

Regular Meeting
City Council
October 12, 1992

The regular meeting was called to order by Mayor Charles B. Black, Jr. at 7:30 P.M. Those present were Mayor Pro-Tem Faye Little, 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.

The invocation was led by Rev. Wilson Rhoton.

The minutes of September 14 & October 6, 1992, were approved as written, upon MOTION by Councilwoman Little, seconded by Councilman Hope, carried with six ayes.

The regular meeting was recessed and the public hearings called to order by Mayor Black. The first public hearing was to consider a request by Mr. Blackwell, Walnut Avenue, to close a portion of Dutchman Avenue. Mr. Jim Stancil, attorney for Mr. and Mrs. Stilwell, an adjoining property owner, stated that they are in opposition to the closing as petitioned. He stated that Dutchman Avenue is a dedicated right-of-way by means of a recorded subdivision plat, even though it has never been opened. He further stated that the Stilwells purchased the property adjoining that street last year after hiring him to search the title and having it surveyed. Their primary concern at the time was that they would have access to the property. Although they own a house on Gaston Avenue behind this property, they do not wish to go through their yard to get to this property. The title search disclosed this public right-of-way, so they bought the property. They have spent a lot of money and time making a lot of improvements to the land, filled it in and cleared out the underbrush. The Blackwells have never complained to them until now. Mr. Stancil said the property was available for sale for forty years, and the road could have been closed all these years. In addition, Mr. Stancil stated that, in the alternative, he would like the Council to take no action due to the fact that the land upon which the right-of-way lies was deeded to the Stilwells, and they as the owners have filed a Dedication of Withdrawal pursuant to a North Carolina statute. He felt that his client's interest is protected by that means, but that if the Council takes action on the petition before it, they wish to oppose it due to a requirement for means of access. Councilwoman Little said that the original intent of the subdivision was to have a road through there, a full connecting; and a portion was closed years ago, but the City has utilities in there. Mrs. Little asked where he plans to put a house, as she did not see a place. Mr. Stilwell said there is a knoll leveled off, and he built it up and had the surveyor come back out and do an elevation survey to determine its location in the flood plain, so a house can now be built. Councilwoman Nichols said if the City opened the street now, it would not have to improve it. Mr. Stancil said his client does

not want the City to improve it, they plan to use it for a driveway to the new house. Councilman Small asked how the street was deeded to Mr. Stilwell; it was by quitclaim deed. Mr. Small felt this was not sufficient, since anyone can sign a quitclaim deed to anything. Mr. Stancil agreed, but stated that the Nims heirs who signed the quitclaim did in fact own the property so that made it a good and valid transfer of title. City Attorney Michael had prepared a memorandum about this matter which the Council had been given earlier. He stated that the law does state that an owner can file a withdrawal of dedication; however, he was of the opinion that the matter of ownership and withdrawal was beyond the parameter of the City Council's jurisdiction; there is a petition before the Council to either close or not, with statutory criteria governing that decision to be made, and it would be best for the City to stay on that issue alone. Mr. Stancil stated that they do not want the City to close the street because the statute gives adjoining property owners the title to the center of the right-of-way, and since the Stilwells own all the right-of-way, they would lose half of it; this would mean they would have to fill in the deep gully to build the driveway, and they need the whole right-of-way to build the driveway without all that extra work and expense. Mr. Jim Blackwell was recognized next; he said his attorney was ill and could not be present, but he had made notes of the points he wanted to make. He said he has been cleaning and caring for that area for many years. He continued that he broke no laws, he only kept it up to keep the undergrowth from taking over. Mr. Blackwell said that when the portion of Dutchman Avenue was closed in 1972, they killed the original intent of having a through street; he also said that he believed that the closing in 1972 closed the portion of Dutchman next to his house also. He said when Mr. Stilwell bought a small piece behind the branch from him, he told him then that he owned to the middle of the right-of-way because he believed the closing in 1972 had come up to there and that after it closed he owned half. He did not know until June that Mr. Stilwell wanted to put a driveway through there which would destroy his bushes and yard. Mr. Blackwell said that Mr. Stilwell has access, and has been coming in that way to do the cleanup work. He wants the street closed so he will own half the right-of-way. He does not want the street opened up so people can go down there all hours and park. Councilwoman Little said they had called the League of Municipalities and they said a quitclaim deed can be made for the State House but it would be no good. She said the City's utilities must be left open, and the City must not take responsibility for improving the street. Mr. Stilwell was recognized and he said this land sat for 30 or 40 years, and anyone who wanted to could have bought it or closed the street; he said he had equipment and has put forth a lot of effort and money to fix the place up and plans to build a house for himself. He plans to sell the house on Gaston Avenue, so he needs a driveway from Walnut Avenue to this property. Councilwoman Harris said she wanted the City Attorney's opinion. Mr. Michael said his memorandum had covered the legal matters involved, and he stated the City Council's liability is to determine if this road is

needed for reasonable access or not. He said the quitclaim deed and withdrawal are private matters between the developer/owner and the Blackwells to be heard by a Judge in a Court of law. Councilman Small asked if the withdrawal they filed is valid, does Stilwell get the whole right-of-way or only half to the center; the City Attorney said that if the title to the land did in fact pass to Stilwell and if it has in fact never been used for access, then the withdrawal makes Stilwell the owner of all of it; however, it cannot be withdrawn legally if it would deny access to anyone of the other property owners, and the facts to be determined must be determined in a Court of law if not sooner settled privately. Councilman Jessen said that the withdrawal would make it as if the road was never there. Mr. Michael said that was the purpose of the law which is an old one. Councilwoman Little asked Mr. Nichols how the City's utilities would be affected; he said there are sewer and water lines there. Mr. Stancil said the Stilwells have no intention of closing off the sewer and water lines of the City and acknowledge that they took title subject to the existing utility easements. Mr. Michael said those lines have probably been there for over 21 years which would grant the City proscriptive easement even if there are none recorded. Councilwoman Nichols asked how this would affect the City in the future; Mr. Michael said there is no impact on the City, only on the property owners. Mrs. Nichols asked if others could apply later to ask that it be closed; he said they can, but these petitions must be considered individually in light of existing conditions. Councilwoman Little asked what the difference is between this and Annex Street; Mr. Michael said Annex Street was dead-ended and adjoined a large tract open to development; this right-of-way is already a dead-end even if it were opened up fully today because at the back side is a house. There were no more comments either for or against. The public hearing was adjourned and the regular meeting resumed. Councilman Jessen said it is always difficult when both parties are neighbors, and he understands Mr. Blackwell believed that this was already closed and he owned half of it although he in fact did not. He also said he can see where the Stilwells could come across their own property but they stated they plan to sell the house on Gaston Avenue. He said he wished the parties had settled but the Council has a petition and must choose between them, and that he believed that if the Council grants the petition it will deny reasonable access to the Stilwells, so he MOVED to deny the petition to close a portion of Dutchman Avenue. This motion was seconded by Councilman Hope. Councilman Hope asked which would take precedence, the Council's action to not close the street or the dedication of withdrawal filed by the Stilwells. Mr. Michael said if all the criteria for the withdrawal are met, the City Council's action is unnecessary; however, the Council does not have actual knowledge that the withdrawal filed is valid. He stated that if this motion passes, the City will be out of it, and the matter will be between private owners as to what action if any they take in Court; but if this motion fails, and the street is closed by Council action, anyone grieved may appeal to Superior Court. The motion carried, with four ayes and two nays (Harris

and Little).

The regular meeting was recessed again and a public hearing called to consider amending the zoning ordinance with regard to appearance criteria for manufactured homes. Zoning Administrator Roberts said the changes are for a steeper pitch on the roof, a wider overhang, specific foundation materials, and that it face the street. Mayor Black asked who initiated this matter; Mr. Roberts said he did when the R-8 zone changes were made due to his belief that the appearance criteria needed to be upgraded to fit in with the neighborhoods. Councilman Hope said the State allows 3-12 pitch so he does not see why the City should not. Mr. Roberts said the purpose for this would be to fit into stick-built neighborhoods. Councilman Jessen said these are reasonable requirements; if we are going to allow them, we want them to look nice to protect the neighbors. Councilwoman Nichols said a lot of these may want to build a house later and move this but would not have the same requirements if they did. Councilman Hope said the requirement to face the street would limit the use of some building lots. Mr. Roberts said they could apply for a variance. Councilman Jessen said the proposal says "generally parallel", and Councilman Small said it should be just "parallel" because he would not want a crooked house next to him. Mr. Ralph Michael said he did not think it was fair to make these requirements because stick-built houses do not have to do this. Mr. Phillips said a 3-12 pitch is good enough. Mr. Jim Grant said the former Zoning Officer, Allen Medlin, cost his daughter a lot of money because of the foundation requirements due to the fact that her modular house only had a small rail around the bottom. Mr. Roberts said the foundation is not a structural foundation but is only for appearance. Mr. Brown asked Mr. Roberts how many trailers are in Mount Holly; he said about ten percent. Councilwoman Little asked if this proposal was recommended by the Planning Commission; it was. There were no further comments.

The third public hearing was called for consideration of a correction to extraterritorial jurisdiction boundary for Mount Holly at Westland Farm/Kelly Road to conform to the one mile limit. Zoning Administrator Roberts said an error was made on the existing ETJ ordinance and Zoning Map and this will correct it. This would be coordinated with the County so that they extend their zoning to cover the area we are releasing. Mr. David Berg stated he is in favor of this amendment. There were no further comments. The public hearings were adjourned and the regular meeting resumed.

Councilwoman Little MOVED to adopt the appearance criteria ordinance Section 117 as proposed with one correction: paragraph (f) strike "generally"; seconded by Councilman Small and carried with five ayes and one nay (Jessen).

Councilwoman Little MOVED to approve the change in the ETJ as presented, contingent upon County approval, seconded by Councilman Jessen and unanimously carried. (copy of map attached)

City Manager Phil Ponder had ordered information brochures on the bond package and stated he has had no news on the bond package; he asked the Council if they have heard any comments from the public. There has been very little feedback. David Berg and Ralph Michael volunteered to distribute some of the brochures.

Mr. Jack Stevenson, from the County Air Quality Standards Commission said the County has plans for initiating penalties for pollution, in harmony with the 1960 Clean Air Act. The question they would like input on is whether to handle this matter locally, or jointly with Mecklenburg County, or let the State handle it. An informational meeting was announced for the following Wednesday at Belmont Abbey College. He informed the Council that all funds collected go back into quality control. The law says they must emit 1.175% cleaner than what comes in. Gaston County would generate more revenue than Mecklenburg County because of the two power plans. If we handle it locally we would have to have equipment and personnel. The State will make the final decision, but they want the cities' positions. Councilwoman Little said she would prefer to handle it in our County. Mr. Stevenson said there would be costs at the beginning, but after that the fees would maintain the program. Councilman Jessen said it would create another bureaucracy in the County and he would rather the State handle it. Mr. Stevenson said one advantage to keeping it locally is the permits can be obtained more quickly. We are in a region with Mecklenburg County as identified by the Federal government. If this is handled with Mecklenburg County, the money is divided by population, so they would get the lion's share, he said. Four of the Councilmembers indicated they prefer the County handle it.

A request by Wayne & Linda Richter to operate a "Starwalk" amusement behind the mini-mall the Perrigos are operating was considered. The Richters have rented an area behind the building off the parking lot. The City Manager required her to appear before granting a privilege license. Mrs. Richter stated they have liability coverage with Moore Insurance. She further stated they will have an adult on duty at all times, and they would take the "Starwalk" down and take it home when not open. They plan to operate when the mini-mall is open. The Zoning Officer said the B-3 zone allows recreation. Councilwoman Little MOVED to approve the request by Wayne & Linda Richter to operate a "Starwalk" behind the mini-mall, seconded by Councilman Hope, with all in favor.

Mr. Ron Johnson requested a name change be made for N. C. 273 Bypass, asking that the section between the intersection with South Main and the intersection with North Main be called Dr. Richard E. Rankin Highway. Mr. Johnson said Dr. Rankin began practicing in 1951 in this area and has given much to this community, and still makes house calls or opens his office after hours, and this would be a good way to honor him. Councilwoman Little said the by-pass is a state highway and it would remain designated as N. C. 273 Bypass, but the City could give it a name inside the City limits.

Mayor Black noted that roads are usually named after someone who is deceased, and he recalled that Dr. Rankin came to the public hearing regarding the by-pass and spoke in opposition to it. Councilman Jessen stated that he agrees with what was said by Mr. Johnson about Dr. Rankin but he did not want to rename the road. Councilwoman Harris MOVED to name the N. C. 273 By-Pass Dr. Richard E. Rankin Highway, seconded by Councilwoman Little. The City Attorney stated that a study was done a few years back about changing street names in the City but people were so irate about having to change their addresses, licenses, insurance, etc. that it was dropped, and this might have the same effect. The motion carried with four ayes, one nay (Jessen), and one abstain (Small). City Manager Phil Ponder said he would apply to the State for its approval.

Councilwoman Little MOVED to adopt the Resolution identified as #10-12-92(a) as presented to release the City's share of the State funds therein designated to COG for 1992-1993, seconded by Councilman Jessen with all in favor.

Chief Bishop had made recommendations to the Council by memorandum for school zone improvements. At the Junior High there would be a right turn only at the exit, at peak time there would be no unloading on Hawthorne, the crosswalk would be moved, and for flashing lights warning of the school zone. For Catawba Heights Elementary, a school zone would be marked on Marguerite, a crossing established, flashing lights, "school" written in the crosswalk on Belmont-Mt. Holly Road. Councilman Jessen MOVED to accept and approve the recommendations presented by the Chief, seconded by Councilwoman Little. City Manager Phil Ponder said he will need signs and lights and the costs are not budgeted. Councilman Jessen amended his motion to add that the County be asked to share in the costs, and if they decline the City Manager is authorized to expend up to \$3,000.00, seconded by Councilwoman Little. Motion carried by unanimous vote.

Zoning Administrator Gary Roberts stated that the Planning Commission has recommended that double-wide mobile homes be allowed in R-12 on an upgrade basis if they meet appearance criteria and if the property owner is also the mobile home owner. City Manager Phil Ponder said he would like this matter delayed until he can suggest a change as to the procedure so that the zoning administrator would not be burdened with the decision which he would the way the proposal is worded. Mr. Roberts agreed. Councilman Jessen agreed and MOVED to deny the request for public hearing at this time with the amendment in its present form, seconded by Councilman Hope with all in favor.

Next, Mr. Roberts presented the proposal for changing zone designations in the Craig Street and Noles Drive area. Councilman Hope asked what motivated this request. Mr. Roberts said the property on Craig Street owned by Yates Springs where the rest home is located is R-8MF, and the tract behind it he owns and it is R-20 and R-8; he is recommending it be R-15. He recommends the

multi-family areas stay R-8. The area he marked in yellow he recommends be changed from R-8MF to R-8SF. Councilman Hope asked if putting R-15 would not be spot zoning since there is none around it. Mr. Roberts stated it would not be in his opinion because it is a large area with three owners and has water but not sewer available. Councilwoman Little MOVED to set a public hearing to consider the change in zones as designated on map presented (copy attached), seconded by Councilman Hope, carried with five ayes and one abstain (Small because he lives there).

Councilman Small MOVED to withdraw City authorization for a railroad crossing at Alexander Street and that no funds be sent, seconded by Councilwoman Little, with all in favor.

Sonny E. Horne applied to the Council for a privilege license to operate an outside stand for the retail sale of jewelry, to be located in the parking lot at 210 Beatty Drive at the Texaco convenience store. Mr. Horne said he lives on Mt. Olive Church Road in Mecklenburg County, near Berryhill School. He plans to sell gold jewelry, and would not operate when the store is closed. He said he has had a State business license since March 26, and has been operating at flea markets. The City Manager recommended that he be required to provide the City with written authorization to set up his stand at that site from the property owner. Councilman Hope asked if he will be selling new merchandise; he said he will. Councilwoman Little asked what karat the gold would be, where it is from, and if it is marked; he said it would be 10K, 14K, and sterling silver, and is marked. City Manager Ponder said the site is within a business zone. Councilwoman Little MOVED to grant a privilege license to Sonny E. Horne, Mt. Olive Church Road, Charlotte, NC 28208, for a street vending booth at the Texaco convenience store at 210 Beatty Drive and Highway 273, contingent upon his presenting to the City written permission from the business owner. This motion was seconded by Councilwoman Harris and carried unanimously.

The tax releases as presented for October 14, 1992, consisting of \$748.92 for 1992 taxes, \$14.32 for penalties, and \$17.00 for tags, totaling \$780.24, were approved upon MOTION by Councilman Small, seconded by Councilman Jessen, with all in favor.

Mayor Black stated he is resigning from TAC, and a new delegate would need to be appointed. Councilman Jessen MOVED to appoint Councilwoman Nichols as the TAC delegate, seconded by Councilwoman Little, with all in favor. Councilwoman Little MOVED to appoint Councilwoman Harris as the alternate TAC delegate, seconded by Councilman Hope, with all in favor.

Councilwoman Nichols reported that the search for a new doctor for Mount Holly is going well.

Mayor Black informed the Council that the Bill Maskal trial was scheduled to begin the next Monday at 2:00 P.M. at the Gaston County Courthouse.

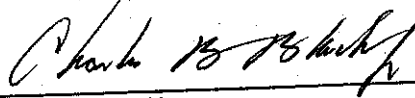
The floor was opened for complaints or petitions not on the agenda. Mr. Merlin Brown was recognized first. He asked that they consider school signs and warning lights at Pinewood School. The City Manager was asked to see it that could be added to the earlier action, and at what cost. Mr. Brown also objected to someone on the Council having a low opinion of trailer owners, as he stated there are many fine people who live in trailers.

Mr. Jim Grant was recognized. He said he is opposed to them renaming the by-pass after Dr. Rankin. He wanted to go on record stating that his wife was very sick one night and he turned her away because she had not seen him in four years. He wanted to know if naming that road could be brought up again. City Attorney Michael said there is no limit to the times a street can be renamed. Mayor Black said he is opposed to renaming it because of the hardship it would place on the people who live along there. Mr. Grant said he has had to change his stuff before and it is a real hardship and he feels they should leave it as it is. Hazel Michael said she does not think they should change the name either, as it will affect so many things, and she has been through that. She felt it was not fair to do that to those people when you don't have to.

City Manager Phil Ponder distributed a memorandum from Public Works Director Eddie Nichols with regard to Deertrack Subdivision, Phase Two. He recommends the City enter an agreement to upgrade portions of the lines they will be doing which coincide with the City's needs as set in the sewer study. He said this is not budgeted, but funds are available. Councilman Jessen MOVED to upgrade approximately 1300 linear feet of the sewer line in Deertrack Phase Two from eight inches to twelve inches with authorization to fund the City's share not to exceed \$12,088.65; seconded by Councilwoman Little, with all in favor.

The meeting was then adjourned upon MOTION by Councilman Small, seconded by Councilwoman Little, with all in favor.


City Clerk


Mayor
