Regular Meeting
City Council
April 10, 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 Administrator Danny Jackson, Zoning Consultant Judi Simac, and a Police Department representative.

The invocation was led by Rev. Wayne Preusz.

Councilman Helms **MOVED** to approve the minutes of March 13, 1995 as written; motion seconded by Councilman Jessen, with all in favor.

The regular meeting was recessed and a public hearing called to order by Mayor Black for consideration of adoption of new subdivision regulations under Chapter 17 of the Mount Holly Code of Ordinances. The Planning Commission recommended approval of the adoption of new regulations. Mr. Steve Davenport from Benchmark was available for questions by the Council or the public. There were no comments either for or against. The public hearing was adjourned and the regular meeting resumed. Councilman Jessen **MOVED** that upon recommendation of the Planning Commission the new Chapter 17 entitled Subdivision Regulations be approved; motion seconded by Councilman Helms and unanimously carried.

The regular meeting was again recessed and a public hearing called to order for discussion and possible action regarding the expansion of the extraterritorial jurisdiction to accomodate the Autumn Woods Subdivision. Zoning consultant Judy Simac advised the Council that a revised copy had been placed on their table that evening. An unidentified man in the audience stated that there is a private cemetery on that land and that one grave has been disturbed according to his information. The City Manager will check on that matter. City Attorney Michael asked for a revision to the proposal, and that it would substitute the word "enlarge" for the word "extend" on Page 2 of the proposed resolution. A woman in the audience inquired if it was true that a road would be put in this new subdivision that would go to the back of her property. The Mayor replied that there will be. There were no further comments either for or against and the public hearing was adjourned. The regular meeting resumed. Councilman Hope **MOVED** that upon reccomendation of the Planning Commission the ETJ shall be enlarged to accomodate the Autumn Woods Subdivision by adoption of the proposed ordinance identified as Res. #4-10-95(a) as presented with correction by changing the word extend to the word enlarge to be effective April 10, 1995. Seconded by Councilman Small and carried with all in favor. (Copy attached)

Mayor Black read a proclamation declaring the week of April 23-30, 1995 as Week of the Young Child to recognize the needs of young children in our community. (Copy attached)

Mayor Black requested the City Attorney to prepare and send out to Council to be signed a proclamation to comform with the request received by him from Sam Jamison, President of the Gaston County NAACP, which proclamation would declare May 1, 1995 as Non-Violence Day. The goal of Non-Violence Day is to have one 24-hour period with no violent acts committed in this state.

Mr. Jack Drumm, North Drive, appeared before Council complaining of a drainage problem on his property. The City Manager had taken pictures of the area and presented them to the Council with a topographical map of this section of Mount Holly. Mr. Drumm said that most of the water comes off of North Street, Main Street, Timberlane, and Jenkins. Mayor Black noted that according to the topo map this is a natural drainage ditch and that the problem is that all the water drains down to this one low spot from the surrounding area, not just the streets. Mr. Drumm said that the City has maintained a ditch area with riprap in the past, but that it has not done so lately. Mayor Black asked if we would be able to make the water go on down Jenkins to the dead end to help alleviate this problem. City Manager Ponder felt that this is a natural flow of water and if we divert it, it will only create a problem somewhere else. City Ordinance Section 19-11 says that if the City created or contributed to the problem, the City will pay up to 1/3 of the cost to correct the problem. The conservative estimate for a minimum of work to be done would be $50,000.00. Mr. Ponder stated that he has no evidence that this drainage problem was created by the City. Public Works Director Eddie Nichols stated that this is basically a wet-weather creek at the rear of Mr. Drumm's property and the water is going to run down across there. Catch basins would be required and a lot of landscaping in order to reduce the erosion to the back of his property. Mayor Black asked where the water goes after it passes Mr. Drumm's property. Mr. Drumm said that the water goes under Timberlane Street down to the creek and that is the place that the City had cleaned out in the past and placed riprap upon. Mr. Drumm stated that the City should put pipe and storm drain on his street and that would help to fix this problem. Councilman Jessen stated that from what he sees there is no solution, that the City can not go in there on private property and stop all that water from the whole surrounding area from coming across the back of Mr. Drumm's property. He noticed that from the topo map, the water is not coming from North Main Street, but is coming off all the land surrounding. Mr. Drumm happens to be at the bottom lowest elevation. Mr. Jessen stated that the City's policy is not to go on private property and that has not changed. He sympathized with Mr. Drumm, but stated that Mount Holly is situated at the edge of major river and water flows to it, and that the City of Mount Holly cannot fix all the drainage problems of Mount Holly. He felt that if the City paid for this work it would set a precedent and the City would then have to repair all drainage problems throughout the entire city. Mr. Jessen further stated that he had had water going across his own property and had to pay to have it fixed himself. Mr. Drumm stated again that if the City put curb and gutter on Timberlane and on North Streets that it would fix the problem. Councilman Duke asked if pipe was put under North which would enable water to go on down to the creek, if that would help the problem. Councilman Jessen said that it may help to move the water so that it did not pond as much, but it would not stop the erosion from the water coming across that property. The Council took no action.

The Council considered a proposed lease of City property to Gastonia Iron Works. Mr. Jerry Pace, who had appeared before Council some time ago to request a lease has just now submitted a survey. The property requested to be leased is 3.08 acres and .94 acre. Mr. Pace stated that his company would not cut any timber until the lease is finalized, and any money received for the timber would go to the City, although he did not think that there would be any because there are not hardwoods on the property. Councilman Helms stated that he has spoken to a man who does take pine and he estimated the value of the timber to be $2,000.00. Mr. Pace stated that the City Manager had asked him to clear only part of the land at a time and he agreed to do two acres now and leave the other two acres in timber until such time as it may be needed for their operations at a later date. Councilman Helms reminded him that clearing of land over one acre in size must have an erosion control plan, and then asked City Manager how much land the city would have left at that site if this is leased. Mr. Ponder stated there is about 20 acres in this tract. Mr. Pace said they are leasing down towards the railroad track, there are no houses right immediately adjoining and that they would clear the debris as they go and put it into the gully, cover it with dirt and sow grass over it. Mr. Pace stated that the EPA has already been to his office and has reviewed his operations, and has found him to be in compliance. He further stated that the fire department has given him a final inspection and states he is in compliance. City Manager Ponder stated that the minutes of City Council showed that there was an agreement to lease this property, but because there has been a turnover on the Council since then he wanted to bring it before the members on the board now for approval before signing it. Councilman Jessen recalled the disscusion to lease the property, but he did not remember the clear cutting as being a part of the terms and he **MOVED** to table this matter for further study until the next regular meeting. Motion seconded by Councilman Helms with all in favor.

A proposed agreement between the City of Mount Holly, CEKA, Inc., and CSX Transportation for the installation of a railroad crossing to access the Kendrick Industrial Park was presented to Council. City Manager Ponder stated that the attorneys have negotiated the terms and prepared the document. Mr. Carlton Broome was present and stated that he had seen the agreement and has agreed to it. City Attorney Michael stated that he had asked for a few minor changes from Mr. Broome's attorney, which were just just faxed to him that afternoon. These changes were itemized on a memo presented by the City Attorney before the Council. Mr. Michael stated the City's agreement is limited to when the crossing is completed the City will pay its statutory share of its

Jessen added to his motion that approval for the final plat is also subject to presentation of easements and approval by the City Attorney, accepted by Councilman Duke and carried by a unanimous vote.

Diane Pritchett with Priority One Management presented the fiscal year 95/96 budget for Holly Hills. There are no significant changes from last year. She stated that they can certify that all requirements have been met. Mr. Ponder stated that HUD requires this to be adopted now, although the City will formally approve it with its budget in June. He has reviewed the document and saw no need for changes. Councilman Hope **MOVED** to approve the budget as presented by adoption of resolution identified as #4-10-95(C). Seconded by Councilman Duke with all in favor. (Copy Attached)

A representative from BellSouth, Kevin Davenport, appeared before Council to request the City authorize negotiation of an agreement to allow BellSouth to perform a study. This study would determine if it is feasible for them to install an antenna on the Mount Holly water storage tank at I-85. If the study shows a favorable result, they would wish the City to allow them to lease the use of said tank for twenty-five (25) years at $6,800.00 a year. Mr. Davenport was requesting that evening that the City grant an option for one (1) year for which BellSouth would pay $500.00. Mr. Davenport responded to Mayor Black's questions as to its construction by stating that it would be a pole with panels and covered with fiberglass. They are proposing it to be constructed on top of the tank and painted to match. He distributed sample pictures for the Council. Mayor Black wondered if it would interfere with our transmitters. Mr. Davenport said that would not be determined until the study is performed. Councilman Jessen wondered if it would be in FAA conflict. Mr. Davenport said that they would not do anything to create a conflict with the FAA. The Council inquired as to the type of instrument these would be. Mr. Davenport stated that this is next-generation cellular carrier to be used in a form of wireless phone service which will allow them to compete in the mobile phone markets. Mr. Ponder stated that the document he was presented did not contain a statement that the City could reject the lease after the study. Mr. Davenport stated that he brought a standard form and that negotiation is allowed and the agreement can be amended as necessary to satisy the City. City Attorney Michael stated he could not recommend passage tonight; that he would ask for a consensus from the Council and then, if approved, the City Manager and himself would meet with BellSouth's representatives to prepare the option. The Council concurred to allow an option to be prepared. Councilman Jessen stated that he feels negative towards this for aesthetic reasons since it is the tank on the I-85 location. He asked if they might possibly use the North tank instead. Mr. Davenport did not think that that would be the correct location but said that he would look into it.

John McLaughlin from W. K. Dickson Engineers appeared before Council to discuss assessment of liquidated damages with regard to Contract Number 1 and Contract Number 3 of the water storage tanks. As to the Contract Number 1 with CBI Nacom, Incorporated, the City has witheld $123,940.00. The Contract completion date was September 20, 1994. The actual completion date was February 7, 1995. The Contract provides for liquidated damages of $500.00 a day. W. K. Dickson recommends (1) an increase to the Contract in the amount of $634.73 for additional fencing added to the Contract; (2) to extend the Contract fifty-six (56) calendar days with a new Contract completion date of November 15, 1994, because of delays to the electrical contract. As to liquidated damages, they did not make a specific recommendation but stated the City is entitled to charge from a minimum of actual damages to the maximum of $42,000.00. Mr. Ponder concurred with the first two recommendations. He stated that liquidated damages are difficult to recommend. He informed the Council that although they were over the Contract deadline, the tank was functional for City use; the items remaining being outside. It was the opinion of the City Attorney that it is difficult to enforce liquidated damages when the actual damages amount to less than the Contract specifies. Councilman Jessen **MOVED** to approve items one and two of the W. K. Dickson's recommendations and to assess damages in the amount of actual damages for the sum of $4,466.17. This motion was seconded by Councilman Hope and carried with all in favor. As to Contract Number 3, for instrumentation and control with Roland E. Black, Incorporated, the City has witheld $29,415.93. The Contract completion date was October 20, 1994. The actual completion date was March 23, 1995. The Contract allows for liquidated damages at the sum of $200.00 per day. The Contractor requested 154 calendar day extension. W. K. Dickson recommends twelve (12) calendar day extension of the Contract for delays due to weather. They stated that liquidated damages may be assessed from a minimum of actual damages to a maximum of $28,400.00. Mr. McLaughlin noted several exceptions the engineering firm has taken to the letter of explanation from Randy Chuning of Roland E. Black, Inc. dated November 3, 1994. There were several points of disagreement between the engineer and the contractor itemized in memo from Mr. McLaughlin to the City dated April 4, 1995. The Council discussed this matter at length. Mr. Ponder then stated that the City's actual damages were about $800.00. Councilman Hope was concerned about a re-connection for which they intend to charge $2,000.00. Councilman Duke **MOVED** that the Contract be extended for twelve (12) days due to bad weather; that liquidated damages be assessed in the amount of actual damages in the sum of $800.00, and that the re-connection be performed at no additional cost. Councilman Hope seconded this motion and it carried with all in favor.

John McLaughlin with W. K. Dickson presented bid tabulation for the Mount Holly Wastewater Treatment Plant Sludge Handling Facilities Improvement Project. The low bidder was Good Water, Incorporated, Greenville, South Carolina, in the amount of $1,388,000.00. Mr. Ponder stated that this figure is $288,000.00 over budget and he recommended the matter be tabled until the staff can attempt to negotiate with the low bidder for any savings that may be possible. Councilman Duke **MOVED** to table this matter until next month's regualar meeting, seconded by Councilman Helms with all in favor.

City Manager Ponder stated he received only one bid for the fire department command vehicle which bid was $200.00 over budget. He stated to the Council that he advertised in two newspapers and requested bids from eight (8) dealers. The bid received is from Dixon Ford. Councilman Jessen **MOVED** to award the bid to Dixon Ford for a fire department command vehicle, seconded by Councilman Hope and carried by a unanimous vote.

City Manager Ponder presented the bid tabulation for paving with John Jenkins being the low bidder. Both Mr. Ponder and Mr. Nichols recommended removing Cove Avenue from the list due to legal problems. Councilman Jessen **MOVED** to approve the bid award to John Jenkins for $151,364.00 after removing Cove Avenue from the list as recommended by the City Manager, seconded by Councilman Duke with all in favor.

City Manager Ponder requested a budget amendment for the Powell Bill Fund in the amount of $15,000.00 stating that this is the first year with a separate fund and he had made an bookkeeping error. The budget amendment was approved upon **MOTION** by Councilman Duke seconded by Councilman Hope with all in favor. The amendment is as follows: Increase Account #400-570-5-328--street maintenance--in the sum of $5,000.00. Increase Account #400-570-5-5346--street re-surfacing--in the amount of $10,000. Decrease Account #400-570-5-102--salaries--in the sum of $15,000.00.

The floor was opened for complaints or petitions. Mrs. Hazel Michael inquired as to the status of the new bridge on Highway 27 to be constructed by DOT. City Manager Ponder stated he had just received a request to remove the City's welcome signs by the end of May; therefore, he believes that construction will begin this summer as scheduled. Mr. Nichols also reported that they have begun talking to him about utility re-locations.

Mayor Black requested that a pattern be begun as to paving streets in the City. He also stated that in the past when new streets were paved one-third was paid by the City, one-third was paid by the owner on one side and one-third by the owner on the other side, and he believes this should be re-instituted as the City's policy. Councilman Jessen said that is a good idea but that the streets that the City has been paving in Catawba Heights have been paid for by the City because that was an obligation under our annexation order and that other new streets constructed in the City have to meet the subdivision regulations so that they are paved by the developer.

Mayor Black stated he had complaints about the police department personnel parking two cars together and talking for long periods of time. One citizen reported seeing them in the old cemetery and another one reported seeing them at McDonald's. Councilman Small said that they had been seen at Food Lion also and he has spoken with Chief Bishop. Mrs. Michael was recognized and stated that she is aware patrolmen are required to sit out in the field to do their reports rather than coming into the office and perhaps that accounts for part of the time they are seen sitting in their vehicles. Mayor Black further stated that he had asked for a downtown man at the last Council meeting to patrol everyday and that a few days later one of the banks was robbed in town. He felt that it would have made difference to have had a man out there or at least have a car parked on Main Street. Councilman Duke stated that he would also like to see a downtown patrolman everyday.

Councilman Hope stated that Second Baptist Church is building a new church on its property on the opposite corner from where they are now. This property is on land shown on an old recorded plat which has streets indentified on the plat that have never been opened. The church wants to have those streets closed. Councilman Hope **MOVED** to set a public hearing at the June regular meeting to consider closing of those streets shown on the plat within the property of Second Baptist Church at its building site. Motion seconded by Councilman Helms with all in favor.

Councilman Small was concerned about a lack of regulation on vicious dogs and requested the City Manager to investigate how they may be controlled in the City of Mount Holly. Mr. Ponder stated that he believes we can use state law but he would find out.

Councilman Helms stated that the Image Commission for Gaston County did not accept the person the City nominated because that person does not live in the City. He nominated David Hostetler. Councilman Duke nominated Robby Kayton. Mayor Black noted that there are two spaces available. Councilman Jessen **MOVED** to approve both persons nominated to be referred to the Image Commission seconded by Councilman Helms with all in favor.

City Manager Phil Ponder, informed the Council that he had received a request for utility service by a property owner for property located on the new bypass at its junction with South Main Street. If the City installs the line by only installing a service line and boring under the highway, it will cost about $2,000.00 for materials plus the labor, although the tap fee is only between $500-$600. The other option for installation would cost about $100,000.00. Councilman Jessen asked if the City is obligated to serve since the lot is inside the City. Mr. Ponder stated that the City is not required to serve this lot and he also noted that the City does not have an assessment policy. After discussion, Councilman Duke **MOVED** to proceed with running service lines to the lot for the estimated price of $2,000.00 for materials, plus the labor. Motion seconded by Councilman Hope and carried four ayes and two nays (Jessen and Harris).

Mayor Black reminded the Council that they should attempt to obtain jurisdiction over the area up to Stanley before annexation laws are changed.

City Attorney Michael stated that with regard to the matter involving a lease with Mr. Pace, he had noted when he went to the property to inspect that they were spraying paint in the open air and this could be an environmental problem. He told Council that, in his opinion, they are not obligated to lease this property or any property owned by the City, and he does not recall the City ever leasing any of its property in the time that he has been advising the Council.

Councilman Duke inquired as to the legal status on Cove Ave. City Manager Ponder stated that the insurance company's attorney has not given him a response to the inquiry made.

There being no further business before the Council, the meeting was adjourned, upon motion by Councilman Duke seconded by Councilwoman Harris and carried with all in favor, at 11:25.

Phillip D. Ponder, Jr.
City Clerk

Mayor of the City of Mt. Holly

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