Regular Meeting
City Council
December 14, 1992

The regular meeting was called to order by Mayor Charles B. Black, Jr. at 8:00 P. M. Those present were Councilwomen Lib Nichols and Phyllis Harris, Councilmen Archie Small, Bob Jessen, and Jim Hope, as well as Director of Public Works Eddie Nichols, Zoning Administrator Gary Roberts, City Manager Phil Ponder, and City Attorney Kemp Michael. Mayor Black said that it was a sad night, because of the vacancy next to him due to the recent death of Mayor Pro-Tem Faye Little, and that she would be sorely missed. He declared a minute of silence in her honor.

The invocation was led by Rev. John Bowden.

The minutes of October 27 and November 9, 1992, were approved as written, upon MOTION by Councilman Jessen, seconded by Councilman Hope, carried with five ayes.

Mayor Black asked the Council if they wished to select a Mayor Pro-Tem, stating that the policy in the past has been to use the highest vote getter on the Council, and informed them that the next highest to Mrs. Little had been Archie Small. Mayor Black nominated Archie Small, and Councilman Jessen MOVED that the nominations be closed, which was seconded by Councilwoman Harris with all in favor. Archie Small was appointed Mayor Pro-Tem by a vote of four ayes.

The regular meeting was recessed and the public hearing called to order by Mayor Black, for consideration of rezoning the two acre lot at 1000 Hickory Grove Road from R-12 to B-2 CU, upon a petition by Jack Ferrell. Mr. Roberts stated that the subject property is across from the old Calvin Burrell store and Jordan Graphics is across West Catawba Avenue Extension from it. He said that Mr. Ferrell proposes a restaurant and gift shop within the existing house without building an addition. The Planning Commission had recommended that no action be taken until the sewer situation is settled. Mr. Jim Atkins, attorney for Mr. Ferrell, said that his engineer has stated that first choice would be to attach to the City sewer, at his cost; and the second choice would be to have an onsite sewage system which meets the County inspection. He said that they had about 50 neighbors who had signed a petition in favor of his plan; and that restaurants are compatible with residential zones. They had a letter from DOT stating that traffic would not be a problem. Mr. Atkins stated that as long as there is no compelling reason to prohibit a use, they should allow the property owner to use his property as he wishes; that since this is a conditional use, the use would be limited to the Council's conditions and would control Mr. Ferrell or to anyone he sold it to, if he ever chose to do that. Mr. Mike McIntosh, West Catawba Avenue, said he owns adjoining property and he objects to the rezoning, and knows there are others who do also, because it is an established residential neighborhood, and this is not in a target area for business. He was concerned because there are about 40 acres which adjoin Mr. Ferrell and someone later might use this rezoning to allow them to rezone that business. He said Mr. McIntosh can have a gift shop in his home without the restaurant and leave the zone as it is. He was also concerned that if the restaurant failed, Mr. Ferrell would come back and be allowed to have another type of business use there. Margaret McIntosh stated that Mr. Ferrell had not approached them to ask their opinion and did not visit all the neighbors in the area adjoining him, and she was opposed to the rezoning request. Mr. Marvin Elmore, Kelly Road, said he was in favor of the rezoning because a nice restaurant would benefit all in Mount Holly, and this is a conditional use so he could not do whatever he wanted. Mr. David Collier, Fites Creek Road, said he felt the rezoning would depreciate the values of residential properties around it and expose them to more of the land being changed to business; he also felt that even with conditional use, they would not be protected because if the restaurant fails, something else might be allowed that would be a nuisance. Holly Jones, 706 W. Catawba Avenue, said see would hate to see a nice residential property rezoned to business. Mr. Jim Atkins said he appreciates the concerns of those who had spoken against, but that none of them are adjoining property; he also said they were wrong to expect a "domino" effect since that assumes that the Council will not do its job properly, and concluded that Mr. Ferrell is entitled to the highest and best use of his property. There were no other comments. The public hearing was adjourned and the regular meeting resumed. Councilwoman Nichols MOVED to table this matter until a later meeting, seconded by Councilman Small, with five ayes.

An agreement between the City and Hoechst Celanese for relocation of a sewer line had been provided to the Council prior to the meeting for review, regarding a portion of a 14-inch sewer force main within a portion of old Seventh Street which was recently closed. Mr. Eilskov from Hoechst Celanese showed the proposed relocation on a map. The construction and engineering costs would be paid by the company. A 40-foot right-of-way would be granted the City for the new location, and some abandoned City lines would be terminated and turned over to the company. Councilman Small MOVED to approve and authorization execution of the agreement as presented, seconded by Councilwoman Nichols with all in favor.

Phyllis Harris presented a resolution in support of the Second Baptist Church's prayer project (copy attached) to petition the County Commissioners that prayer be allowed at school again. Mayor Black stated that he was informed that it is not against the law in North Carolina, but the schools are afraid of being sued because of the ruling made in another state. Councilwoman Nichols MOVED to approve the resolution as presented, identified as #12-14-92(a), seconded by Councilwoman Harris, with all in favor.

The matter of Board of Adjustment vacancies was tabled until the next meeting upon MOTION by Councilman Small, seconded by

Councilman Hope with all in favor.

The Employee of the Year Award was presented to Eddie Nichols, based upon nominations by other City employees. He was given a plaque and a check for $250.00. He was recommended because of his excellent work record and performance, encouragement for safety, listening to problems and trying to solve them, and helping others. Councilwoman Nichols (not related) asked how long he has worked here; he said almost 16 years.

Mr. Don Pearson from the League of Municipalities discussed the OSHA regulations' impact on the City. The City staff has attended seminars, and OSHA has already been here which he felt is a good thing because we had warning about some things that can be handled before the fines go into effect on January 1, 1993. Fines for "non-serious" violations will be $1,500.00 and below; "serious" violations will be fined up to $7,500.00; and "willful serious" violations will be fined up to $70,000.00, for each offense. He said that although the OSHA man was thorough, he had gone through and found other things which he has recommended the City repair or change before they come back. These regulations will affect the City's taxes sooner or later. There are 112 OSHA inspectors now. He cited the "Woodson vs. Roland" case of July, 1991, wherein the Supreme Court ruled that worker's compensation is no longer the sole remedy; the employer can also be sued. A case is currently pending in which the City, the Mayor, the City Manager, and the Council are all being sued personally as well. He stated that a legislative bill has been introduced to overturn the "Woodson" case, but it has not been heard yet, and the Council needs to support it next season. He also cited the "Donlevy vs. Yates" case in which the property owner was found to be liable for a contractor's employee's death. Mr. Pearson said that it is expected that OSHA will make an example of one or more cities. He also stated that the City's Employee of the Year, the Public Works Director, Mr. Nichols, has a good reputation in this whole area.

Mr. Trent Wilson, City Auditor, presented the city audit for fiscal year 1991-1992. He said the City staff had been most cooperative and helpful. He stated that the City's accounts are in good order and the financial condition is very good. He discussed the reasons for increases or decreases in each major fund with the Council. He recommended a few management changes be made; namely, that with the water/sewer collections, the bookkeeper should not cover the counter as this does not provide internal control. He said City employees should not be cashing checks from the cash drawer without a strict policy. He said the City is operating well within its budget due to good management for many years. He suggested guidelines for purchasing and invoicing be in place. He said reports should be timely filed for reimbursement to the City so that interest can be earned on the money due the City. Also, a separate payroll account should be considered. There were some old water/sewer receivables from Catawba Heights that he felt should be written off the books. In the Housing Authority, he found the records now to be well managed, but he has had them to begin showing sales tax paid so it can be refunded. Mr. Wilson further suggested that better control be kept over blank checks, that fire extinguishers be located close to the computers, that "back-up" storage of computer data be done promptly. He commended the City for its "fund balance" percentage which the State has approved. The Council concurred to have Mr. Wilson attend the upcoming Council workshop for more in depth instruction for the newer Councilmembers regarding the budget.

City Manager Ponder presented budget amendments covering certain items necessary to immediately comply with OSHA regulations which he discussed with the Council. Councilman Jessen MOVED to approve resolution #12-14-92(b) budget amendment as follows: Water and Sewer Fund: increase account #300-710-5-233.07, OSHA Compliance, by $40,000.00; decrease account #300-710-5-789.00, Contingency, by $20,000.00, and decrease account #300-810-5-789.00 by $20,000.00; and further to approve resolution #12-14-92(c) budget amendment as follows: General Fund: increase account #100-420-5-233.07, OSHA Compliance, by $10,000.00; decrease account #100-420-5-789.00, Contingency, by $10,000.00. Motion seconded by Councilman Hope, with all in favor.

Councilman Jessen MOVED to set a public hearing at the next regular meeting on January 11, 1993, after due notice, for consideration of a request for rezoning two lots identified as tax parcels 3-14-93 and 93.01 on Oak Grove Road from H-I to B-2 made by Harold Stroupe; motion seconded by Councilman Small and carried with five ayes.

Councilman Hope MOVED to set a public hearing at the next regular meeting on January 11, 1993, after due notice, for consideration of a request to rezone a vacant lot (200' x 60') on North Lee Street behind the old Paschal Oil Building from R-8MF to B-4 made by Hugh Paschal, which motion was seconded by Councilman Small and carried with five ayes. The Planning Commission did not recommend a hearing on this matter be set because it is a separate lot, but it was stated that if it is rezoned to business a 25-foot buffer would be required.

Following information provided by Zoning Administrator Roberts, and after discussion, Councilman Hope MOVED to adopt resolution #12-14-92(d) as presented to request DOT include sidewalks on the proposed new bridge for Highway 27 crossing the Catawba River, seconded by Councilman Jessen, with all in favor. (copy attached)

Consideration of the matter of Ordinance 5-11-92(c) regarding the Planning Commission was tabled upon MOTION made by Councilman Small, seconded by Councilman Jessen, with all in favor.

Zoning Administrator Roberts asked the Council for interpretation regarding its ruling on March 11, 1992, as to a non-conforming use at 806 Belmont-Mount Holly Road. A balloon and gift shop was allowed with three conditions, two of which are: no outside storage, and no additions to the structure. Mr. Quinn wants to install on the property a 10' x 30' portable cooler room, which Mr. Roberts has denied. Mr. Quinn has appealed to the Board of Adjustments. They have tabled action until the Council clarifies its ruling. Mayor Black recalled that the conditions were as recommended by the Planning Commission and were not even discussed by the Council. Councilman Hope said he was at the Board's meeting and the question was what is meant by "open" outside storage. Councilman Jessen asked for Mr. Roberts' recommendation. Mr. Roberts said business needs to be encouraged in business zones, but at a non-conforming use in a residential zone care should be taken. Councilman Jessen said outside storage means to him like lumber stacked up outside which is not enclosed in a building. Councilman Hope agreed, but acknowledged Mr. Roberts' fear that a precedent would be set. Councilman Small felt it is the Board of Adjustments job to interpret the ordinance. Councilman Jessen felt that the condition of no additions to the structure is still a problem. David Berg said that the ambiguous language makes it hard for the Board to make a ruling. It was the consensus of Councilmembers Jessen, Nichols, Hope, and Harris, and of the Mayor that "no outside storage" means no outside open storage.

Councilman Jessen MOVED to approve resolution #12-14-92(e) to write off $3,676 uncollectable accounts for 1991-1992, and resolution #12-14-92(f) to write off $1,772 uncollectable accounts for 1992-1993, at Holly Hills Apartments, seconded by Councilman Harris, with all in favor. Mr. Jessen reminded the City Manager that he still feels as Myles Biggerstaff did, that these accounts should still be pursued for collection.

The matter of a request for paving and maintenance of First Street in Catawba Heights was tabled upon MOTION by Councilman Hope, seconded by Councilwoman Harris, with all in favor.

A proposed contract with W. K. Dickson for engineering services was discussed, with regard to design, surveys, construction administration and review, for water line extensions, was considered. City Attorney Michael questioned Mr. Hemker regarding payment to the engineer if the contract runs over the specified time period. Mr. Hemker said 215 days is the expected construction time and the contract provides for 270 days to give a buffer of time for rain. He said that on past contracts overruns were billed to the contractor as liquidated damages. Councilwoman Nichols asked if City staff could handle some of the work included in this contract in order to save money; Mr. Ponder said that Mr. Nichols is capable of some of it but he has difficulty completing the work he already has. Councilman Jessen MOVED to approve the contract with W. K. Dickson for water line extensions subject to re-wording of the contract to meet the approval of the City Manager and City Attorney, seconded by Councilman Hope, with all in favor.

The matter of amendments to the Mount Holly Fire Department

Constitution and By-Laws was tabled upon MOTION by Councilman Small, seconded by Councilman Jessen, with all in favor.

The Council next discussed the proposed amendment to the Personnel Ordinance to limit benefits of part-time employees. Councilwoman Nichols felt that an employee who works constantly for the City every day for the hours agreed upon should get benefits. Councilman Jessen stated it is not logical to give the same benefits to someone who does not work the same number of hours per week. Mayor Black said his recollection is that the Council did not intend to include part-time employees. City Manager Ponder said that in order to stop vacation and sick leave accruals for part-time employees as the Council had indicated in September should be done, he would need the Personnel Ordinance amended. Councilman Hope MOVED to approve the amendments as recommended by the City Manager in his December 4th memo (copy attached), seconded by Councilman Jessen, and carried with four ayes and one nay (Nichols).

The matter of placing liens on real property for clearing of weeds, grass and vines, was tabled upon MOTION by Councilman Hope, seconded by Councilwoman Nichols, with all in favor.

The Planning Retreat workshop for the Council was set for January 9, 1993, at 2:00 P.M. to be held at the City Attorney's house.

Councilman Jessen MOVED that the following releases as presented by the Tax Collector for December 14, be approved, seconded by Councilwoman Nichols, with all in favor:

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|---|---|---|
| 1992 taxes | $422.01 | |
| 1992 tags | 6.00 | |
| 1991 taxes | 42.92 | |
| 1991 tags | 1.00 | |
| 1990 taxes | 15.73 | |
| 1990 penalties | 1.57 | |
| 1990 tags | 1.00 | |
| | $490.23 | Total |

The floor was opened for complaints or petitions not on the agenda. Merlin Brown asked for a report on the water tank. Mr. Ponder said it is expected to take about a year from now.

Councilwoman Nichols nominated Phyllis Harris to serve on the Recreation Commission, which was approved by the full Council.

Councilwoman Harris stated that J. C. Little, Jr. has offered to fill the seat left by his wife, Faye Little, who recently died, on the Council, for the remainder of her term. The Council had been provided earlier with a memo from City Attorney Michael about the appropriate procedures for filling a vacancy. Councilwoman Harris MOVED that nominations be taken for someone to complete Faye Little's term, seconded by Councilman Jessen with all in favor. Councilwoman Harris nominated J. C. Little, Jr. Councilman Small nominated David Berg and J. C. Little, Jr. and then MOVED that the nominations be closed, seconded by Councilwoman Harris, with all in favor. Councilman Hope MOVED that the Council vote immediately on the nominations, seconded by Councilwoman Nichols, with all in favor. The vote was taken by written ballot of the Council, dated and signed. J. C. Little, Jr. was appointed as Councilman for the remainder of Faye Little's term with a vote of five.

The Council went into executive session for attorney-client matters upon MOTION made by Councilman Jessen, seconded by Councilman Hope, with all in favor. The Council returned to regular session upon MOTION by Councilman Hope, seconded by Councilman Jessen, with all in favor.

Councilman Hope MOVED to grant Galen Cassada such easement as the City has for utility lines, seconded by Councilman Small, with all in favor.

The meeting was then adjourned, upon MOTION duly made, seconded, and carried unanimously.

Phillip D. Bondurant — City Clerk

Charles B. Black — Mayor

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