharon Road it is now zoned for office institution. When the petitioner tends to belittle the traffic problem which to the protestants is one of the most major points involved, it escapes him as to how one could say that what is now an almost intolerable traffic situation is not going to be further compounded when if the reports are true this is designed to be the world's biggest Hardees hamburger place. At present additional lanes on Sharon Road are in the process of being constructed; there are plans for extending Fairview and creating four to six lanes. Coltsgate Road is less than a city block from this intersection. That he understands the Highway Department contemplates a median down Sharon Road for a distance. The existing traffic situation out there now makes it almost impossible for the residents of Coltsgate to enter Sharon Road. With the Hardees being directly across the street it will create a situation to where it will be almost impossible for the residents of Coltsgate to enter from Sharon Road even without the traffic divider. He stated this is only a couple of blocks from Sharon School; this is a fine residential neighborhood down Coltsgate Road. Foxcroft is at the rear of Coltsgate Road. He stated from the standpoint of traffic and esthetics he believes the petition should be denied.

Mr. Robert Potter, Attorney, stated he is a resident of Coltsgate Road; that if this was going to be a nice restaurant he would not object to it. That frankly he does not want any hamburger joints on Sharon Road. When you get this out there you will wind up with everything between there and Sharon View, such as Lums, Kentucky Fried Chicken, McDonald's and Arbee's and it will look like Independence Boulevard or South Boulevard. That he did not come up and object to SouthPark and he does not object to it now. There are five restaurants in SouthPark. Where is the need for another unless you want to come in there on Sunday and disturb the peace of the church which is right down the street and the residents in the area, and SouthPark too. He stated he is not too concerned about the traffic as he does not think it could get any worse. That unless he leaves his home by 6:30 or 7:00 in the mornings it takes from five to six minutes to get out of his road. That it could not get any worse except on Sunday; now they will have the traffic seven days a week instead of five. That he really does not think that anyone wants to turn this Sharon Road into a South Boulevard or Independence Boulevard.

Mr. Potter stated he does not think he would be up here if this was a service station. That it is the kind of traffic he is objecting to. The people who will come over there and drink beer at night in that parking lot, and who will sit there all night long. From a personal standpoint they will be coming down Coltsgate Road to see what is down there. Nobody bothers them much now; but when they are sitting up there drinking beer and eating a Hardees hamburger they are going to come down Coltsgate Road to see what is down there. This is a nice section out there now; it is busy but he does not want to see it turned into a hamburger strip.

Mr. Perry stated if this is going to be the largest Hardees ever built he is not aware of it. It will be a standard Hardees. He asked before a decision is made that each go out and look at Cotswold facility and see whether they think it falls into the category of a hamburger joint or not. He submits they will conclude it does not. They are nice restaurants and most of the eating is done on the inside. If the people come and drink any beer, it will definitely be after hours, and they will not get it at Hardees as Hardees does not sell beer. What will come next on that street will be entirely up to the Commission and the Council.

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Councilman Withrow asked why the yellow strip was left out? Mr. Perry replied that was done at his suggestion. That he thought it might discourage a protest petition; they did not want to have to overcome a 3/4 vote. That in his judgement a protest petition could have been entered by the people across the street. The other reason was the fact that although the property between Sharon Road and the subject property can be used partially for parking, it requires setback for parking and it will insure that the building will be built back of that line.

Councilman McDuffie asked how many feet off Fairview intersection is it? Mr. Caudle replied it is somewhere between 250 and 300 feet from the intersection. Councilman McDuffie stated he wonders if Mr. Hoose would not have in his vision sometime a divider strip as he does in a lot of places where it is congested. If that ever happened it would prevent people from going directly across the street.

Mr. Bryant stated this is a request for B-1 zoning which in effect means that if it is zoned for B-1 than anything permitted under B-1 classification could go in. Normally a drive-in restaurant facility requires a B-2 classification; B-1 does not permit a drive-in restaurant. The facility referred to in Cotswold was one of the first permitted to go in a B-1 zone. It was permitted to go in by the zoning administrator working out of the Building Inspection Department on the basis of the number of inside seats which were provided. In his opinion, this took this out of the drive-in restaurant facility classification and placed it in a more normal sort of restaurant classification. Presumably the same thing would apply here. That interpretation and ruling was made by the zoning administrator, and he does not attempt to speak for him. Since the request is for B-1, there obviously would have to be some concession made to this being designed to fit into a more conventional sort of restaurant facility than just the normal drive-in facility.

Councilman Short asked how many of the uses along Sharon are non-conforming? Mr. Bryant replied the only non-conforming use he is aware of is the dog kennel which immediately adjoins this property.

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

MEETING RECESSED AND RECONVENED.

Mayor Belk called a recess at 3:05 o'clock p.m. and reconvened the meeting at 3:25 o'clock p.m.

COUNCILMAN WHITTINGTON COMES INTO MEETING.

Councilman Whittington came into the meeting at this time, and was present for the remainder of the Session.

DOUGLAS MUNICIPAL AIRPORT MASTER PLAN, APPROVED AS AMENDED.

Council was advised the Federal Aviation Administration has recently requested the purchase of six (6) additional properties for the future expansion of the Airport. The areas are as follows:

Area 1 - Is needed for the expanded approach zone for Runway 36R.

Area 2 - Will be used for additional leased plots for support businesses in connection with general aviation in the long term development. Immediate use would be for expanding long term parking facilities.

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Area 3 - Will be used for alignment of property lines on future lease plots.

Area 4 - Will be used for additional airline maintenance area.

Area 5 - Will be used for additional cargo make-up and warehousing area.

Area 6 - Is needed for the end light standards which will hold the Approach Lighting Systems when Runway 18L is instrumented.

Motion was made by Councilman Jordan, seconded by Councilman Whittington, and unanimously carried, approving the subject amendment to the Airport Master Plan as recommended by the Airport Manager and the Airport Advisory Committee.

RESOLUTION PROVIDING FOR PUBLIC HEARINGS ON MONDAY, MARCH 20, 1972 ON PETITIONS FOR ZONING CHANGES.

Upon motion of Councilman Short, seconded by Councilman Withrow, and unanimously carried, the subject resolution was adopted providing for public hearings on Monday, March 20, 1972, on Petitions No. 72-9 through 72-20 for zoning changes.

The resolution is recorded in full in Resolutions Book 8, at Page 72.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE FOR DEVELOPMENT OF A COMPREHENSIVE REHABILITATION PROGRAM FOR EX-OFFENDERS.

Councilman Short moved adoption of the subject resolution authorizing the acceptance of a grant in the amount of \$138,646 from the United States Department of Justice for development of a Comprehensive Rehabilitation Program for Ex-Offenders. The motion was seconded by Councilman McDuffie.

Councilman Jordan stated according to the contract from the government, it is his understanding that the only objective for city council is to approve the allocation of the funds, and not any particular site.

Councilman Jordan made a substitute motion to approve the acceptance of the grant, but not being in favor of it going into the Kenilworth Avenue section. The motion was seconded by Councilman Whittington.

Councilman McDuffie asked if the substitute motion would be binding on the location? Mr. Underhill, City Attorney, replied the grant does not place the responsibility for the site location on the City Council. The grant in its contract language contains no mention at all on site location. The adoption of the resolution accepting the grant does not in and of itself place the decision for the location of the facility. As he understands it the location of the facility ultimately rests with the Board of Directors of the Corporation that operates the program. The program can be operated anywhere.

Councilman Alexander asked if the Council has the legal right to bind the acceptance of the grant with a site specification? Mr. Underhill replied the grant does not place the approval of the site with Council. The decision as to where the program will be operated from rests with the Board of Directors. They could choose to continue where they are now, or they could relocate in any area so long as the zoning would permit the type of program they intend to operate. Councilman Alexander asked if Council has the right to bind the approval of the grant provided it is not at (x) location? Does Council have the legal right to bind the approval of the grant with such a motion? Mr. Underhill replied it would not be binding on the Board. The motion would express an intent or perhaps a policy or desire of Council but would not have any legal binding effect.

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Councilman Whittington stated he wants to make sure he understands this. That he wants to be perfectly sure when he votes for the substitute motion made by Mr. Jordan that he is voting with a clear understanding by this Board that this location on Kenilworth Avenue will not be used. That this is not a zoning issue; it is something these people are being asked to accept in their neighborhood and on their street, and obviously they do not want it. To have something like this they do not want, we should consider their wishes in the matter. That he wants to make sure when he seconded the motion, and votes for the substitute motion that this Board understands that this site is not to be on Kenilworth.

Councilman Jordan stated it is expressing the wishes of the Council, and if the substitute motion receives a majority, then he sees no reason why they would or could do this.

Councilman Alexander stated there is no point in having these people thinking that such a motion does one thing when it does not. The point is that this Council does not have the authority to say where the program will be located. Councilman Jordan stated the motion is only saying we do not want it in this particular place; we have no authority to be selecting the site according to the grant. Councilman Alexander stated the only thing we have before us is to approve the grant or not approve the grant.

Mr. Underhill replied that is correct; the only question before Council is the acceptance or rejection of the grant. If the Council accepts the grant, the Board will not be legally bound by that portion of the motion relating to the site location as that rests with the Board.

Mayor Belk asked if the substitute motion is legal or is it not legal? Mr. Underhill replied he can only answer by saying the only legal responsibility and authority the Council has in this matter is to either accept or reject the grant. If it is made as a part of the motion contingent upon the acceptance of the grant that the program not be operated from a certain location, then that portion of the motion, although it expresses an intent on the part of Council, it is not legally binding on the operators of the program. If the Board seeks to disregard that portion of Council's motion they have legal right to do so. There is nothing in the grant itself about the site in which the program will be operated. The contract itself deals only with the question of an amount of money which in turn will be channelled to this particular program for the purpose of operating this type of program.

Mayor Belk asked if Council has the authority to eliminate this location? Mr. Underhill replied no; that portion of the substitute motion is not binding.

Councilman Jordan stated he did not intend and the motion was not anything to mislead the people; his motion is to accept the grant, and that he is not in favor of it going into the Kenilworth Area. That he thinks Council was misled in the first place when it was asked to make a selection of a site. That in the beginning as we are now, we are only supposed to accept or reject the allocation of money. That he does not know how Council got into the selection of the site.

Councilman Whittington requested the City Manager to have a conference with the officers of the Christian Ministers Association to answer the question of whether they are going to settle on Kenilworth or not, before Council votes on the question.

Mr. Ray Cohn, representing the Board, stated they would not rule out going somewhere else if a better site can be found; they would like to be the judge of whether the site is better; they would prefer not being in the position of someone handing them a location where everything else had been torn down around it. He stated the Board's position is basically that they will consider going to another place, and he would prefer that

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they not be in a position of promising not to go here because they would then be committing themselves to the necessity of finding a better place. They are not going to say that they must go here; they will look for other locations.

Councilman Whittington asked the situation as it relates to the option? Mr. Cohn replied they have placed a \$1500 binder on the property and it will terminate March 15.

Councilman Alexander stated he would like to make a substitute motion for the whole which he thinks will define the responsibility of this Council and the citizenship to the Board of the House of Assurance, and the whole works. That he hopes if the motion passes that there can be community input to the extent of where some resolve can be done as far as this matter is concerned. Somewhere we need such a program; this program is no different from many of the other social programs that bind us in the community. This is a program where some concern must be given for underprivileged - be it a social ill or a physical ill. That he thinks we have as much responsibility in the community to resolve our own problems than to shift them off on somebody else. That the community has the capacity among itself to honestly face its problems. None of us know when we are going to have circumstances over which we have no control, as it affects us individually or our family. We can never be the judge and jury of these types of social actions. Certainly we have a responsibility to the community and to ourselves.

Councilman Alexander made a substitute motion for the whole that the grant as it has been submitted be accepted. The Mayor advised that is the original motion.

Councilman Alexander stated if you take the substitute motion and leave off the last portion, then we have the original motion as it is and there is no reason for the substitute motion.

Councilman Short stated if the substitute motion is accepted, Council has exempted for practical purposes one neighborhood and left the entire remainder of the city exposed. This may not be the legal situation but it is the practical outcome.

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

YEAS: Councilmen Jordan, Whittington, Alexander and McDuffie.

NAYS: Councilmen Short and Withrow.

Councilman Alexander stated he voted for the motion, as the City Attorney has stated it is not binding.

After further discussion, the City Attorney stated the motion has carried by a 4-2 vote, and the motion is to accept the grant with an intent on the part of Council that the program not be operated from the Kenilworth site; that he explained that portion of the motion that was legally binding and that portion which in his opinion is not binding, and the motion carried on a vote of 4-2 according to the clerk. Mayor Belk asked if the motion is legal and the City Attorney replied it is.

The Resolution is recorded in full in Resolutions Book 8, at Page 73.

COUNCILMAN ALEXANDER LEAVES THE MEETING.

Councilman Alexander left the meeting at this time and was absent during the discussion and vote on the ground transportation contract to and from Douglas Municipal Airport.

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CONTRACT WITH YELLOW CAB COMPANY FOR GROUND TRANSPORTATION TO AND FROM DOUGLAS MUNICIPAL AIRPORT, AUTHORIZED.

The Yellow Cab Company proposal containing the following was presented:

- (1) A 24-hour service.
- (2) One Person, to or from the airport, metered rate. No limousine rate offered for one person regardless of waiting time.
- (3) Two persons, metered rate plus \$1.00 to and from the airport - immediate departure, or limousine rate of \$2.00 per passenger to downtown area with a maximum waiting time of 10 minutes and \$2.50 per passenger to all other areas of the city with a maximum waiting time of 15 minutes.
- (4) Three or more persons, must pay limousine rates with immediate departure, no metered rates offered.

Mr. Robert Perry, Attorney for C. D. Spangler, stated he would like to thank Council very much for the two times action was deferred on the Yellow Cab contract. He stated they are not now prepared to present to Council, as they hope to be in the very new future, one or more alternatives for providing limousine service. It was decided after the last meeting that they owed it to the Council and to the city to either withdraw their request or to get to work with it. That they got to work with it, but they are not now prepared to give the alternatives. They hope to be able in the very near future to give some alternatives which they think will give first class downtown ground transportation from the airport and back.

Mr. Perry stated they have made inquiries of five different towns - Atlanta, Memphis, Washington, Baltimore and Jacksonville - as to what they are doing. Everyone of them have limousine service. He stated they think it is going to be in the interest of the city at some time in the not too distant future to have similar service.

Councilman Whittington stated last week Mr. Birmingham, Airport Manager, talked about the Arnold Thompson study and the fact they are making surveys at the airport now about enplaned passengers as to where they are going; he talked a little about the gate operation that Mr. McDuffie has mentioned; the pertinent facts that the Authority and the staff of the Airport will try and get together for this Council to make a decision when the Yellow Cab Contract, if approved today, comes up for renegotiation by March 1, 1973. Councilman Whittington stated when the motion to approve the contract is made today it should include the remarks made by Mr. Birmingham last week about what the Thompson Company is to obtain for the Airport Advisory Committee and for Mr. Birmingham and his staff to present to Council. That Council should require the airport to have this information on hand and in the presence of the Council by February 1, 1973, so that Council will have all these facts from which to make a decision about ground transportation in the year 1973 and in the future as it relates to the Airport. The City of Atlanta has 28 inns or hotels who offer free service to and from their airport. All of this information should be in a package for Council to consider when the Yellow Cab contract expires at the end of February, 1973.

Councilman McDuffie stated what Mr. Whittington is saying is good; that the time he has spent on it this past week has been most informative, and there has been a lack of information that would be needed. The present service where courtesy cars are allowed to pick up passengers at the airport, some cities have a fee they charge for this free service, and the city gets so much per room. At the moment we do not have any fee. He stated from his study we do not have enough flights to justify both the limousine and the taxi service. That the proposal made by Yellow Cab with some modifications should clear up some of these. That he personally has found that we are fortunate to have the Yellow Cab willing to do this service because the other cab companies are not only not staffed and equipped but do not want the business.

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Councilman McDuffie moved that the contract with Yellow Cab Company be approved for one year with the following additions, that Mr. Kennerly of Yellow Cab has agreed to along with the Airport staff:

- (1) That a taxi lane and metered gate will be installed at the earliest possible date that construction and location at the terminal can be satisfactorily arranged.
- (2) That the City's share of the revenue will be 25 cents per passenger to and from the airport. The only change being proposed will be a charge of \$2.25 downtown rather than \$2.00; that the downtown area will be drawn out on a map and specified as the downtown area; \$2.50 for the rest of the city for two or more people.
- (3) The other proposals as mentioned stay the same.
- (4) It is agreed that Yellow Cab Company will provide quarterly audits and an annual CPA certified audit. It is agreed that the City of Charlotte has the right to inspect the books and accounting records of Yellow Cab Company during normal business hours. It is agreed that Yellow Cab Company will pay the City of Charlotte 25 cents per passenger delivered to and picked up at the airport monthly from their present accounting system until the metered gate is erected.

The motion did not receive a second.

Councilman Withrow asked if it is legal to have the metered gate; can you charge a person 25¢ for a metered gate until the legislature passes such a law? Mr. Underhill, City Attorney, replied it can be a matter of contract between the City and the company. That the 25 cents per passenger is coming from the cab company rather than the individual. It is a matter of contract and if the cab company agrees to that, then to the best of his knowledge it is permissible.

Mr. Underhill stated if Mr. Withrow is concerned about a head tax arrangement he has a valid concern. Head taxes generally have been held to be unconstitutional. But this type of procedure would not be considered as a head tax since it is a contractual matter between the city and Yellow Cab.

Councilman McDuffie stated Yellow Cab will print a map on a card and have the rates on it and will give one to each passenger with a place on it for the name of the driver and the amount of the fare.

Mr. Burkhalter, City Manager, stated we may not be able to do this in two months time or one months time; that it is a lot more difficult than it looks on the face of it, particularly the individual tax. The tax per cab is one thing, but there is no gate he knows of that will register the number of people in the cab as it goes through. That staff should be allowed to do some reviewing.

Councilman McDuffie stated the system we plan to use was one ticket with the number of passengers written on it. The proposal is to get 25¢ from each passenger, where presently we have never audited or asked them for any records. That it seems to him there is no question but we will have more revenue and the opportunity to check and come out with a better accounting system. There are already two starters working; we are already using their records, and if we never improve on that system, we are better off than we are now. We do not know how many taxi trips are made out there. He stated his system is to have a meter and count taxis.

Following further discussion, Councilman Whittington moved that Council accept the recommendations of the Airport Manager and the Authority and grant the contract with Yellow Cab Company, and that the following information be included in a report to Council for consideration when Council considers this contract in 1973:

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Origin and destination of passengers by areas; percent of enplane passengers requiring public transportation; types of transportation presently used; types of service to meet the demands; changes in the configuration of the airport terminal entrances required for optimum use and what the cost would be; what maximum, acceptable revenues they will get for the city to insure adequate, economical and comprehensive service.

The motion was seconded by Councilman Withrow.

(Councilman McDuffie left the meeting at this time.)

Mr. Burkhalter stated much of what Mr. McDuffie has suggested is not only feasible but is probably desirable. The difficulty is that through the weeks and weeks of negotiations we only presented this one way and now we are negotiating for an entirely new way of doing this. That his recommendation would be that Council approve the contract as the Airport Advisory Board and the Airport Manager have recommended, with the understanding that staff will continue to work on this with these ideas suggested by Mr. McDuffie. That in two months time we can cancel this contract, and staff can come back at that time, and maybe negotiate some gate procedure of doing this.

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

YEAS: Councilmen Whittington, Withrow, Alexander, Jordan and Short.
NAYS: None.

Councilman McDuffie left the meeting prior to the vote on the motion.

Councilman Short suggested that this be expanded somewhat. That in Dallas, Yellow Cab Company operates a limousine service with taxis. But they have painted them a different color and they have big letters painted on them saying it is a limousine service. This means someone from out of town would know just what the vehicle is and they can rally to that point. He stated he would hope along with the suggestions of Mr. McDuffie that they would also think about this possibility.

Mr. Kennerly stated Yellow Cab Company realizes the need for better service. They are in the taxi business; they realize that a limousine service is needed in the future but not right now. According to their records, it would be three times a day that a limousine service would be used. That he feels with Charlotte growing like it is that it will only be a matter of a year until there will be a need for limousine service. That he thinks the gate idea is good; but he does not see how you can put a gate in that would collect three passengers or four passengers; you could collect perhaps 50¢ per gate, and let all the cabs go through. Then the limousine service could be added and the entire responsibility would not fall on Yellow Cab.

Councilman Jordan stated most of the airports do have some type of limousine service, and he hopes in the near future that this can be worked out for Charlotte, and he is sure that Mr. Kennerly is willing to cooperate. That he also understands that Mr. McDuffie has spent a lot of time with Mr. Kennerly today and over the weekend and in putting a lot of thought to the gate. That he would appreciate it if Mr. Kennerly would meet with Mr. Burkhalter and go into this, and see if it is feasible.

Mr. Kennerly stated he would like to sit down with a committee. That Mr. McDuffie was good enough to give him about three hours of his time on this. That they are interested and they feel they are qualified to know what is needed.

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COUNCILMAN ALEXANDER RETURNS TO MEETING.

Councilman Alexander returned to the meeting at this time and was present for the remainder of the session.

ORDINANCE NO. 387-X AUTHORIZING THE TRANSFER OF FUNDS FROM THE UNENCUMBERED UNENCUMBERED BALANCE OF VARIOUS ACCOUNTS AND AMENDING ORDINANCE NO. 176-X, THE 1971-72 BUDGET ORDINANCE AUTHORIZING THE TRANSFER OF FUNDS TO PAY FOR THE CONSTRUCTION OF THE GREENVILLE NEIGHBORHOOD CENTER.

Motion was made by Councilman Whittington, seconded by Councilman Short, and unanimously carried, adopting the subject ordinance authorizing the transfer of \$195,966 from the unencumbered balance of various accounts and amending Ordinance No. 176-X, the 1971-72 Budget Ordinance, authorizing the transfer of funds to pay for the construction of the Greenville Neighborhood Center.

The ordinance is recorded in full in Ordinance Book 18, at Page 491.

ORDINANCE NO. 388-X ESTABLISHING A CAPITAL IMPROVEMENT PROJECT ACCOUNT FOR THE SHARON LANE-SHARON ROAD INTERSECTION IMPROVEMENTS.

Councilman Whittington moved adoption of the subject ordinance establishing a Capital Improvement Project Account in the amount of \$50,000 for the Sharon Lane-Sharon Road Intersection Improvements. The motion was seconded by Councilman Short, and carried unanimously.

Council was advised the purpose of this ordinance is to appropriate funds to cover cost of construction until the City is reimbursed by the State. The State Highway Commission has agreed to pay for all costs of the improvements.

The ordinance is recorded in full in Ordinance Book 18, at Page 492.

RESOLUTION AUTHORIZING THE REFUND OF CERTAIN TAXES COLLECTED THROUGH ILLEGAL LEVY AGAINST ONE TAX ACCOUNT.

Upon motion of Councilman Withrow, seconded by Councilman Jordan, and unanimously carried, the subject resolution was adopted authorizing the refund of certain taxes in the amount of \$50.00 which were collected through illegal levy against one tax account.

The resolution is recorded in full in Resolutions Book 8, at Page 74.

RESOLUTION SETTING DATE OF PUBLIC HEARING ON PETITION TO CLOSE WADE DRIVE, IN THE CITY OF CHARLOTTE, MECKLENBURG COUNTY, NORTH CAROLINA.

Motion was made by Councilman Jordan, seconded by Councilman Withrow, and unanimously carried, adopting the subject resolution setting date of public hearing on Monday, March 27, 1972, on petition of Henry R. Hargett, Georgia H. Hargett, Jesse L. Allison, Evelyn N. Allison, A. V. Moffitt and Maggie C. Moffitt, to close Wade Drive (formerly known as Weldon Drive), an un-opened street, running off the Plaza in a northerly direction toward Dinglewood Avenue, in the City of Charlotte.

The resolution is recorded in full in Resolutions Book 8, at Pages 75-76.

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ORDINANCES ORDERING THE REMOVAL OF ABANDONED MOTOR VEHICLES LOCATED IN THE CITY OF CHARLOTTE, NORTH CAROLINA, PURSUANT TO ARTICLE 13-1.2 OF THE CITY CODE.

Councilman Short moved adoption of two ordinances ordering the removal of abandoned motor vehicles located in the City of Charlotte, pursuant to Article 13-1.2 of the City Code which motion was seconded by Councilman Whittington, and unanimously carried.

- (a) Ordinance No. 389-X ordering the removal of abandoned motor vehicle located at 3100 Florida Avenue.
- (b) Ordinance No. 390-X ordering the removal of abandoned motor vehicle located at 4809 Morgan Street.

The ordinances are recorded in full in Ordinance Book 18, beginning on Page 493.

PROPERTY TRANSACTIONS AUTHORIZED.

Upon motion of Councilman Withrow, seconded by Councilman Whittington, and unanimously carried, the following property transactions were authorized:

- (a) Acquisition of 25' x 760.23' of easement at 8351 Nations Ford Road, from John F. Whitescarver and wife, Velva, at \$760.00, for the Kings Branch Outfall Sanitary Sewer Construction Project.
- (b) Acquisition of 25' x 112.32' of easement at 401 Arrowood Road, from Robert E. Wilson and wife, Frances J. Wilson, Arnold P. White, Sr., (deceased), Cora McArthur White, Arnold P. White, Jr. and wife, Margaret C. White, at \$113.00, for the Kings Branch Outfall Sanitary Sewer Construction Project.

CONTRACT AWARDED BARGER CONSTRUCTION COMPANY, INC. FOR THE GENERAL CONSTRUCTION OF THE GREENVILLE NEIGHBORHOOD CENTER.

Motion was made by Councilman Jordan, seconded by Councilman Short, and unanimously carried, awarding contract to the low bidder, Barger Construction Company, Inc., in the amount of \$444,400.00, on a unit price basis, for construction of the Greenville Neighborhood Center - General Construction, subject to approval by HUD.

The following bids were received:

Barger Construction Co., Inc.	\$444,400.00
Butler & Sidbury, Inc.	448,835.00
Juno Construction Co.	459,700.00
Rodgers Builders, Inc.	464,220.00
Donald C. Neal Const. Co.	543,930.00

ALTERNATE BIDS: (Includes deductives)

Barger Construction Co., Inc.	350,000.00
Juno Construction Co.	355,500.00
Butler & Sidbury, Inc.	361,485.00
Rodgers Builders, Inc.	363,104.00
Donald C. Neal Const. Co.	436,567.00

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CONTRACT AWARDED THOMPKINS-JOHNSTON COMPANY FOR PLUMBING WORK IN THE GREENVILLE NEIGHBORHOOD CENTER PROJECT.

Councilman Withrow moved award of contract to the low bidder, Thompkins-Johnston Company, in the amount of \$47,959.00, on a unit price basis, for plumbing work in the Greenville Neighborhood Center Project, subject to approval by HUD. The motion was seconded by Councilman Whittington, and carried unanimously.

The following bids were received:

Thompkins-Johnston Co.	\$47,959.00
Acme Plumbing & Supplies	49,660.00
Gastonia Heating & Plumbing	49,900.00
Mecklenburg Plumbing Co.	51,060.00

ALTERNATE BIDS: (Includes deductives)

Thompkins-Johnston Co.	\$33,609.00
Acme Plumbing & Supplies	34,260.00
Gastonia Heating & Plumbing	35,900.00
Mecklenburg Plumbing Co.	38,780.00

CONTRACT AWARDED CLIMATE CONDITIONING OF CHARLOTTE FOR MECHANICAL WORK FOR THE GREENVILLE NEIGHBORHOOD CENTER PROJECT.

Upon motion of Councilman Alexander, seconded by Councilman Whittington, and unanimously carried, the subject contract was awarded the low bidder, Climate Conditioning of Charlotte, in the amount of \$53,725.00, on a unit price basis, for mechanical work for the Greenville Neighborhood Center Project, subject to approval by HUD.

The following bids were received:

Climate Conditioning of Charlotte	\$53,725.00
Mechanical Contractors, Inc.	53,816.00
Gastonia Plumbing & Htg. Co.	56,350.00

ALTERNATE BIDS: (Includes deductives)

Climate Conditioning of Charlotte	\$51,225.00
Mechanical Contractors, Inc.	53,101.00
Gastonia Plumbing & Htg. Co.	55,850.00

CONTRACT AWARDED DRIGGERS ELECTRIC AND CONSTRUCTION COMPANY FOR ELECTRICAL WORK IN THE GREENVILLE NEIGHBORHOOD CENTER PROJECT.

Motion was made by Councilman Whittington, seconded by Councilman Jordan, and unanimously carried, awarding contract to the low bidder, Driggers Electric and Construction Company, in the amount of \$62,991.00, on a unit price basis, for electrical work in the Greenville Neighborhood Center Project, subject to approval by HUD.

The following bids were received:

Driggers Elec. & Construction	\$62,991.00
Ind-Com Electric Company	71,259.00
Austin Electric Company	72,214.00
Port City Electric Co.	74,000.00
Beam Electric Company	81,937.00
Long Electric Company	85,347.00

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ALTERNATE BIDS: (Includes deductives)

Driggers Elec. & Construction	\$52,706.00
Ind-Com Electric Company	60,743.00
Port City Electric Co.	61,250.00
Austin Electric Company	63,332.00
Beam Electric Company	69,508.00
Long Electric Company	70,349.00

CONTRACT AWARDED GARDNER & BENOIT, INC. FOR FOOD SERVICE EQUIPMENT FOR THE GREENVILLE NEIGHBORHOOD CENTER PROJECT.

Upon motion of Councilman Short, seconded by Councilman Withrow, and unanimously carried, contract was awarded the low bidder, Gardner & Benoit, Inc., in the amount of \$7,500.00, on a unit price basis, for food service equipment for the Greenville Neighborhood Center Project, subject to approval by HUD.

The following bids were received:

Gardner & Benoit, Inc.	\$7,500.00
Fadel's Food Equipment	7,696.00
Food Eqpt. Contract Co.	7,890.00
Hood Hotel Supply Corp.	9,500.00

CONTRACT AWARDED T. A. SHERRILL CONSTRUCTION COMPANY, INC. FOR STREET IMPROVEMENTS IN THE SHARON LANE WIDENING PROJECT.

Councilman Jordan moved award of contract to the low bidder, T. A. Sherrill Construction Company, Inc., in the amount of \$599,979.65, on a unit price basis, for street improvements in the Sharon Lane Widening Project. The motion was seconded by Councilman Whittington, and carried unanimously.

The following bids were received:

T. A. Sherrill Construction Co., Inc.	\$599,979.65
Rea Construction Company	620,242.27
Blythe Brothers Company	632,278.50
Crowder Construction Company	641,034.00

ALTERNATE BIDS: (Addit. cost for keeping traffic lane open during construction.)

Crowder Construction Company	\$105,000.00
Rea Construction Company	110,000.00
T. A. Sherrill Construction Co., Inc.	114,000.00
Blythe Brothers Company	130,000.00

MOTION TO HOLD THREE EXECUTIVE SESSIONS OF CITY COUNCIL, ADOPTED.

Councilman Alexander moved that the City Council hold three executive sessions. One immediately following this session; second at the breakfast meeting for Wednesday, at 7:30 A.M., March 1; and third, in the City Council Chamber on a day and time Council can agree on now for the purpose of considering and discussing a personnel matter in accordance with G. S. 143-318.3, and if such discussions cannot be concluded at that time, that another executive session be held at such stated time and place as can be agreed on for the same purpose. The motion was seconded by Councilman Whittington, and carried unanimously.

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COUNCILMAN MCDUFFIE RETURNS TO MEETING.

Councilman McDuffie returned to the meeting during the next discussion and was present for the remainder of the session.

COUNCILMAN ADVISED THAT PROPERTY OWNER AT 1415 EAST INDEPENDENCE BOULEVARD SHOULD FILE AN APPEAL WITH THE ZONING BOARD OF ADJUSTMENT ON AN ORDER TO REMOVE BUILDING ON THE PROPERTY.

Councilman Alexander stated he has a matter concerning the Building Inspection Department. That a property owner has received a notice requesting that a building be removed at 1415 East Independence Boulevard.

Councilman Alexander stated the notice refers to a section of the Code in which it states the erection of the building on the same premises within 75 feet of an advertising sign is not permitted. That he does not find that enumerated in this section of the code as such. This is a building that a permit has been given for the construction, and it has been built. Now they are notifying the owner to take it down because it is within 75 feet of the sign, and that should have been known from the beginning. Councilman Alexander stated he does not think the regulations say that, and an interpretation of the regulations as such is beyond the meaning of the regulations as it is so stated. If the regulation as written calls for that, then it is ambiguous as it is written, and certainly it could not be determined that this is what it meant. On the other side, we need to give a little closer attention to these type matters, and any matters like this that could lead us into legal controversy should be referred to the city attorney, and he give the final decision as to what the real interpretation of a law is before such orders are given. That he is of the opinion that the building inspection department is in error in ordering this building removed.

Mr. Underhill, City Attorney, stated this is a matter of interpretation on the sign ordinance, and other provisions of the zoning ordinance. That he has discussed this with any number of attorneys and people who desire permits. There are some problems in the ambiguity in the sign ordinance and it is strictly a matter of interpretation. The zoning administrator and the building inspector have interpreted the matter in one fashion, and the interpretation has been questioned by people who desire building permits and sign permits in another fashion. In most of these cases we have been able to resolve the matter in a satisfactory manner. In two recent incidents we have not, and it has been his recommendation to the people who have protested the interpretation of the zoning administrator to appeal the decision to the zoning board of adjustment.

Mr. Underhill stated the problem is the zoning board of adjustment has built into it a ten man board - five must live inside the city, and the other five residents of the perimeter area. That perimeter area is no longer under the city's jurisdiction, and the board is no longer legally constituted. So we no longer, in effect, have a zoning board of adjustment. This will require the City Council to re-establish and re-constitute the zoning board of adjustment. That he is working on the language to do this, and will come back to the Council for a public hearing on the matter in the very near future.

Councilman Alexander stated for that reason he thinks the building inspection department was out of its authority in ordering this building removed under the section they so ordered. That he thinks the owners of the building should be permitted to allow the building to stay until such laws are established to govern it.

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Mr. Underhill replied that is the effect. Once an appeal is filed, then that stops the enforcement by the inspector. Councilman Alexander asked if the owner of a building should have to suffer because of the ambiguity of an ordinance over which he has no control? Mr. Underhill replied the owner of the building will not be made to suffer because he has the right to appeal any decision the zoning inspector makes to the Board of Adjustment.

After further discussion, Mr. Underhill advised that the owner of the building should contact the building and zoning inspector and obtain an appeal form and take an appeal and that stops the effectiveness of that order pending and appeal of the matter. That the zoning board of adjustment is the mechanism the Council and the general assembly has provided for appealing and passing on questions of the interpretation of the zoning ordinance.

The City Attorney stated the law in this state is that even though a permit is issued under a mistake in fact, that if it is discovered at a future point in time, and what was authorized was not permitted, then that does not prevent the zoning inspector or the building inspector from going back and requiring compliance with the law.

ORDINANCE NO. 391-X AMENDING ORDINANCE NO. 367-X, THE 1971 MODEL CITIES BUDGET ORDINANCE, REVISING APPROPRIATIONS TO MEET ACTUAL AND PROJECTED EXPENDITURES AND REVENUES.


The City Manager requested Council to consider an ordinance making adjustments in the model cities budget; that it is not appropriating new money; it is readjusting some of the funds.

Motion was made by Councilman Short, seconded by Councilman Whittington, and unanimously carried, adopting Ordinance No. 391-X, Amending the 1971 Model Cities Budget Ordinance, revising appropriations to meet actual and projected expenditures and revenues.

The ordinance is recorded in full in Ordinance Book 18, at Page 495.

ADJOURNMENT.

Upon motion of Councilman Jordan, seconded by Councilman Alexander, and unanimously carried, the meeting was adjourned.


Ruth Armstrong, City Clerk