Regular Meeting
City Council
March 13, 1995

The regular meeting was called to order by Mayor Charles B. Black, Jr. at 7:30 P. M. Those present were Councilwoman Phyllis Harris, Councilmen Bob Jessen, Michael Helms, R. L. Duke, Archie Small, and Jim Hope, as well as City Manager Phil Ponder, Public Works Director Eddie Nichols, City Attorney Kemp Michael, Zoning Consultant Judi Simac, and a Police Department representative.

The invocation was led by Councilman Archie Small.

Councilman Helms **MOVED** to approve the minutes of January 30 and February 13, 1995, with one amendment on page four of February 13: change CEKAL to CEKA, Inc.; motion seconded by Councilman Jessen, with all in favor.

The regular meeting was recessed and a public hearing called to order for consideration of an amendment to the Zoning Ordinance to allow for special exceptions. The Planning Commission has recommended that the amendment not be adopted. Mayor Black recapped the events of the Rick case before the Council which caused this to be prepared. Councilman Small was in favor of special exceptions for medical hardship with two doctors' statements to citizens who need help can be helped. Councilman Hope reminded the Council that this amendment cannot be retroactive and so it will not help the Ricks. Councilman Helms was also in favor of the amendment. Councilman Jessen was concerned that the proposed ordinance does not state what determines a permanent medical hardship; Councilman Small said that can be added now. Frank McLean was recognized, and he stated that the Ricks have gone so far they should just be able to finish it, and if the City wanted the building stopped, it should have done so at the beginning. Lynn Dunn inquired as to what will happen to the Ricks if this amendment will not help them. Councilman Hope said that could not be discussed during this public hearing. There were no other comments. The public hearing was adjourned and the regular meeting resumed. Councilman Hope asked the Ricks' neighbors, Don and Gail Loftin, if they are willing to sign a statement they do not object to the completion of the building in violation of the zoning; they said they would. Councilman Hope said he feels the City is partially responsible for this problem, and the County Inspector Danny Garrett has said he only needs a letter from the City. He then **MOVED** to direct staff to write a letter saying the City knows about the violation and it is not going to pursue enforcement on this addition; seconded by Councilwoman Harris, with all in favor. Councilman Small **MOVED** to table the matter of the zoning ordinance amendment until the next regular meeting; seconded by Councilman Hope, with all in favor.

A proposed agreement with CEKA, Inc. and CEKAL Specialties, Inc. regarding liability associated with a private railroad crossing adjacent to West Central Avenue was discussed next. Carlton Broome stated he had met with CSX representative Carl Worsham and the City Manager, and CSX agreed to the relocation. They have a standard agreement for the City to execute and CEKA, Inc. would agree to pay all costs for the relocation. He agreed for CEKA, Inc. to indemnify the City for its liability on the existing crossing. However, he objected to some of the provisions in the proposed agreement; he had revised it and signed the revised agreement. City Manager Ponder asked Mr. Broome when CEKAL began shipping products across the existing crossing; he said last June or July. Mr. Ponder said he sent a certified letter to Mr. Broome last July, which he read aloud, notifying him that the City could not continue its liability on the crossing. Mr. Ponder advised the Council that the revised agreement removes all personal indemnity and that of CEKAL Specialties, which is the company sending the trucks across the crossing, and has added a $4 million insurance policy. Mr. Broome stated he has reconsidered and would have CEKAL also join the indemnity but he refused to be personally liable, citing the fact that the Councilmembers were not personally liable on the agreement with CSX. Councilman Jessen asked why it has been said that CEKA could sue the City if the railroad does not relocate the crossing. Mr. Ponder said that by omitting paragraph one from the City's proposed agreement, that option was made available. Mr. Broome further stated that paragraph seven should have "with cause" added. Councilman Jessen stated the City does not usually ask for personal liability on subdivisions and he did not see a need for it in this agreement. Councilman Hope asked if Mr. Broome's attorneys have been in contact with the City Attorney. Mr. Michael said they had, and the four main issues were discussed, and staff had prepared an agreement that will protect the City. Councilman Jessen noted that the City Attorney had previously withdrawn due to a conflict; Mr. Michael said that was a good question, and stated that the Broomes had hired two attorneys (who were present at this meeting) and the Broomes have signed a waiver of conflict of interest for the purpose of drawing up this agreement. Councilman Jessen stated he has no problem with it as long as they don't. The Council decided to delay action until after an executive session later that night.

The proposed sign regulations were presented. Mr. Hubbard said there are only two corrections needed; one being in the O-I section. If there is a double-sided sign, the size should be computed only using one side. Mr. Dotson said the other correction is in the Definitions, Section 71.60, External Illumination. He said the last sentence is unreasonable, and feels the objective is to prohibit lights which might affect vehicle safety or cause a nuisance to adjacent property owners, and business zones should be included. Mr. Ponder had no objection to either correction. Mr. Dotson thanked the Council and Planning Commission for a hard job done and stated he had come to realize from working on this that it takes stamina to deal with these things. Councilman Hope **MOVED** to replace Section 20-71 with the proposed new sign regulations as presented tonight with the two corrections; seconded by Councilmen Duke & Small, with all in favor.

The management agreement with Priority One for the public housing apartments was approved as presented with changes as follows: 1. page 4, paragraph IV, D, change $2,500 to $75 and delete all sentences after the first sentence; 2. page 9, paragraph I. 5., change $2,500 to $75 due to the City's purchasing policy; and 3. page 15, paragraph C, add that Agent shall not be held harmless for willful misconduct or negligence, upon **MOTION** by Councilman Jessen, seconded by Councilman Helms, with all in favor.

June Smith, Tax Collector, made her annual report as required by G. S. 105-369(a). The total unpaid taxes for 1994 which are liens on real property is $55,460.00. She recommended advertisement for tax liens be made on April 5, 12, 19, and 26, 1995, and that May 8, 1995, be set as the tax lien said date. Councilman Hope **MOVED** to accept her report and set the advertisement and sale dates as recommended; seconded by Councilman Small, with all in favor.

Tax releases dated March 13, 1995, in the sum of $60.22 were approved upon **MOTION** by Councilman Helms, with all in favor.

New subdivision regulations have been prepared for consideration by Steve Davenport at Benchmark. Mr. Joe McWhirter, Cottonwood Acres, was recognized. He said he has a copy of their restrictions for the City to use next time someone applies for a permit so the City can refer to them and let them have input at the beginning so they don't have to spend money on lawyers and lawsuits. He said the City issued permits that infringed on their rights. Mayor Black said a public hearing on the new subdivision regulations should be set. Councilman Hope **MOVED** to set a public hearing to consider the proposed new subdivision regulations at the April 10 regular meeting, seconded by Councilwoman Harris, with all in favor.

Steve Davenport, with Benchmark, recommended to the Council that the process of revision to the zoning ordinances begin with a public input meeting. The Council asked the City Manager to set the date and advertise it for a night other than a regular meeting night.

Mayor Black asked Mr. Davenport what happens if the restrictions in a subdivision are stricter than the City's ordinances; and what takes precedence. Mr. Davenport said neither one takes precedence, that they are different documents, each with its own power. The City ordinances are enforced by the City, but the City cannot enforce restrictions and has no authority to do so. He said restrictions are private covenants (contracts) which must be enforced by the neighbors if they so choose.

Mr. Jim Coates, First Colony Group, asked the Council to approve the sketch plan they had reviewed several months ago. It has been revised into lots no less than 10,000 square feet. He asked for a commitment by the Council for city water and sewer and agreed to voluntarily annex at Phase 2. He stated he would limit the commitment to a two-year obligation. City Attorney Michael advised that annexation should not be done in phases and the owner should be asked if he will do it all at once. Mr. Chris Moffat, Morehead Properties, the owner, said they will annex the whole tract not already inside the city, if required. Mr. Nichols stated the City has always provided water and sewer if they annex as long as the construction meets city specs. He further stated that the Dutchman Creek outfall is already there and water mains adjoin the tract. Councilman Jessen **MOVED** to accept the sketch plan as presented with R-10 size or greater lots, and that the staff is instructed to draw agreements for water and sewer contingent on voluntary annexation occurring within two years of the date of this meeting, seconded by Councilman Duke, with all in favor.

Councilman Jessen **MOVED** to set a public hearing for April 10 to consider expansion of our ETJ for Autumn Woods Subdivision, seconded by Councilman Small, with all in favor.

A request has been made for paving of Walley Drive. City Manager Ponder said the street is not a recorded public right-of-way, and the street was not built by the developer to City standards which was why it was refused in the past. Lynn Duffy and others who reside there asked what they need to do. They would have to provide right-of-way and have the street brought up to City standards before it can be accepted by the City. They said they had been told by the contractor the road would be deeded to the City and accepted by the City. Mr. Nichols said he would have to check that zone to see exactly what is required of them. Mr. Ponder said 300 feet of paving costs about $12,000.00. One of the ladies asked what it means to have a dedicated or public right-of-way. Mr. Michael said it means it is described or shown on a plat and recorded in the Register of Deeds office. Mr. Duffy said the City's garbage trucks go on it and turn around twice instead of once. Mr. Jessen said he regrets that the contractor ignored the City when he built those houses and left and never did what the City asked of him, but until it meets the subdivision regulations, the City cannot accept it.

The paving list as presented by the City Manager in his memorandum of March 9 and his recommendations included with it were approved by the Council, except that Walley Drive was removed.

Mayor Black asked the Council if they want our delegate, Councilwoman Harris, to request widening of Highway 273 at the TAC meeting; he emphasized the need for full Council support. The Council concurred that it be requested to be done as soon as possible.

Councilman Jessen **MOVED** to appoint Linda Richardson, 316 Oakwood Drive, to the Gaston County Appearance Commission, upon recommendation by Janice Stowe; seconded by Councilman Helms, with all in favor. Our other delegate is Cyrus Frazier.

The agreement with W. K. Dickson for engineering services associated with construction of water lines on Killian Avenue and Woodhaven Drive not to exceed $10,700, and to be completed this fiscal year was approved upon **MOTION** by Councilman Jessen, seconded by Councilwoman Harris, with all in favor.

Mayor Black stated his displeasure with the engineer not having the water tank properly lighted.

Eight budget amendments presented by City Manager Ponder identified as #3-13-94 (a) - (h) were approved upon **MOTION** by Councilman Hope, seconded by Councilman Duke, with all in favor. (copies attached)

City Manager Ponder presented the bid requests he has prepared for solid waste collection services, which he has not sent out. He requested Council input first. The Council agreed it would be best to discuss this matter in one of the budget workshops. Dr. Richard Rankin was recognized, and he stated Mount Holly is to be commended for good garbage collection, and he would like them to leave it as it is. Councilman Jessen **MOVED** to table this matter until a later determined date, seconded by Councilman Hope, with all in favor.

The floor was opened for complaints or petitions not on the agenda. Mr. Jack Drum asked the City to fix the drainage problem on his property like was done on Nims Avenue. He has been to Council before and Mrs. Little has told them the City is supposed to maintain that drainage ditch. Councilman Small recalled that the City should keep that drainage ditch clear. He complained that City street runoff water and off the State Highway all comes onto his property even though the City put in an asphalt ridge to stop it. Councilwoman Harris said she needs more information; Councilman Hope agreed that he needs to know what has happened before now and what the minutes show the Council has agreed to do.

The Council took a five minute recess.

Councilman Hope **MOVED** that the Council go into a closed session for attorney-client and for personnel purposes, seconded by Councilman Small, with all in favor.

The Council returned to open session upon **MOTION** by Councilman Hope, seconded by Councilman Duke, with all in favor.

Councilman Jessen **MOVED** that, in the best interest of the City and to uphold our responsibility to the citizens of this City, the Council approve and authorize execution of the liability agreement for the existing crossing, with Carlton Broome and his companies, prepared by the City Manager and City Attorney; motion seconded by Councilman Helms, and carried with five ayes and one nay (Small).

As to the Agreement between the City and CSX Railroad for relocation of the crossing off West Central Avenue near Kendrick Street, City Attorney Michael recommended: 1. change the agreement to include that when the new crossing opens the City's permit for the old crossing terminates; 2. add a prerequisite that a written agreement be provided with CEKA or CEKAL reimbursing the City for costs; and 3. it should be contingent upon the execution of the liability agreement approved just prior to this matter. Councilman Jessen **MOVED** to approve and authorize execution of the agreement between CSX and the City contingent upon the three items recommended by the City Attorney, seconded by Councilman Hope, with all in favor.

Councilman Jessen stated that the Council decided what was necessary in the best interest of the City, but they are open to negotiation if another way can be found to protect the City to the same extent. Mr. Jim Lawing asked why it would not be acceptable to use the amount of insurance equal to their net worth rather than personal liability. City Attorney Michael stated that there is the possibility of an insurance policy not being in force or a loophole being found by the insurance company; he suggested they would purchase whatever amount of insurance to protect themselves so that they felt comfortable. Mayor Black stated that no one expects a wreck, but if it happens, they must be sure the citizens of Mount Holly don't pay for it. Councilman Jessen said the way the Council sees it, this is a one way agreement, in that the City gets nothing out of it; that the alternative is to close the crossing and he does not want to put them in a bad position like that. He said he does not like the personal liability requirement but the Council must be sure all the holes are plugged in favor of the City so the citizens are protected. Mr. Lawing felt the City benefits by having industry growth there. Mr. Broome said the City's planner put on the permit they could use the crossing. Councilman Jessen said they know that, but it was a temporary thing intended for use in construction of his building and they had no idea the crossing would not be replaced by the time he was ready to operate. Attorney Blake Hassan stated the indemnity agreement is not needed to get the relocation agreement with CSX and the City; they see it as a separate issue. Mr. Michael replied that the Council sees it as related, and it is a paramount issue to the City to have its liability for the old crossing gone. Mr. Michael further stated that it is their position that they should get enough insurance to cover Mount Holly, but he suggests the City would be better protected if they get enough insurance to protect themselves and leave the City out of it. Attorney Rob Wilder stated they have offered a $4 million policy and will increase that to whatever amount is equal to their net worth. Mr. Broome said he had already signed an agreement with CSX to get a permit and sent it back but he has not heard from them yet. No further action was taken.

Councilman Small asked that the crepe myrtle trees at the railroad be trimmed.

Mayor Black asked that the City Manager inquire about the lack of a policeman downtown since the city budgeted for another man just so there would be one all the time.

Mayor Black said that Gastonia is having legislation introduced which would allow it to sell water anywhere in the County we do not have control over; we should be sure we retain the right to sell water anywhere also. Councilman Small stated we should try for the two mile ETJ again since there are new Commissioners since the election.

City Manager Ponder asked the Council for clarification. The Optimist Club is requesting they be exempt from the $10/hour charge for lighting the ballfields at Tuckaseege Park. The Council concurred not to charge them.

City Manager Ponder had applied for a grant for federal funds for two police officers under the new Crime Bill; funding was approved for one with the stipulation it be used for community service such as downtown, schools, neighborhood watches, etc., with emphasis on crime prevention. The grant will pay 75% of the salary over three years. He suggests it be used for an investigator position. Councilman Jessen **MOVED** to authorize the City Manager to accept the grant, seconded by Councilman Helms, and carried with five ayes and one nay (Duke).

City Manager Ponder stated he has interviewed three people for the Planning Director position, followed by interview by Judi Simac. Danny Jackson, a present City employee, did better than the other two applicants. Mr. Ponder stated that Mr. Jackson had technical knowledge beyond what Mr. Ponder had realized previously. However, he feels Mr. Jackson will need help for some issues, and Mr. Ponder requested he be sent to three seminars over the next year, and that we retain Judi Simac's services until the end of this fiscal year and during the seminar weeks. The Council concurred.

Mayor Black said he had talked to the postmaster about the lack of cleanliness at the post office. She stated they have a five year contract with a service and have been having problems getting the job done properly.

The meeting was adjourned upon motion by Councilman Duke, seconded by Councilman Hope, with all in favor, at 12:05 A.M.

Phillip S. Ponder, Jr.
City Clerk

Charles B. Black, Jr.
Mayor

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