

The City Council of the City of Charlotte, NC, convened for a luncheon briefing on Monday, February 21, 2005, at 12:20 p.m. in Room 280 in the Charlotte-Mecklenburg Government Center. Council members present were present: Susan Burgess, Nancy Carter, and Patsy Kinsey.

**ABSENT:** Councilmembers Patrick Cannon, John Lassiter, Don Lochman, James Mitchell, Patrick Mumford, Gregory Phipps, John Tabor, and Warren Turner

Staff briefed the Council members in attendance on the requested deferrals and the business items scheduled on the evening agenda.

The meeting was adjourned at 1:12 p.m.

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### **DINNER BRIEFING**

The City Council of the City of Charlotte, NC, convened for a dinner briefing on Monday, February 21, 2005, at 5:40 p.m. in Room CH-14 of the Charlotte-Mecklenburg Government Center with Mayor Pat McCrory presiding. Council members present were: Susan Burgess, Patrick Cannon, Nancy Carter, Patsy Kinsey, John Lassiter, James Mitchell, Patrick Mumford, Gregory Phipps, and John Tabor.

**ABSENT:** Councilmembers Don Lochman and Warren Turner

**Keith MacVean, Planning Commission**, reviewed the deferrals, and **Debra Campbell, Planning Director**, provided an update of pending rezoning petitions for February, March, and April 2005.

Staff requested that Council consider the following:

- Consider moving Petition 2005-57 by Hendrick Automotive Group, currently scheduled for the April public hearing, to the March hearing agenda.
- Make a decision after the scheduled hearing for Petition No. 2005-38 by World Worship Center.

The dinner briefing recessed at 5:52 p.m. to move to the Council Chambers for the regularly scheduled Zoning Meeting.

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The meeting reconvened in the Council Chambers at 6:04 p.m. with Mayor Pat McCrory presiding. Council members present were: Susan Burgess, Patrick Cannon, Nancy Carter, Patsy Kinsey, John Lassiter, James Mitchell, Patrick Mumford, Gregory Phipps, John Tabor, and Warren Turner.

**ABSENT:** Councilmember Don Lochman

### **INVOCATION AND PLEDGE**

Mayor McCrory gave the Invocation and led the Council the Pledge of Allegiance to the Flag. He said we have a unique meeting tonight because it is not just the Zoning Meeting but we also have a couple of items on our regular agenda. The first portion of our meeting is the business portion. I will move that item first and then we will get to the zoning.

**CONSENT AGENDA**

[ Motion was made by Councilmember Burgess, seconded by Councilmember Cannon, and ]  
[ carried unanimously to discuss Item Nos. 4 and 5. ]

[ Motion was made by Councilmember Tabor, seconded by Councilmember Burgess, and ]  
[ carried unanimously to approve the Consent Agenda as presented. ]

The following items were approved:

- 3-A. Contract to the lowest bidder, Metrolina Landscaping of Charlotte, NC, in the amount of \$194,156.78 for Prosperity Church Road Widening Landscaping for Engineering and Property Management.

**Summary of Bids**

Metrolina Landscaping	\$194,156.78
Ingle & Son	\$208,054.55

- 3-B. Contract to the lowest bidder, United of Carolina, Inc., of Charlotte, NC, in the amount of \$236,675.25 for Rail Crossing Lane/South Boulevard Streetscape for Engineering and Property Management.

**Summary of Bids**

United of Carolinas, Inc.	\$236,675.25
Onsite Development, LLC	\$280,025.03
Valley Crest Landscape	\$332,084.66
Sealand Contractors	\$334,029.15
Blythe Development	\$337,194.90

- 6. Reject the bid of \$99,999.99 from SLS of Charlotte, NC, pursuant to non-responsive bid -- bidder does not have a valid North Carolina Landscape Contractor's License as required by the project specifications -- and award the contract for Statesville Avenue Widening Landscaping to the next low bidder, Superior Seeding, Inc. of Gastonia, North Carolina for \$114,956.89.

- 7. Contracts for the design and construction administration of fiber optic cable routes and traffic signal interconnections for a total amount of \$2,015,000 with A) CBW Communications Engineers for \$850,000; B) Kimley-Horn and Associates for \$765,000, and C) HNTB for \$400,000.

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**SOUTH CORRIDOR LIGHT RAIL PROJECT-CONSTRUCTION PROJECT**

Mayor McCrory said this is A, B, C, and D. As I understand it, E and F have been pulled.

**Ron Tober, Charlotte Area Transit System (CATS)**, said, yes, Mayor. We are asking that you pull items E(a) and E(b) from tonight's agenda.

Councilmember Burgess said when I read this and read the Manager's Memo that came this weekend I found it very confusing. First of all, I don't believe that any item that is \$146 million and the second one is \$7.5 million, \$15 million, almost \$2 million – I don't believe that any of these should be on a consent agenda ever. It's just way too important to bury it someplace in our agenda, and I believe they should be on our action agenda with a full explanation because today at our agenda briefing I asked the staff that was present at that meeting for an explanation and none of them could give me one. I just think when we have this much responsibility that we need to have a thorough briefing so we know exactly what we are voting on, and we are not given the correct or proper thorough enough information to make a good decision. I wanted to pull them in order to understand it, and I'm sure everybody at this table has the same questions

that I do. I just want to make the point that I don't believe that decisions of this magnitude ever ought to be on a consent agenda. I believe they should be on an action agenda.

Councilmember Carter said Section B of the budget ordinance, the second and third bullet points discussing the State grant revenue to fund a portion of the train control contract center, the first two are dependent on State funding, Mr. Tober. Could you discuss this in light of what we have heard about 25% of the State's transportation budget being deleted? Will there be impact here? Will the City have to assume more responsibility for that funding?

Mr. Tober said this particular funding for the light rail project is being provided under the State's full-funding grant agreement for the project, which the State Board of Transportation has now acted on three separate times including most recently back here about two weeks ago when they approved the amendment to it. It is provided for under that agreement in the State. It does not require any additional appropriation by the legislature. It will be funded by funds that are available within the North Carolina DOT budget under that State full-funding grant agreement for the project.

Councilmember Burgess asked are you going to give us a presentation about it or are you expecting to take questions? How do you want to do this?

Mr. Tober said I had not planned to give you a presentation. We had given you a presentation back on January 10<sup>th</sup> on the status of the light rail project. All of the contracting actions that are before you tonight are consistent with that revised budget that we presented to you. In fact, in some cases, they are actually under what we had estimated in that budget. They are all associated with particular elements of the project, which are time sensitive under the schedule we have for the project. I can try to answer whatever questions you have, and I have additional staff here if I'm not able to answer your question.

Councilmember Burgess said the numbers matched up, but what was not understood by the City Manager's staff at the meeting today nor any of us on the City Council is where is this money coming from? Are we doing COPs and will get reimbursed from the Federal government?

Mr. Tober said calling you back to the presentation we gave on January 10<sup>th</sup> the funding plan for this project is that the Federal government, once the full-funding grant agreement is executed, which we expect will happen sometime in April, will be paying for 47% of the project. The State, under the State full-funding grant agreement, will be paying 25% of the project. We locally, from the transit sales tax alone, will be paying for the remaining 28%. We are using certificates of participation for two things. One is short-term financing to finance the construction of the project in anticipation of Federal funds coming. The Federal funds will actually be appropriated over a three-year period of time and will come back to the City as Congress appropriates those funds, and we will retire those short-term certificates of participation as those funds are received in. There will be about \$80 to \$85 million worth of long-term certificates of participation, which will be funding a portion of the City's share. The City's share of the project is about \$121 million, so \$85 million of that will be funded by certificates of participation. The debt service on those certificates of participation will be paid for from the transit sales tax.

Councilmember Burgess asked do you know how much the finance charges would be that we incur with the COPs until we get the Federal funding that's coming over three years?

Mr. Tober said I don't have a good estimate on that right at this point in time. We have left a provision in the full-funding grant agreement with the Federal government that depending upon what their actual schedule is for reimbursing us those funds that we would be able to claim a portion or perhaps all of any financing costs that we have associated with any short-term debt for those certificates of participation as part of the project costs and get reimbursed for that cost at some point in time. That assumes that we come in under budget and we have some contingency funds available.

Councilmember Burgess asked was that anticipated in the initial funding model?

Mr. Tober said, yes, it was.

bvj

Councilmember Burgess said we were expecting 50% to be paid for by the Federal government, and they are now down to 47%. Can we expect those kinds of decreases in the future?

Mr. Tober said I certainly hope not. I think that the timing of things related to this project and the position of this administration essentially has held us at that level of funding. I'm hopeful that we won't have that kind of a situation develop in the future, that we will be able to get at least 50% of the funding from the Federal government for the project.

Councilmember Burgess said I think for the benefit of our citizens when we are spending this much money that we should have an explanation of exactly what it is that we are voting on, so could you very briefly do that?

Mr. Tober said what is on your agenda tonight in Item 4 is principally the award of two contracts. The first is a contract for fare collection equipment in the amount of \$2,125,000 approximately. That particular contract award will be buying ticket vending machines that came in \$1 million under the budget for that particular item. The second item, the major item, is \$106.8 million. That is to fund track, roadbed, and structures construction. It's the major construction contract for the light rail project that will basically construct the right-of-way. That particular contract is again the most significant portion of our contracting. In addition to that, there is an amendment to the capital improvement plan to accommodate those two particular items and a budget ordinance appropriating \$146,834,843 for those particular actions. There was one action that we had proposed for your consideration tonight, and it was a contract for train control and communications. Because there is a protest that we have not finished reviewing the protest from the second low bidder we asked that the item be pulled, and we will bring it back to you at one of your future meetings.

Councilmember Burgess said the \$146 million – you mentioned the \$2 million and the \$1 million. Where is the rest of that?

Mr. Tober said the rest of it would be when we come back with the \$33.6 million train control and communications contract. This covers all the south corridor contracts that have been encumbered so far this year or that will be encumbered.

[ Motion was made by Councilmember Tabor and seconded by Councilmember Cannon to: ]  
[ A) adopt a resolution to amend the FY2005-FY2009 Capital Improvement Plan; B) approve ]  
[ Budget Ordinance 2877-X appropriating \$146,838.843; C) Authorize CATS CEO to negotiate ]  
[ and execute a contract with Ascom Transport Systems for the purchase and installation of ]  
[ the ticket vending machines (fare collection) for an amount not to exceed \$2,125,712.75 ]  
[ contingent upon receipt of a Letter of No Prejudice (LONP) from the Federal Transit ]  
[ Administration (FTA), and D) authorize CATS CEO to negotiate and execute a contract with ]  
[ Archer Western Contractors Corp. for the construction of the South Corridor Light Rail ]  
[ Project-roadbed, bridges, and track work for an amount not to exceed \$106,800 contingent ]  
[ upon receipt of a Letter of No Prejudice (LONP) from the Federal Transit Administration ]  
[ (FTA. ]

Councilmember Cannon said on E(a) you said it is going to come up in a future meeting on this item regarding the control and communications piece. Do you expect that to come back at our next business meeting or when do you expect that to be back? It seems that you have been working on that for some time, and obviously those things take time and we want it done right, but I'm wondering how you are coming in that process.

Mr. Tober said the process is at the final step in the process, the internal administrative process, which is my level of review, and I do expect to complete that review this week and hopefully will be in a position to bring it to you at your next business meeting a week from tonight for your action.

Councilmember Burgess said I have a question for you since you are our representative to the MTC. Does your group go into detail about these contracts?

Mayor McCrory said many times they do and sometimes they don't. It's very similar to City Council. The City Council approves water and sewer contracts, and sometimes we go into a lot of detail and sometimes we don't have questions about them, so it's very dependent upon the circumstance, very similar to the way this Council body works on, for example, the multi-million dollar water/sewer plants that we often approve in consent items. We review, first of all, the total budget, and I might add that the 47% issue the City Council did get a presentation and was advised of the 47% issue probably over a month ago and so was the MTC. I want to make sure that the audience doesn't assume that is new information we are getting tonight because we were all advised of that in a very detailed presentation. I'm glad you are asking these questions because the more education we get on it I think it is very beneficial. By the way, I don't mind. I think there is some merit to the discussion of the larger consent items being a part of our regular agenda, although I don't think transit should be the only exception to that rule because we have been doing it for many, many other large capital and construction programs that often aren't pulled. They just don't get the publicity that this particular expenditure does. By the way, that is including roads, too, because we approve road consent items, which we just did. We just approved some major road items -- \$236,000 and another \$194,000 -- in consent items. I agree these are some items, and I think it is very important that all of you have a clear understanding of these issues. Our meetings are very similar to City Council meetings. It's dependent when people read the material what questions are spurred by that information.

The vote was taken on the motion and carried unanimously.

The resolution is recorded in Resolution Book 39 at Page 540  
The ordinance is recorded in Ordinance Book 53 at Page 358-359

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**SOUTH CORRIDOR LIGHT RAIL PROJECT CONTRACT AMENDMENT WITH STV INC. FOR CONSTRUCTION MANAGEMENT SERVICES**

Councilmember Carter said two questions. The first would be to Mr. Tober to explain the financial statement in the change of businesses. Are we increasing our commitment to this line item? The second question would be the small business opportunity dealing with subcontracting opportunities for the project being trees, shrubbery, evergreens, and mulch. Saying there are no SBE firms certified to perform this work is really an astounding statement to me. If someone could speak to that item as well, please.

Mr. Tober said I can speak to the first one. Are you referring to the SBE participation in this contract?

Councilmember Carter said we have already voted on that.

Mayor McCrory said that's another item.

Mr. Tober said the item that is before you will save us about \$700,000. What we are doing is essentially requesting that you authorize us to use the consultant that has been providing project management support to us now to undertake the construction management services, and that is instead of having the primary design firm perform those services. The net effect of all these actions is provided in the budget control worksheet and indicates that we are actually saving about \$700,000 by doing this.

[ Motion was made by Councilmember Carter, seconded by Councilmember Burgess, and ]  
[ carried unanimously to authorize CATS CEO to negotiate and execute Amendment to the ]  
[ contract with STV Inc. to provide construction management and start-up and testing services ]  
[ on the South Corridor Light Rail Project for an amount not to exceed \$15,185,377, authorize ]  
[ CATS CEO to negotiate and execute Amendment to the contract with Parsons Transportation ]  
[ Group (PTG) to reduce the total amount of the contract of \$7,500,000, and approve Budget ]  
[ Ordinance No. 2878-X appropriating the Federal and State share totaling \$5,764,003. (Local ]  
[ match of \$1,921,334 in COPS previously appropriated). ]

The ordinance is recorded in Ordinance Book No. 53 at Pages 360-361.

Mayor McCrory said I do want to clarify one thing that is kind of unique about transit, and that is the federal funding, which, Susan, I thought you asked some good questions and that is with regard to the difficulty. Every part of federal money for transit you get after the fact. You have to prove your case first and then they basically do a refund. This is true in every single major city that gets transit money. It's the way you have to deal with the federal government. You borrow money against the money that is going to be paid back. By the way, I do want to verify that has already been a part of our budgeting process that the MTC does review the amount and how it impacts interest, how it impacts loans, and all the other things. The big issue is if you waited for the federal money it would cost you so much in the schedule waiting that it would end up costing the taxpayers even more money. It would be like delaying a highway project until you actually get the funds as opposed to borrowing in advance, and that ends up costing a lot more money in the actual delay of the schedule. Is that a fair way to –

Mr. Tober said it is, Mayor, and under North Carolina rules and laws we have to be able to encumber the funds when you award a contract, so we need to be in a position from a budgetary and ordinance standpoint to be able to identify those funds.

Councilmember Burgess said you just said this will save us \$750,000. Is that in the write up?

Mr. Tober said what should have been provided to you what we call a budget control worksheet. For all of the south corridor light rail project items, we provide that. It is usually in the back where the ordinances or resolutions are attached. There was one included for this particular project. If you look at the top of that sheet, you will see it's actually \$739,000 is what the estimate is.

**Julie Burch, Assistant City Manager**, said, Councilmember Burgess, that is Attachment 3 to your agenda.

Mayor McCrory said that might be good and bad – a bullet point summary just on the point we mentioned and might be a good thing to do. If there is some major information on those attachments it would be good. By the way, if it was over \$700,000, we would want the same bullet point. I think it's good information to know. I doubt we'll get a headline on that one. Councilmember Carter has a question on one we already approved. Is that the Statesville one?

Councilmember Carter said this would not change my vote or I would not encourage anyone to vote in another way than they have, but if I could ask Ms. Capers since she is here with us today. On the Statesville Avenue widening landscaping, as I just stated for the previous amendment, I am interested in the fact that there are no landscaping firms that have been identified or certified to perform this landscaping services that are the SBE firms we are searching for and hoping to nurture in our system. Ms. Capers, can you help me understand because it seems like there are a lot of people who are in our diverse population who are involved with landscaping.

**Tiffany Capers, Small Business Opportunity Program**, said let me respond by providing one piece of additional information. With regard to landscape contractors licensing, there is a threshold by which small businesses have to be able to demonstrate that they can perform \$30,000 worth of work or more. So, for many of our landscape contracts, we don't have SBEs that have the requisite landscape contractor license to even perform on contracts that are over \$30,000. That is one of the issues. For this particular contract and contracts like it, we try to make sure we examine whether or not the contract truly provides subcontracting opportunities. When we were establishing the goal or considering a goal for this contract, we looked at a history of landscape contracts. For those contracts, we had set a 1% goal. For each of those goals, prime contractors committed 0% and prime contractors also told us they could perform the contract with their own forces, and to use an SBE firm would cost more. So we went into setting the goals for these contracts based history of how these contracts get performed and whether or not there was any subcontractor opportunities. We also tried to look at whether or not there was a supplier opportunity for these contracts, whether we had an SBE firm, a nursing company, for instance, who could supply the plant materials for the contract. We currently do not have any SBE firms that supply landscape materials. The language in the agenda item probably could

have been written to better explain that it was more so for supplier opportunity as opposed to subcontractor opportunity but that's the gist of the explanation. We don't have any SBE firms to supply landscape or plant materials.

Councilmember Carter said two questions subsequent about who set the threshold for these measurements, and are we nurturing businesses that are within this industry so they can move forward and perform according to our thresholds or goals?

Ms. Capers said we have a goals committee that is staffed by citizen volunteers who actually reviewed the staff's recommendation for the 0% goal and concurred with staff that was an appropriate amount to set given again the nature of the work and the nature of the contract. As far as nurturing and trying to develop firms, certainly we are trying to do that, but again, in order for firms to be able to perform at the \$30,000 threshold and above, they have to meet the licensing requirements as mandated by the North Carolina General Statutes. That is where the development for us takes place, making sure that those firms are in position to pass the test to meet the rigors of the statute.

Councilmember Cannon asked who were those individuals that you may have gotten from the private sector to help you with those thresholds?

Ms. Capers said I'll try to remember the names -- I don't have them in front of me -- Jesse Hite, for instance, Otis Crowder. We have a representative from Ferrebee Corporation, Don Jones serves on the committee. Clifton Budnick serves on the committee. Those are some of the names, but we have three goals committees that are staffed by five volunteers each, and those committees are responsible for reviewing the recommended goals that staff presents as they review the projects.

Councilmember Cannon said I respect each and every one of those individuals mentioned. I will tell you that I have some real concern about information like that not coming back before this body knowing that we aren't obviously the experts like those individuals there but at least being able to weigh in on it or to ask some questions. I can appreciate the effort, but just like the application process, I question this also.

Mayor McCrory said I do need to make one other clarification. Mr. Mumford made a good point in some of the questions about the transit. It was stated that the federal government reduced their match from 50% to 47%. In percentage case, that is correct, but the federal government had promised us a certain amount of money and they are 100% in giving us that amount of money. It is when our costs went over due to the price of steel it reduced the percentage from 50 to 47%, but that did not reduce the federal government's initial promise of the money that we initially asked for, and I just wanted to make sure that was clearly understood because we are talking about both percentages and whole numbers. By the way, the logic of the feds is sound. It went over. You need to take the responsibility for that, and that's what we are doing.

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## **NOMINATIONS TO BOARDS AND COMMISSIONS**

**Citizens Review Board** – The following nominations were made for one position beginning immediately and ending July 2006:

1. Jonathan Pollack, nominated by Councilmember Tabor
2. Joanne Sizoo, nominated by Councilmember Burgess
3. Christy Mann, nominated by Councilmember Kinsey
4. Greg Jones, nominated by Councilmember Lassiter
5. Vanessa Burns, nominated by Councilmember Cannon
6. David Blough, nominated by Councilmember Carter

[ Motion was made by Councilmember Cannon, seconded by Councilmember Burgess, and ]  
[ carried unanimously to close the nominations. ]

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## ZONING AGENDA

### DEFERRAL OF VARIOUS PETITIONS

[ Motion was made by Councilmember Carter, seconded by Councilmember Turner, and ]  
[ carried unanimously to defer decisions on Petition Nos. 2004-120, 2005-07, and 2005-13 for ]  
[ 30 days and to defer public hearings on Petition Nos. 2004-106, 2004-109, 2004-134, ]  
[ 2004-136, 2005-03, 2005-10, 2005-24, 2005-30, and 2004-137 for 30 days. ]

[ Motion was made by Councilmember Cannon, seconded by Councilmember Mitchell, and ]  
[ carried unanimously for both the public hearing and the decision to occur on tonight's agenda ]  
[ on Petition No. 2005-38 by World Worship Center. ]

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### ORDINANCE NO. 2879-Z FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE THAT COMPLEMENTS THE PARKING ON FRONT LAWN ORDINANCE WHICH BECAME EFFECTIVE 4/1/04

[ Motion was made by Councilmember Burgess and seconded by Councilmember Carter to ]  
[ approve Petition No. 2002-122 by the City Attorney's Office for the above zoning change ]  
[ as recommended by the Zoning Committee. ]

Councilmember Burgess said I just want to remind the Council that this issue of parking on front lawns was referred to the Housing and Neighborhood Development Committee. We have discussed an evaluation of our experience for the past six months and will be reporting our findings back to the Council on February 28<sup>th</sup>.

Councilmember Cannon said I want to add one last thing. Mayor and Council, I understand there is no definition for driveways as we talk about parking on front lawns. I would like for us to look further into that to get a definition of driveways. The issue right now is we have some of these communities where parking is an issue on front lawns where you can literally go and if you wanted to toss a rock out there and call it a driveway you can on actual grass itself. I have some information I would like to share with you, and it might be something that goes back to committee for further discussion.

**Julie Burch, Assistant City Manager**, said there was brief discussion about that when the committee evaluated and looked at the staff evaluation. Up to this point at least, that has not been much of an issue in terms of enforcement of the ordinance so the staff didn't feel like it was necessary to go back and amend the ordinance at this time but perhaps that might be an issue in the future and something we could look at. I think certainly we would welcome any additional information if there is something we can take another look at.

Councilmember Cannon said on the contrary I think it's an issue now because it's a loophole. It's a loophole to allow people to continue to just go ahead and sprinkle rocks or gravel onto a lawn where you can still see the grass because there is no level of inch that is required, there is no level of width that is required. What precludes someone from doing that is still causing some issues for the neighborhoods, so I still say it's an issue that needs to be addressed.

Councilmember Carter said I'm going to ask Mr. MacVean if he could please explain this to our constituents, as they are listening, the difference between what was and what is with this new addition to the ordinance.

**Keith MacVean, Planning**, said this is a companion to the previously approved City Council Code section that restricts parking in the front yard. This requires new development as new single-family development – townhouses, multifamily. If they have a garage, then the minimum driveway width is 20 feet as measured from the right-of-way line or the back of the sidewalk, whichever is the greatest. The 20 feet is to assure that we have enough room to park a car and

not have the car overhang into the public sidewalk. It also does create a definition for minimum length for the pad and the driveway. It does also try to speak to what is an improved driveway.

Mayor McCrory said we could spend all night on what is a driveway.

Mr. MacVean said what we have defined a driveway to be is a – and it doesn't totally address what Councilmember Cannon was discussing earlier because for the purposes of this subsection improve means a surface with concrete, asphalt, gravel, or any other material commonly used for parking vehicles but not including grass or dirt, so we have not addressed totally the standard in terms of how much depth of gravel or depth of concrete, etc. We did talk about the 20 feet, and again it does help provide standards for new development, new homes, new town homes. What is the minimum length of the pad and how it has to be provided between the street and the actual building.

Councilmember Tabor said I wanted to follow up on Mr. Cannon's comments regarding throwing gravel down. I think the technicality, and it can – I think I asked that question when we were first going into this process, but I think common sense can prevail. The police can still give the citation, and worst case we are making those folks go and appeal it, and hopefully whoever does the appeal will use some common sense and say just because you throw some gravel down doesn't mean you are going to get away with it. It is a technicality. I don't want this to get too bureaucratic where we have to define everything to a great degree. My thinking is if we have a lot of appeals that lose let's look at it again, but let's wait until there are three or four of them.

Councilmember Cannon said I would only add when you speak to a neighborhood whereby the issue is an issue they also have a concern about the level of enforcement that police will be providing because they haven't been providing that, so that is something we need to follow up on.

Councilmember Tabor said that's a different animal.

Councilmember Cannon said I hear your comments, but I will tell you it is an issue.

Mayor McCrory said we are going to find out what happens. It is a brand new procedure.

Councilmember Phipps said in dealing with this issue much to my chagrin I found out that this particular no parking on the front lawn ordinance only pertains to cars and trucks, so if a person had a trailer or a boat or motorcycle, that's permissible to be parked in the front yard.

Mr. MacVean said I would think boats would be classified as vehicles and they should not be allowed to be parked in the front yard. We would have to look at the other provisions in the City Code. From a zoning perspective, those would be considered vehicles.

Councilmember Phipps said when I called the special 7600 number they said it only pertains to cars and trucks. If that is the case, it defies logic why a boat or a trailer or –

Mayor McCrory said we need to find that out so there is clarification one way or the other. He got that answer from a customer service rep.

Councilmember Phipps said yes.

Mr. MacVean said I'll have to check and see exactly what the wording is and how they have been treating that. From a zoning perspective, trailers have to be attached to the truck. If you detach the trailer, then the zoning administrator will cite the property owner with a violation for having a commercial vehicle on the site, I believe is what they have been doing. From a zoning perspective, they have always treated boats as vehicles. Anything that has a motor more or less becomes a vehicle.

Mayor McCrory said we need to make sure that the people answering these questions have the accurate information or we have it clarified.

A vote was taken on the motion and carried unanimously.

bvj

The ordinance is recorded in Ordinance Book 53 at Pages 362-364.

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**ORDINANCE NO. 2880-Z FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO ALLOW FUNERAL HOMES, WITH ACCESSORY EMBLACING IN THE INSTITUTIONAL ZONING DISTRICT, WITH PRESCRIBED CONDITIONS**

[ Motion was made by Councilmember Burgess, seconded by Councilmember Carter, and ]  
[ carried unanimously to approve Petition No. 2004-83B by Donald Green for the above zoning ]  
[ change as modified and as recommended by the Zoning Committee. ]

The modifications are:

- Funeral homes shall have a minimum lot size of three (3) acres
- Funeral homes as an accessory use to a cemetery of 75+ acres shall have a maximum sign size of 32 square feet

The ordinance is recorded in Ordinance Book 53 at Pages 365-368.

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**ORDINANCE NO. 2882-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 32.76 ACRES LOCATED NORTHWEST OF THE FUTURE OVERPASS OF INTERSTATE 85 AND FUTURE INTERSTATE 485 FROM R-12MF LLW-PA TO 1-1 (CD) LLW-PA**

[ Motion was made by Councilmember Cannon, seconded by Councilmember Tabor, and ]  
[ carried unanimously to approve Petition No. 2004-141 by Robert Eric Lanier for the above ]  
[ zoning as modified and as recommended by the Zoning Committee. ]

The modifications are:

- No billboards will be permitted
- Landscaping along the frontage of Interstate 85 and 485 will consist of four to five large trees per 100 linear feet. A class "C" buffer will be required if loading docks orient to the highways.

The ordinance is recorded in Ordinance Book 53 at Pages 406-407.

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**ORDINANCE NO. 2881-Z ALLOWING A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO CREATE A NEW TRANSIT SUPPORTIVE (TS) OVERLAY ZONING DISTRICT WITH ASSOCIATED DEVELOPMENT AND URBAN DESIGN STANDARDS, TO COMPLEMENT THE EXISTING TRANSIT ORIENTED DEVELOPMENT (TOD) ZONING DISTRICTS AND MODIFY THE TRANSIT ORIENTED DEVELOPMENT (TOD) ZONING DISTRICT BY ELIMINATING CERTAIN NON-TRANSIT SUPPORTIVE USES**

[ Motion was made by Councilmember Carter, seconded by Councilmember Cannon, and ]  
[ carried unanimously to approve Petition No. 2004-128 by Charlotte-Mecklenburg Planning ]  
[ Commission for the above zoning change as recommended by the Zoning Committee. ]

The ordinance is recorded in Ordinance Book 53 at Pages 369-405.

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**ORDINANCE NO. 2883-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY ONE ACRE LOCATED ON THE NORTHEAST SIDE OF EAST 8<sup>TH</sup> STREET, SOUTH OF NORTH ALEXANDER STREET FROM UR-1 TO UR-2(CD)**

A protest petition has been filed and is sufficient to invoke the 20% rule requiring affirmative votes of  $\frac{3}{4}$  of the Mayor and Council members not excused from voting in order to rezone the property.

**Keith MacVean, Planning**, said if I may clarify one point. I didn't realize this was in the agenda this way, but that petition has been amended to UR-2(CD). We mentioned that at the public hearing. The petitioner originally thought he needed UR-3 for the FAR, but after more closely looking at the calculation, UR-2 is all that is needed. Since that is lower in the hierarchy that is within his ability to amend the application without requiring a new hearing. It is UR-2(CD).

Councilmember Mitchell said I wanted to thank all of those in First Ward community for their input and for inviting me to a neighborhood meeting back in February about the rezoning issue. We had over 100 people in attendance. Recently I received letters from two of the four property owners as well as from the president, who is here with the board of directors, the African-American Cultural Center, NAACP, the Black Political Caucus, the Historic Landmarks Commission, the Urban League, so this really was the result of a petition that got a lot of attention. Let me address one request that was sent to me by First Ward about spot zoning, to just classify the spot zoning. I talked to Mac McCarley and City staff, and it is clear that the City Attorney and I feel this is not spot zoning or contract zoning, that the rezoning request is compatible to the district plan in the area meaning there was already UR-1, UR-2 surrounding this particular rezoning. Why it's not a contract zoning is the City Council has not agreed to exercise its zoning power in exchange for some promise made to the petitioner in the rezoning. There has been a lot of discussion about the historic significance, especially from an African-American perspective for the property there, and I think Keith mentioned earlier that the Drakeford Company has agreed to help relocate one of the homes that they feel like based on the Dilworth Construction Company, who went out there and did the assessment, that the property located at 729 East Eighth Street is the one that has the most value and will be a prime candidate to keep that structure and to relocate it. In the event that no one comes forward, the Drakeford Company has agreed to donate about \$15,000 to a nonprofit organization to keep that historic structure there. I think this gets down to a land use, and as I mentioned to First Ward about urban development being something we really preach in the First Ward Plan as well as the Center City and from a land use perspective, I think it's appropriate that the Drakeford Company is going to do for First Ward and for that property. I will ask all Council members to join me to approve this rezoning, Item No. 2004-143 with the amendment that we receive from the Drakeford Company about 728 East Eighth Street being relocated to keep its historic significance.

[ Motion was made by Councilmember Mitchell and seconded by Councilmember Kinsey to ]  
[ approve Petition No. 2004-143 by The Drakeford Company for the above zoning as modified ]  
[ and as recommended by the Zoning Committee. ]

Councilmember Carter said I would like to express appreciation to Mr. Drakeford for making available these two buildings, as I understand it, those two homes that are deemed most structurally sound and also that donation of \$15,000 for the cause of moving and preserving that one structure and also making the other one available for moving, if it's possible, within the

community. I do have a question for our zoning staff. The last bullet on this item says, "The site plan will contain notes limiting the development to residential uses only." We were discussing in our briefing at noon the location of businesses within homes. Could you continue and explain that definition for us, Mr. MacVean?

Mr. MacVean said typically as part of the residence the R zoning regulations allow and in this district would also allow what we call a customary home occupation. That is where the people or person living in the home can run a business from that home as long as it does not occupy more than 25%. That would be permissible here. What we did not want to allow or want to occur in the future because the UR-2 zoning classification does allow non-residential uses to occur within the building. We did not feel this was an appropriate location for businesses or office uses as a separate entity to the residential uses on the site -- an independent business could open up on the ground floor of a building or use one of the units. We did not think that was appropriate, and that's why we asked for that condition to be added to this particular site plan that the non-residential provisions of UR-2 would not apply here but customary home occupations, which are accessory to residential uses, would be acceptable.

Councilmember Burgess said I would like to follow up on this very issue about working at home and what exactly is permissible. I went last week to a local Innovations workshop given by the Reason Foundation, and they gave a piece of data about Charlotte that the number of people working at home has increased in the last few years from 12,000 to 22,000, and that's wonderful because the commute is nonexistent, and we certainly want to encourage that kind of flexibility in the workplace. What we need to know, I think, is exactly what is possible, what is permissible.

Mr. MacVean said what can you do exactly.

Councilmember Burgess said if you wouldn't mind giving us some report on that it would be great because that's something we definitely want to encourage. The other thing is last night I did a television interview about these homes that are being made available for moving, and I want to thank the petitioner, Bobby Drakeford, for his generous offer of trying to save the homes. Even though they are old and they are charming, they are not deemed to be historic by those professionals in our city who determine those sorts of things because they have been moved there and for that reason they have lost their historic designation. However, the homes themselves have value, and one of the offers that he wanted us to consider is moving a home to the lot next door that actually is the city right-of-way, would have been the extension of Myers Street. I would like to know if that is possible to move it, and I want to make the community aware that if it is then the petitioner will again -- let me restate -- donate \$15,000 to make that possible and then the nonprofit can do what it needs to do and sell it. I know that at lunchtime I asked you to investigate more if it would be permissible to move that house to that particular lot.

Mr. MacVean said I did check with the Department of Transportation because they had received this question earlier, and they have investigated what is the status of the old right-of-way for Myers Street. The right-of-way has been abandoned, and right now that is basically a lot that is still currently owned by the City. The old right-of-way is now a City lot. The house could be moved to that lot. There are utilities both under the ground and above that would need to be relocated, and the petitioner is aware of that, and the survey of the lot needs to be done to see exactly what the utilities are and to see if they can be relocated. Mr. Drakeford has agreed to try to move the home at 729 East Eighth to that lot. He will be looking to the City to possibly donate the lot to the nonprofit. He has agreed to provide \$15,000 toward a nonprofit for the movement of that home to that lot. If that can't be accomplished, he has agreed to donate the \$15,000 to a nonprofit to deal with the issues relating to other historic properties or other urban renewal issues. He didn't give me a lot of specifics as to how he would designate the nonprofit that would receive the money other than it would be a nonprofit. Those are commitments currently by the petitioner in writing to us. They are not necessarily conditions of the conditional plan. They are his commitments to follow through on that, but they are not currently conditions of the site plan. They could be made that, but we would need to ask the petitioner if that's what he wants to do. We have not done that at this point. The lot can be used. There are some "if's" still left to be answered -- what are the utilities, can they be relocated, and is the City willing to donate or sell that lot. At this point, the request is for a donation of that lot to allow the house to

be moved onto it. That will be something that will need to be worked out in the future with City staff and the City Council.

Councilmember Burgess said also the nonprofit. I hope the media will help us get the word out to the nonprofit world that there may be a real opportunity here. It is a compromise position that saves an old house in the center of a city and still allows us to use the property there on Eighth Street to be consistent with the plan. It's not all four houses, but it could definitely be one, and it's a charming Dutch Colonial, probably in the 1920s –

Councilmember Kinsey said actually moved from Myers Street originally. That's where it started its life.

Mr. MacVean said I believe in the report there are two houses.

Councilmember Burgess said the house next door to it as well.

Mr. MacVean is willing to donate those to anyone that is willing to move them – both of those.

Councilmember Turner said, Mr. Drakeford, I appreciate what you have done and what you are committed to doing in regards to save those houses. My concern beyond that is when we get to the point we want to restrict citizens the right to sell their homes or their property. I think if we do not support this petition that is exactly what we will be doing is restricting a homeowner the right to be able to sell their property, and if so, make a profit. I don't think personally that should be our goal, and that should not be our aim as a Council, and I'm not saying that is at this point, but I do want to make sure that we understand that those homes have been there and those people live in those homes. I went out and had an opportunity to visit with Ms. Jackson. I went through her home. She actually was one of the persons who had interviewed and was on the news with regards to her upstairs bathroom where basically the commode just fell through the house. In my opinion, and I'm not a professional in architecture or structure, but I tell you that house in my opinion is not in sound condition. It's a very old home, and that is obvious, but she wants to be relieved of that home and that liability of trying to maintain it. I think she should have the right to sell her property and make a profit.

Mayor McCrory said on this item I think the major issue, although the one of the houses is getting all the publicity, but the real issue I think we should decide in zoning is this the proper zoning for that piece of property regarding the increased density. I think that is the real decision. I realize there is some other perspective to the homes, which I think should be considered, but in most respects we are voting on the zoning, and that is is it appropriate for density in comparison to the surrounding neighborhood. That is the big issue.

The vote was taken on the motion and carried unanimously with the following modifications:

The modifications are:

- Unit numbers 4, 5, 12 and 13 shall be two stories with a 30-foot height limitation. This limitation does not include the parapet wall that will be constructed around the peripheral of a rooftop terrace. The peripheral wall is not expected to exceed five feet. The dimensions of this terrace shall be limited to half of the building footprint.
- The height limitation of the detached garages shall be 15 feet.
- Flat roofs shall be predominate roof type. The roofs over the garage and the facades of the buildings fronting 8<sup>th</sup> St. shall be pitched (a gable/A-frame type is envisioned and illustrated on the elevations) in order to blend with the existing architecture.
- The following is a comprehensive list of anticipated exterior materials: brick, stone, cementitious hardi-plank, cementitious MDO siding, standard roofing materials.
- The site shall be lowered by the stated degree under the specified units: (a) Units 2 and 3 – four feet and (b) Units 1, 6, and 7 – two feet.
- Sidewalks will meet all criteria including labeling
- A revised elevation that includes landscaping and screening of the parking area and driveways will be submitted for approval
- Neither the decks nor patios will encroach into the rear yard setback

- The site plan will contain notes limiting the development to residential uses only

The ordinance is recorded in Ordinance Book 53 at Pages 408-409.

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**ORDINANCE NO. 2884-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 2.03 ACRES LOCATED ON THE NORTH SIDE OF EAST WOODLAWN ROAD BETWEEN STACY BOULEVARD AND DARWIN CIRCLE FROM R-4 TO UR-2(CD)**

[ Motion was made by Councilmember Turner, seconded by Councilmember Lassiter, and ]  
[ carried unanimously to approve Petition No. 2004-144 by Bridge Partners for the above ]  
[ zoning as modified and as recommended by the Zoning Committee. ]

The modifications are:

- End of building elevations will be provided including screening of HVAC units
- The tree preservation has been improved to identify a minimum number of trees to be preserved
- The sidewalk note has been changed to provide a functional internal sidewalk
- A minimum of 18 feet will be provided between sidewalks and garages
- Patio walls in fronts of units will be limited to 4-1/2 feet in height

The ordinance is recorded in Ordinance Book 53 at Pages 410-411.

Councilmember Burgess said I support this, but I do want to lift something out of this write up, and that is that the Charlotte-Mecklenburg School System actually did weigh in on this petition. We often criticize the school system of not giving us their opinion, and this time they gave us their opinion and they are recommending against it because of no capacity in the nearby schools. Our problem, I think, with making decisions based on this is we haven't put that in our GDPs, and we probably need to address that, and if I could ask Mr. MacVean when that is going to be considered to be proposed to the City Council.

**Keith MacVean, Planning**, said the Planning Liaison Committee has looked at that, and they are providing some guidance to each individual bodies of the County, the School Board, the City Council as to what priorities in terms of schools and infrastructure. The Planning Liaison is looking at this issue, but also you asked the staff to look at infrastructure GDPs concurrently with the environmental GDPs, and the environmental GDPs are well into the process. I think we have been working on those for the last four or five months, maybe six months. We are due to kick off the infrastructure part of the GDPs this spring and summer. I'm not sure of the exact date, but in the next three to four months we'll kick that off. Schools will be part of that discussion of infrastructure – how do you fund schools, adequacy, and things like that. Again, it's part of that process of examining infrastructure – roads, sewer and water, schools. As to what will come out of the report and what will be the recommendations, it's too early to tell, but it will be something you will hear about in the coming year and we'll start work on fairly soon.

Mayor McCrory said the only dilemma I have with the recommendation from the schools is they are looking at it from a very narrow perspective because then where do these people move to – Huntersville? Is it worse at Woodlawn versus Huntersville or Union County or Rock Hill because they are all having the same issues? There is a cause and effect regardless. It's a much bigger issue than a narrow perspective of a recommendation, and I hope that discussion is made also. By the way, it could impact our growth patterns as far as where other infrastructure may counter that whole issue, but I'm not going to get into that tonight. We already voted on it.

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**ORDINANCE NO. 2885-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 11.8 ACRES LOCATED ON THE SOUTH SIDE OF SOUTH TRYON STREET ACROSS FROM ERWIN ROAD FROM R-3 AND R-8(CD) TO R-12MF(CD)**

A protest petition has been filed and is not sufficient to invoke the 20% rule requiring affirmative votes of  $\frac{3}{4}$  of the Mayor and Council members not excused from voting in order to rezone the property.

[ Motion was made by Councilmember Burgess, seconded by Councilmember Mumford, and ]  
[ carried unanimously to approve Petition No. 2004-147 by Crosland, Inc. for the above ]  
[ zoning as recommended by the Zoning Committee. ]

The ordinance is recorded in Ordinance Book 53 at Pages 412-413.

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**ORDINANCE NO. 2886-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 55.5 ACRES LOCATED SOUTH OF WADE ARDREY ROAD, EAST OF MARVIN ROAD FROM R-3 TO MX-2(INNOVATIVE)**

[ Motion was made by Councilmember Burgess and seconded by Councilmember Tabor to ]  
[ approve Petition No. 2004-148 by Crosland, Inc. for the above zoning as modified and as ]  
[ recommended by the Zoning Committee. ]

Councilmember Burgess said this particular development will have alleys, which I really like alleys. I grew up with alleys, and they are a wonderful way to collect garbage and make deliveries and so forth. I would like, Mr. MacVean, for you to give us some information about alleys and if they are encouraged, discouraged, or what is going on in the development world in other cities relative to alleys.

**Keith MacVean, Planning**, said at a later date we will be glad to do that. We encourage them. We do not discourage alleys. A lot of developments that request alleys are bringing homes closer to the street. The lots are getting narrower so the driveway widths –

Mayor McCrory said, Keith, I have to keep the discussion on this particular petition here.

Councilmember Burgess asked would you bring us some information about alleyways?

Mr. MacVean said I will be glad to.

Councilmember Lassiter said this goes back to the school comment, and I think the Mayor's comments were right on target. We got comments from the School System on 23 units infill in town, but we got no comment on 330 units on the Union County line. I'm not sure if there is a reason for that and I don't want to be critical, but if they are going to take the time to comment on a petition, this is in an area where they have slated ten more elementary schools. It seems like we need to get that straightened out so the comments match the issue – not where you are bringing new construction into a community that hasn't seen much new construction in 15 years.

Mr. MacVean said we are working with them to make sure their comments are more timely. We met with them two weeks ago so they could better understand what our schedule is.

Mayor McCrory said I think the other issue is the confusing information we read in the newspaper that is the inner city schools that don't have enough people and yet they rejected the inner city one.

Mr. MacVean said this is an unusual one. Pinewood Elementary is slightly overcrowded. I think in the information we looked at again it actually does not have any mobiles on the site. It's 135% capacity without mobiles, which is unusual.

Councilmember Lassiter said it's just that I have a little prior knowledge to close down a school two miles away and force all the schools into two schools north of that. Part of it is you can't have it both ways, so the challenge and maybe Planning Liaison is trying to work some of these issues through, but the schedule for when zoning hearings are held, when decisions are made has been the same since the late '80s when I sat in one of those chairs over there. You would think that is pretty easily understood, and if we need to kind of get a little better board to board or manager to superintendent, we ought to make that relationship really valid between the two bodies.

Mr. MacVean said as I mentioned we met with them probably two to three weeks ago. We are now going to provide them a calendar so they know exactly when things are when we need them so we can incorporate them into staff analysis. I think if you let us work on that for the next couple of hearing dates to see if we can get that established and they can understand the rhythm of the hearings and when they are getting comments before we go any further in terms of board to board.

Councilmember Lassiter said if I can help in any way let me know.

Mr. MacVean said I will do that.

The vote was taken on the motion and carried unanimously.

The modifications are:

- There will be a six-foot berm along Wade Ardrey Road
- The developer will dedicate to Mecklenburg County Parks and Recreation approximately 400 feet from the top of bank along Six-Mile Creek
- Petitioners have agreed to the notes requested by Storm Water Services

The ordinance is recorded in Ordinance Book 53 at Pages 414-415.

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**ORDINANCE NO. 2887-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.96 ACRES LOCATED ON THE NORTHEAST CORNER OF SOUTH TRYON STREET AND ERWIN ROAD FROM R-8MF(CD) TO INST(CD)**

[ Motion was made by Councilmember Cannon and seconded by Councilmember Mitchell to ]  
[ approve Petition No. 2004-150 by Sunshine House Day Care for the above zoning as ]  
[ recommended by the Zoning Committee. ]

The ordinance is recorded in Ordinance Book 53 at Pages 416-417.

**Following the approval of Item No. 11, Petition No. 2005-01, Councilmember Turner asked to return to Item No. 10, Petition No. 2004-150.**

Councilmember Turner said Mr. Neely is a property owner out there. Basically I need to get a clarification on a couple of things because when I brought this to our attention when it first came before us with regard to proper notification of whether or not Mr. Neely was notified accordingly and whether or not he was given the correct information based on the plan as it was presented to us for use as well as a left-turn signal – a left lane into this property site. Mr. Neely, thank you and welcome. Explain to us exactly how you see this is going to affect you with regard to a left-turn into this property on Petition 2004-150, please.

**Mr. Neely** said the left-turn lane is indicated on that petition in an earlier rezoning that was done a couple of years ago, however, it is impossible to tell from that petition and the diagram that is provided where the left turn is. As I found out just two weeks ago when they began staking out my yard, most of the left-turn lane is being created out of my front yard up to ten to 11 feet for the left-turn lane for the developer on the other side of the road, which is being taken out of my front yard. That was not included on the plan.

Councilmember Turner said tell the Council exactly where your property is notified in proximity of this site and how much land do you own in that area from your house frontage.

Mr. Neely said I own about 400 feet of frontage, and my house is directly across from where the entrance to this project is – the condo project and the daycare project. I even have plans that were submitted, pictures of those plans, that show very clearly that my side of the road is impacted much more so than the other side. Most developments you would expect that if they have to add a lane that they add it on to their property. This lane is being added on my property across the road. In addition, it will cause the demolition of a large 36-inch diameter, 100+-year-old oak tree.

Mayor McCrory said I have to be very careful here. I cannot have a repeat of the public hearing. You have to be very specific in your questions, and you are going to have to be very specific in your answers or I'm going to have to ask –

Councilmember Turner said, Mr. Neely, tell the Council in regards to encroachment on your property what would you lose that you find to be of value to you?

Mr. Neely said according to the engineer who prepared the survey for the developer I would lose about 2,000 square feet; they lose about 1,300 square feet on their side.

Mayor McCrory asked is this specifically related to this zoning case?

Councilmember Turner said it is, Mayor.

Mayor McCrory said this decision we have already made.

Councilmember Turner said that is correct.

Mr. Neely said as I said this was done by the same design group that did the work on the rezoning that was shown to the community, shown to the Planning Commission, probably shown to you guys.

Councilmember Turner asked when were you notified by Council or by the Planning Department that this zoning was taking place and it was going to affect your property?

Mr. Neely said the construction of the road on my property?

Councilmember Turner said that's correct.

Mr. Neely said never.

Councilmember Lassiter said we have a map. Where is your house? Does it front South Tryon?

Mr. Neely said my house is on Irwin Road, and it's pretty much directly across from where the driveway into this project is.

Councilmember Lassiter asked are you on the northwest corner of Irwin and South Tryon?

Mr. Neely said I'm not on the corner. I'm about 600 feet off the corner.

Councilmember Lassiter said let me ask Scott a question. Is there a project going on to widen Irwin Road or some improvements related to the intersection of Irwin and South Tryon Street?

**Scott Putnam, Charlotte Department of Transportation**, said the current construction is related to the zoning petition that was approved back in 2002 – 117. It was a petition that included a daycare and town homes. The town home portion of that development plan is under construction. Permits were approved. It includes a left-turn lane as it did in a previous rezoning of this property to basically extend the three-lane section in front of the school to the three-lane section that is already on the approach of Irwin Road to South Tryon Street. It basically fills in that gap on that same alignment. It's my understanding that the improvements are taking place within the public right-of-way, not on public property, but we'll be happy to look into that.

Mr. Neely said the right-of-way –

Mayor McCrory said, sir, I cannot let you do that. Our public hearing is closed, so I can't reopen the public hearing.

Councilmember Turner said out of respect I don't think that is what we are going to do here. I think what is important is to be notified that during this process – and I brought it to the Council's attention – that we were talking about a development that basically had been pre-approved by the Council for the zoning that it's being used for. We are not arguing the zoning use now. What we are concerned with is Mr. Neely was never properly notified of the encroachment on his property, and the other concern when I brought it to Council –

Mayor McCrory asked has this got to do as a direct result of the zoning?

Councilmember Turner said, yes, it does. What happened, Mayor, is that basically we discussed it and I discussed it to the Council in regards to the traffic impact as well as from Lake Wylie's view of it because of the school also. We decided that the engineering – that we would go back and look at it as well as the developer to see how they would put in this left-turn lane to accommodate the school and move the traffic off of South Tryon Street off of Irwin into the school parking lot. In doing so, we eventually affected Mr. Neely's property, and he has clearly stated to us how much frontage he would lose off his property. I have simply asked the Engineering Department and I spoke with Scott earlier and told him to let's look at it and see basically is there any other way we can do this without affecting his property in a negative way and losing what he finds to be value to him, which is his property, as well as the trees on his property.

Mayor McCrory said we have already voted on this matter, so does the decision we are making on the zoning tonight impact that request?

Councilmember Turner said, yes, it does.

Mayor McCrory said we have already voted on this item, so if someone wants a revote, it would take someone who voted in favor of it, which was everyone according to the record, to ask for a vote of reconsideration and then we can reopen the debate, but I have probably let it go too far in having a debate at this point in time. I will make that request. If no request is stated, then we will move on to Petition No. 12.

Councilmember Turner said I would like to ask that we reopen it.

[ Motion was made by Councilmember Turner and seconded by Councilmember Mitchell to ]  
[ reconsider the decision on Petition No. 2004-150. ]

Mayor McCrory said this is a request to reconsider the decision, which would then reopen the debate. We'll open up the debate to reconsider.

Councilmember Mumford said, Keith or Scott, just so I understand what is going on. There is a rezoning. There is road modification that is directly related to the rezoning. Would there be the road modification without the rezoning request is the first question.

Mr. MacVean said as Scott previously mentioned there is already an approved plan for this site – multifamily and daycare. The requirement for a left-turn lane on Irwin into the site was a result of that previous petition which you approved in 2002. That is now going through the subdivision

process, and it's during the subdivision process that the requirements of the left-turn lane and the construction drawings for the left-turn lane are reviewed and approved both by NCDOT and CDOT because Irwin Road would be an NCDOT right-of-way. If Mr. Neely feels that the lane is being improved in his right-of-way, he needs to take that up with the developer because it is the developer who is now responsible for implementing that requirement of a left-turn lane, which is required as a result of the rezoning but then implemented through the subdivision process. If there is a dispute as to whether the location of the right-of-way, then the surveyors need to be involved with where is the right-of-way, is the area that is being used for the lane actually on Mr. Neely's property or in the right-of-way. Whether you approve this petition or not, the left-turn lane has already been required. It has permitted. The site has been issued a preliminary plan, and the left-turn lane is now under construction raising this issue. You deny this petition it is still zoned multifamily and for a daycare. The left-turn lane is still a requirement. If there is a dispute about where the right-of-way is, this isn't the right place to resolve that, if I may say that. It really is a subdivision matter. The developer may think it's in one place and Mr. Neely is maybe totally correct that they are on his property illegally, and that needs to be resolved. It is not part of the rezoning process to notify about roadway improvements that are done as part of subdivision processes. The rezoning process and the roadway improvement process are really two different ones and related only as a result of the rezoning was the left-turn lane then required.

Mayor McCrory said with all respect I would love to recognize you but I cannot unless I have a specific question to ask you, and the reason for this is because I may need to give equal time to the petitioner because we have already closed the public hearing on this and these are issues that typically are discussed and resolved during the public hearing or between now and the meeting. I was not at the public hearing, so I have to be very careful in following our state statute in how I run this portion of the meeting.

Councilmember Turner said, Mayor, if I may.

Mayor McCrory said right now I want to state we are debating whether to reconsider. That should be the debate, and I assume Mr. Mumford was asking those questions to help him make a decision as to whether or not it deserves reconsideration as part of the zoning process. That's why I allowed that form of questioning to help him make that decision of reconsideration.

Councilmember Turner said based on that, Mayor, as I stated before when this came before us Mr. Neely had not been notified of the encroachment on his property at that time, and I clearly stated to this Council and, Keith, I asked a question because basically we were discussing the traffic issue on Irwin Road and how it would affect Lake Wylie in being able to move the vehicles in and out of the school by them being so close. The distance of the left-turn lane we changed it, did we not, Keith, since I brought that to your attention.

Mr. MacVean said the only thing that we found out as a result of you raising that issue was that the school had reversed its bus lot and its student lot. What was originally designed as the bus lot has now become the student drop-off lot, and what originally was the student drop-off lot is now the bus lot? That has caused some access issues on Irwin Road, and CDOT is going to try to go back to the school and work that issue out. We also determined when talking with the petitioner regarding the left-turn lane that is being required for the multifamily and the daycare the developer of the site is telling us and his plans are indicating that all his improvements are occurring within the right-of-way of Irwin Road. There seems to be a dispute as to the location of the right-of-way, which is then impacting Mr. Neely's property. We have not changed any of the requirements. The left-turn lane is still a requirement of the previous petition and it is a requirement of this petition, and its construction – it's a subdivision matter. It's an issue that does need to be investigated with the Department of Engineering and CDOT to see where is the right-of-way because obviously it is not clear where it's located.

Mayor McCrory said we are debating right now the reconsideration. The motion on the floor is to reconsider. If you want to further debate this, we can reconsider it if that is going to change your zoning decision. The issue right now is on the reconsideration, and if you vote for reconsideration, we can reconsider and have an internal debate as to whether or not you want to approve or disapprove of this zoning. I just wanted to state that for the record. Any further debate prior to the vote of reconsideration.

The vote was taken on the motion to reconsider and recorded as follows:

**AYES:** Councilmembers Burgess, Carter, Lassiter, Mitchell, and Turner

**NAYS:** Councilmembers Cannon, Kinsey, Mumford, Phipps, and Tabor

Mayor McCrory said we are not going to reconsider the decision that we had already made, so, therefore, the vote we made several minutes ago does stand. I do recommend now – can you please get together with them because this is a very unique issue. We'll get together with you tomorrow or something.

Mr. MacVean said we will be glad to discuss this issue. If Mr. Neely will step over here and talk to Scott, we will get his information and try to get answers to the issue of the location of right-of-way, why it's being done that way.

Mayor McCrory said we'll try to work with you on this particular issue, Mr. Neely.

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**ORDINANCE NO. 2888-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 38.189 ACRES LOCATED ON THE WEST SIDE OF PROSPERITY CHURCH ROAD, SOUTH OF FUTURE INTERSTATE-485 FROM CC TO CC SPA**

[ Motion was made by Councilmember Carter and seconded by Councilmember Kinsey to ]  
[ approve Petition No. 2005-01 by BP Products North America, Inc. for the above zoning as ]  
[ recommended by the Zoning Committee. ]

Councilmember Mitchell said, Keith, on this petition when you look back in the attachment part and it talks about Parcels D, E, F, and G. The last conclusion in the write up says that until the resolution outstanding site plans have been satisfied this is not appropriate for consideration.

**Keith MacVean, Planning**, said when we wrote this that was very valid. We had a lot of issues regarding the site plan. We met with the petitioner prior to the actual public hearing last month, and he provided us a revised plan and addressed all our issues. So our issues have been addressed, the site plan was revised, and we are now able to support this petition.

Councilmember Mitchell said it is valid with Prosperity Church Road Village Plan.

Mr. MacVean said it now fits in and we are willing to recommend approval. We are recommending approval.

The vote was taken on the motion and carried unanimously.

The ordinance is recorded in Ordinance Book 53 at Pages 418-419.

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**ORDINANCE NO. 2889-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.55 ACRES LOCATED ON THE EAST SIDE OF MONROE ROAD, NORTH OF GALLERIA BOULEVARD FROM I-1 TO MUDD(CD)**

[ Motion was made by Councilmember Carter, seconded by Councilmember Kinsey, and ]  
[ carried unanimously to approve Petition No. 2005-02 by Galleria Partners II, LLC for the ]  
[ above zoning as recommended by the Zoning Committee. ]

bvj

The ordinance is recorded in Ordinance Book 53 at Pages 420-421.

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**ORDINANCE NO. 2890-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 13.37 ACRES LOCATED ON THE WEST SIDE OF PARK ROAD, SOUTH OF SELWYN AVENUE FROM R-22MF TO O-2**

[ Motion was made by Councilmember Cannon, seconded by Councilmember Carter, and ]  
[ carried unanimously to approve Petition No. 2005-04 by Dr. Wayne C. Mercer for the ]  
[ above zoning as recommended by the Zoning Committee. ]

The ordinance is recorded in Ordinance Book 53 at Page 422-423.

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**ORDINANCE NO. 2891-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY .88 ACRES LOCATED ON THE SOUTH SIDE OF TOM SADLER ROAD, SOUTH OF KINGSWAY CIRCLE FROM R-4 LW-PA TO MX-1(INNOVATIVE) LW-PA**

[ Motion was made by Councilmember Cannon, seconded by Councilmember Carter, and ]  
[ carried unanimously to approve Petition No. 2005-06 by RR Management Company, LLC ]  
[ for the above zoning as modified and as recommended by the Zoning Committee. ]

The modifications are:

- A 45-foot local residential street with a stub to the property to the south will be provided and the 40-foot connections will be changed to a cul-de-sac
- Note 3 will be reworded to include the provision of pedestrian scale lighting
- All garages will be located at least 20 feet from the outside edge of the sidewalk
- Innovative requests under the ordinance will include street right-of-way widths, street type and dimension and possible construction standards, lot size, lot setback, side and rear yards, lot width, and possibly open space elements but not open space size
- The site will be designed to utilize the existing ponds as part of the water management for the site where practical
- The exterior siding of all homes exclusive of doors, windows and window frames, dormers, and gables will be composed of a combination of building materials including brick, stone, or other similar durable masonry product, wood, or other durable product and will exclude the use of vinyl siding
- The development will be furnished with uniform mailboxes
- No commercial vehicle parking will be permitted
- A homeowners association will be established for the entire community to enforce these and other covenants and restrictions
- Any homes that may be constructed on a slab foundation will be constructed so that the portion of the foundation that faces the street will have the appearance of a raised foundation through the use of brick, stone, or other similar products, which will also be used for foundation treatments elsewhere in the development

The ordinance is recorded in Ordinance Book 53 at Pages 424-425.

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**ORDINANCE NO. 2892-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY .61 ACRES LOCATED ON THE NORTH SIDE OF NORTH GRAHAM STREET, WEST OF THE BROOKSHIRE FREEWAY FROM UR-C TO MUDD**

[ Motion was made by Councilmember Carter and seconded by Councilmember Tabor to ]  
[ approve Petition No. 2005-12 by Hawkins & West, LLC for the above zoning as ]  
[ recommended by the Zoning Committee. ]

Councilmember Mitchell said part of this petition is there no site plan required?

**Keith MacVean, Planning**, said originally we did not request a conditional plan. We felt either the UR-C classification or the MUDD classification would be appropriate here without a site plan.

Councilmember Mitchell asked have we told the developer what he is proposing for this site?

Mr. MacVean said it is located in the Fourth Ward Historic District. They have submitted preliminary plans to the Historic Commission. It is a high-rise residential development.

The vote was taken on the motion and carried unanimously.

The ordinance is recorded in Ordinance Book 53 at Pages 426-427.

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**ORDINANCE NO. 2893-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.7 ACRES LOCATED ON THE EAST SIDE OF LUCENA STREET SOUTH OF NORRIS AVENUE FROM I-2 TO I-1**

[ Motion was made by Councilmember Cannon, seconded by Councilmember Carter, and ]  
[ carried unanimously to approve Petition No. 2005-15 by Carl and Thelma Moore for the ]  
[ above zoning as recommended by the Zoning Committee. ]

The ordinance is recorded in Ordinance Book 53 at Pages 428-429.

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**ORDINANCE NO. 2894-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.2 ACRES LOCATED ON THE NORTH SIDE OF ALBEMARLE ROAD, WEST OF CENTRAL AVENUE FROM O-1 TO B-2(CD)**

[ Motion was made by Councilmember Carter, seconded by Councilmember Kinsey, and ]  
[ carried unanimously to approve Petition No. 2005-16 by Harris-Murr and Vermillion/AAA ]  
[ Automark Car Care for the above zoning as recommended by the Zoning Committee. ]

The ordinance is recorded in Ordinance Book 53 at Page 430-431.

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**PUBLIC HEARINGS**

**HEARING ON PETITION NO. 2005-38 BY WORLD WORSHIP CENTER FOR A CHANGE IN ZONING FOR APPROXIMATELY 6 ACRES LOCATED ON THE WEST SIDE OF ROSE LAKE DRIVE, SOUTH OF CROSS BEAM DRIVE FROM B-D(CD) AND I-1(CD) TO O-1**

The scheduled public hearing was held on the subject petition.

**Keith MacVean, Planning**, said we are recommending approval of this.

**Pastor Lloyd Bustard, 3925 Rose Lake Dr.**, said 21 years ago my wife and I were driving up 85 to Canada where I was born and raised, going up to see my family. I believe God works in mysterious ways his wonders to perform. As God is my witness, I looked at my wife and I said, "We are going to end up here." I believe in destiny. God called us here. Three years ago my wife and I and children moved here and from ground zero got a vision from God to found World Worship Center of Charlotte, North Carolina. Every week now several hundred people are gathering, worshipping God. Many of our leaders are here tonight. We have been moving from hotel to hotel, senior centers, and we believe that the Lord has opened up an opportunity for us to get this land and property. We just believe it's time for us to go to the next level of our vision and destiny, and we believe you are making that possible tonight for us. I look forward to partnering with you. We pray for this city. We are called here to work with you. You are building a world-class city here of Charlotte, North Carolina. We want to partner with you and build the kingdom of God.

[ Motion was made by Councilmember Cannon, seconded by Councilmember Turner, and ]  
[ carried unanimously to close the public hearing. ]

The Zoning Committee left the Chambers for deliberations at 7:29 p.m.

The Zoning Committee reported to City Council at 7:52 p.m. that they had voted unanimously to approve the petition.

[ Motion was made by Councilmember Cannon, seconded by Councilmember Carter, and ]  
[ carried unanimously to approve the petition. ]

Ordinance No. 2895-Z is recorded in Ordinance Book 53 at Pages 432-433.

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**HEARING ON PETITION NO. 2004-114 BY THE BOULEVARD 2000 LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY .97 ACRES LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH LAUREL AVENUE AND RANDOLPH ROAD FROM R-22MF TO UR-3(CD)**

A protest petition has been filed and is sufficient to invoke the 20% rule requiring affirmative votes of  $\frac{3}{4}$  of the Mayor and Council members not excused from voting in order to rezone the property.

The scheduled public hearing was held on the subject petition.

**Keith MacVean, Planning**, used a site map to give Council an overview of the property. He said there have been some amendments made to the plan since the staff analysis was originally prepared. This site plan has been modified. He said we are recommending approval of this petition contingent on the remaining site issues clarified as being addressed on the revised plan.

**Chris Branch, 715 W. Church St., Suite 110**, said our firm is dedicated to creating 100-year buildings that add positively to the character of Charlotte and the neighborhoods in which they are located. It is our intent that these buildings are so well located, designed, and constructed

that they and the value they create will endure for the next 100 years. We work exclusively on infill projects in locations that have an established sense of place. It is not lost on us that this sense of place has been created and maintained by residents and neighborhood associations who have worked diligently to protect the qualities of their neighborhood that make it a place that we would like to build a 100-year building in. We respect and are sympathetic to the views of the engaged residents and the strong neighborhood association and make it a practice to include them in our development plan. Our goal is to reach a collective decision that all stakeholders can support. Of course, these stakeholders include others outside the neighborhood, which are represented by City staff, Planning Commission, and Council. We also must create a plan that is financially feasible and to provide economic benefit to investors and lenders. In every rezoning we attempt, we must try to create a plan that both creates a 100-year building that The Boulevard Company can be proud of and meets the reasonable expectations of the group of stakeholders that include the adjacent property owners, the neighborhood leaders, City staff, Planning Commission, City Council, and of course, our investors and lenders. As you know, this is not an easy task, and we often find ourselves in a situation in which no reasonable compromise can be found. In our current efforts to rezone the property at the northwest corner of Randolph and Laurel Avenue, we have unfortunately been unsuccessful in gaining support from all the stakeholders. Some of the adjacent property owners support our rezoning and have written letters stating their support to you. As you know, other adjacent neighbors have filed a protest petition in opposition of our plan. Given this mix, neighborhood leaders represented by the Elizabeth Neighborhood Community Association have not been able to take a formal position on this matter. City staff, as you have just heard tonight, support our request for rezoning. You will hear from the Planning Commission Zoning Committee within the next few weeks and then will be asked to weigh the arguments for and against and render your own decisions relative to the merits of our plan.

As you deliberate, there are a number of things we would ask that you consider. First, we would like for you to consider the context of the property as well as the history of the rezoning. The site is currently zoned R-22MF and has no conditional restrictions on it. There are offices across the street that are two stories but more like a three-story residential building because of their office floor plans. There are multifamily and church across Randolph, and there are single-family uses and multifamily to the side and back all zoned R-22MF. We compare this project to an Elizabeth loft project that we recently finished and completed in the Elizabeth neighborhood that was about 1.05 acres in 41 units and three stories with below-grade parking. What we are asking for in this particular situation is on .97 acres – almost an acre – 48 units, which we will be willing to reduce to 40, three stories with below grade parking, a very similar structure in both terms of massing and size. There has been some confusion, I think, over how the process has gone through with regards to submissions and communications. We originally submitted on 6/28/04. A long time ago is when we applied for the rezoning on this property. We had some title work issues that caused us to delay three times for a total of 90 days and then we had a revised submittal after the open house forum on 12/17. We sent out a community letter on 12/29, and we checked with some of the neighbors in the area who received the letter the next day, which was a full six days notice before we had the meeting. We did have people at that meeting, and unfortunately were deferred last month for our public hearing.

We have made a lot of plan changes, and some of those changes have actually come after this last deferment. Our original plan had a mix of uses. We wanted to put some commercial development down on the first floor. We heard loud and clear during the open forum that the neighborhood did not want to have that. We eliminated that from our plan. It is now residential only. We had four stories over parking because we had that inserted commercial floor, and that has been eliminated. The initial plan had two driveways, but they were not connected because they actually came into different floor plates. The rezoning petition that we filed after that had one drive off of Laurel, and I will tell you with the neighborhood support we have gone to CDOT and gotten another drive off of Randolph Road, which is now on our plan. So we actually have two access points for this property – one on Randolph Road and one on Laurel – and they connect so you can actually go out or in either one of those entranceways. We have also attempted to work with them for some off-site contributions in order to help with the pedestrian ways along Randolph Road. Without being able to get their support, we have not offered that but would be willing to reconsider that. We thought we had come to a conclusion, but I will tell you there are some neighbors that are not supporting the project, and the neighborhood association wanted to ensure that we did a lot of off-site improvements to the tune of about

\$150,000, which our development could not afford, so we were not able to reach a conclusion with the neighborhood, and they have not taken any formal position on the matter. Even with the tremendous number of meetings and communiqués and the result in substantial set of changes made to the plan, we have not been able to get a compromise solution worked out. We will still consider reduction in density and consider off-site improvements to the extent we are able to make them.

We want to talk a little bit about when you get engaged with a neighborhood and how things unfold. We would like you to consider that those in opposition to our plan may not have the entire perspective required to pass a qualified judgment on the plan relative to the entire city. We realize that the opposition to our rezoning is heartfelt and we want to reiterate our respect for their opinions and efforts to protect their neighborhood we really want to be in this location because of their efforts. We would like to build a 100-year building that would make them proud, however we also understand that in many cases the fear of change prevents those closest to the situation from assessing the rezoning in the context of the city at large. Each neighborhood is part of a larger Charlotte and must adapt to a changing environment as part of a dynamic metropolitan environment. In many cases, the plans that have guided the development of those neighborhoods are no longer relevant as to the roads that pass through them have changed from neighborhood collectors to major arteries. Such is the case with Randolph Road, which now carries approximately 43,000 cars a day. That is a busy street. The idea of single-family homes on that street is probably not an economically viable one. It is our contention that the single-family homes along Randolph Road are not an appropriate use, and the current R-22MF supports this notion. However, the R-22MF category is a category that was originally contemplated for a more suburban location. The R-22MF setbacks and the rear yards and the side yards that work well on a ten-acre site do not work very well on a one-acre site, and that is why we have come to you asking for a change in zoning from the R-22MF to an urban residential.

As the City has grown, this urban residential has been used successfully in many cases by our firm to create quality development to which the neighborhood can be proud of. If you conclude the urban residential is an appropriate zoning category, then all that is left to judge is the rezoning request on the merits of the planned development relative to the concerns of the neighborhood. The big concern of the neighborhood that we can gather is traffic, and we certainly respect that. I live on a fairly busy street, and I have four kids that are out there running around, and we really are concerned about the traffic as much as the neighborhood. But with 40 homes, we have an incremental increase of 19 homes on a street that carries 43,000 cars a day. It is not inconsequential, but it's not such a significant difference that we should eliminate the possibility of a great building on that corner for something that won't be so grand. There is also about 1,250 parking spaces that are used primarily by the hospital that dump directly out onto Vail Road. Again, the incremental difference of 19 homes with a 40-unit development is just not that substantial a difference. There are a lot of benefits to the rezoning, but first of all is that the neighborhood actually what they see is what they get. This is a conditional zoning. We have done a lot of work in the neighborhood. We are bound to the plans that we have provided. There are two means of access from both Randolph Road and Laurel. The parking is below grade and out of view, trash compaction located in the parking level, hardscape courtyard with raised planters addressing all the adjacent neighbors, and there is a tree save plan that includes a jog in our building to save a 48-inch oak at the corner. There is also pedestrian access to Randolph Road from our building, and, once again, we are willing to contribute to the pedestrian improvements that are required along Randolph Road.

We have as a fallback position created a plan that has 21 town homes on it. I think the neighborhood has mistakenly seen this as either impractical or a veiled threat to be a substandard project in the neighborhood. Neither of those is accurate. We just don't do substandard projects. Whatever we build, it will be a 100-year building, something that I can drive my grandchildren by and be proud that I built it, but the fact is that at 21 homes we can't do the type of project that we could do with a larger one.

**Melanie Sizemore, 2309 Vail Ave.**, said my husband, Russ Sizemore, and I live on Vail Avenue. I have been requested to speak for all of the members who had signed up to speak tonight in opposition to this development. I am representing many of the landowners and property owners in the Elizabeth area who are in opposition to this project. Many of these

owners are affected by this proposed development. To the extent that there have been meetings in the past by the Elizabeth Community Association where there have been people in support of it, many of them do not live on our side of Elizabeth, and are therefore unfamiliar with the concerns we have with this proposed development. We are not opposed to development of this site. We are not opposed to the development under its R-22MF designation. We are also aware the rest of that entire block is R-22MF, and we would support that redevelopment.

We are opposed to this proposed development and the increased density for a number of reasons. The first one is traffic congestion. While the building is on Randolph, it's also on Laurel. Currently traffic backs up during rush hour at the intersection of Randolph and Laurel Roads so that it is actually past the driveway that will be exiting this site. You have traffic also coming across Laurel from Randolph Road, and it's coming at a very fast pace. There is a concern even with residents trying to exit out onto Laurel they will be unable to do so. There is also a concern with respect to the exit on Randolph Road because right now in the morning rush hour traffic backs up past where even this exit would be, so it's going to be difficult for the residents to enter and exit anyway and particularly on Laurel Avenue they are more likely to exit than go through the rest of the neighborhood streets – Vail, Kenmore, Fifth, and Greenway – because it is just human nature to take the less difficult path. Right now we already have a lot of cut-through traffic on those roads. That is a concern to the property owners, small children. There is a bus stop right at the corner of Vail and Laurel. Those are all issues relative to the safety. In addition, there is not a sidewalk on Laurel Avenue from the intersection of Vail and Laurel, which is less than 100 feet from this driveway exit. Right now Laureldale Apartments back immediately into the street. With respect to sidewalks, it's very difficult already for the property owners to be able to take a stroll, to take a run, or whatever in that area. The additional cars from this development we are concerned will increase the safety concerns of the neighborhood.

With respect to parking, we are also objecting to that. One and a half parking spaces per unit, whether it's 40 units or 48 units, we are not really sure of the bedroom count that will result from that. A couple who buys a one-bedroom apartment, I can't say they are all going to have one car. Most of them are likely to have two to go back and forth to work. There are not the commercial amenities in the area to support a walking urban neighborhood as you would find close to the Hawthorne and Independence development, which would say that parking would not be a concern. Here it is certainly a concern. In addition, the development fronts both Laurel and Randolph, and there is no parking allowed on those streets, so it will spill out onto the additional neighborhood streets, and considering the density of this site and the future development potential of the rest of the whole block, it is going to take a disproportionate share of those street parking spaces and add a disproportionate share of traffic congestion onto the streets more so than this one-acre site or almost one-acre site would warrant.

Other concerns relative to the project are the scale of the project. Concerning the topography sitting up on the hill at the corner of Randolph and Laurel as a three-story building is much too large we believe for this site. Another issue is in 1973 the Elizabeth Community Association was successful in down zoning large portions of Elizabeth, which many now credit for the revitalization of the neighborhood. We don't want to see that trend reversed with this additional development and too high of a density. The adjacent property owners who signed the protest petition like others do not support this development. In speaking with them as with other neighbors in the area, they are concerned that the increase in the density could negatively impact their property values just as those of us who live in the neighborhood are concerned how this development will negatively impact our property values. The only reason we really believe we are at this juncture is that the previous property owners – not The Boulevard Company – but the previous property owner paid too much for the property. We are just asking that you not make the rest of the property owners of Elizabeth pay for their poor business decision. Many members of Elizabeth Community Association are down here asking that you vote against this petition for rezoning.

Mayor McCrory said petition is allocated a two-minute rebuttal according to our rules.

Mr. Branch used a site map to illustrate his comments to Council and said I have just four brief points. Our current petition has an entrance onto Randolph Road and an entrance onto Laurel Avenue. If the property is not rezoned, the townhouse community will have only an entrance onto Laurel Avenue so the traffic will not have any ability to get onto Randolph except to get

onto Laurel. If we are able to get the rezoning, we have already said we would be willing to make some financial contributions towards the pedestrian improvements that are needed at that intersection. The rezoning with town homes would only require 1.5 parking spaces per unit, and our current plan has about 1.75, so we have more parking with the rezoning plan than would be required under the rezoning. Finally, the townhouse plan would also be three stories. It would be two stories over parking, so the massing would be similar. The problem with a townhouse project from a visual is you are going to end up with about 14 or 16 town homes right in a row on Randolph Road. It will be exactly the same mass except it won't have the nice articulation we have in our current plan. With that we would ask that you would help us to reach a compromise with the neighborhood and support us in our rezoning. I have a little time left. Jim Plyler might talk to you a little about the economics that were mentioned.

**Jim Plyler, 2219 Hastings Dr.**, said here's an opportunity to take a cornerstone property and make it a landmark for the City. You can control what goes here if you approve this rezoning, and I would like to say Chris Branch does an excellent job on his developments, and you have seen a lot of them before. Please support the rezoning.

Councilmember Kinsey said, Chris, we have talked about 40 units, 46 units, 48 units. What are you asking for tonight?

Mr. Branch said it's my understanding that the original plan had 48 units on it. Keith mentioned that the plan that was re-filed had 40 units on it. I did not think we made that compromise until we got support from the neighborhood, but it is a number that we are willing to live with were we to get their support or the support from the Council members.

Councilmember Kinsey said right now you say you don't have it. I really want to know how many we are dealing with tonight.

Mr. Branch said I think there had been a lot of discussion about reducing it to 40 units and making a contribution to the City for the pedestrian improvements in order to garner neighborhood support. My understanding is that the latest set of plans did not make that reduction because we were not able to get the Elizabeth Community Association support.

Councilmember Kinsey said we are talking about 48 units on less than one acre, right?

Mr. MacVean said the plan says 46.

Councilmember Kinsey said let's figure out a number here, guys.

Mr. MacVean said I'll look more closely at the plan. I got my number of 40 based on an email I received that said here are some changes I thought were being made. It's my misunderstanding. I apologize. It's either 46 or 48 or 40, somewhere in that range. The original plan was 48 units. I thought it had been modified. If it hasn't, it hasn't, and I'll clarify that.

Mayor McCrory said, Keith, I'm hearing from the petitioner 48.

Mr. MacVean said it's his petition, and 48 it is.

Councilmember Kinsey said when we first saw this plan, as you said, there was no entrance on Randolph. Has CDOT approved that entrance? Is it approved?

Mr. MacVean said, yes, they are willing to issue a driveway permit for a driveway on Randolph Road. Just to clarify a little bit. It is not something they are jumping for joy for, but they are willing to allow it. They did let the petitioner know that at some point in time it could be restricted to right-in, right-out if a median ever gets constructed on Randolph because of its proximity to Vail but not something that is being planned at this time.

Councilmember Kinsey said that was going to be my next question. Would it be right-in, right-out or no left turn in coming from town?

Mr. MacVean said initially it would not be restricted, but it's very possible that in the future it could become a restricted driveway, either right-in, right-out, no left in or out.

Councilmember Kinsey said there is a major problem on Laurel as well. Is there any plan for a dedicated left-turn lane there? That is a major problem. I drive that way daily.

Mr. MacVean said when we met with the neighbors they raised that issue with us also, and it was a joint Planning staff, CDOT meeting. They did ask CDOT to go back and look and see if the signal at Vail and Randolph could be modified so that cars wanting to turn left, either to go southbound on Randolph if you are headed westward on Laurel, could go left or basically allow left-turn movements from Laurel onto Randolph with a signal, a left arrow. They went back and asked their Operations Division at CDOT if that was something they would do. They looked at it and said that it was not something – I don't remember the exact wording, but they do not want to modify that signal to create that timing. They don't see a need to do that. That would lessen the amount –

Councilmember Kinsey said they have never waited at that light, have they.

Mr. MacVean said they may not have. I can't speak for them specifically, but they did look at it. Their email back to the neighborhood was they had their senior staff at CDOT look at that request again to evaluate whether maybe it's time to look at that, how long had it been since it had been looked at before. It has been looked at. Senior staff looked at it. The bottom line is the intersection would operate less effectively if that modification was made, so at this point in time, CDOT would not make that modification.

Councilmember Kinsey said also there was some talk about gated parking, and that produced some concern because of the backup it could cause.

Mr. MacVean said my understanding is the gates have been removed.

Mr. Branch said correct.

Councilmember Kinsey said earlier there were a number of outstanding issues. In your mind, have they all been resolved?

Mr. MacVean said I need to look at this plan, and I looked at them again. They were making sure the site plan dimension is set back correctly, the trees that were to be saved were shown on the plan to be saved. I think they have been. I will need to double-check this revised plan. Obviously I made a mistake on the units. I need to verify that. We have met with the petitioner to discuss those issues. They weren't huge – I mean the biggest issue was really a Department of Transportation issue regarding how trash was going to be handled on this site. The original plan had a dumpster right at the driveway off of Laurel, which required maneuvering in the right-of-way. CDOT was not comfortable with that at all and had asked The Boulevard Company to redesign that. They have done that. The trash is now underneath the building. They will contract with a carrier that can get under the building and pick up that trash. That resolved really the largest remaining issue for us. The other ones were really technical issues – making sure the site plan set backs were labeled. I will need to double-check this revised plan to make sure that they have been done correctly.

Councilmember Kinsey said, Chris, from your elevations, it looks like you have an awful lot of brick, but the proposed request details – and maybe this has been changed – says the buildings will have at least 40% brick or masonry veneer. Actually if the petition passes and you build that building, you could go down to 40% brick or masonry.

Mr. MacVean said it's become part of the petition.

Councilmember Kinsey said when I'm considering it I want to see what he is going to do, but I also want it written down. Right now it's not written down, and maybe it has been written down and we just don't have that.

Mr. Branch said we would be happy to work with you and the neighborhood to refine the notes so everyone would feel comfortable with that. The only non-brick areas that we are anticipating are difficult structural areas where it would be difficult to support brick – over entranceways.

Councilmember Tabor said I have some frustration to throw at both of you. I don't know who is to blame here, but I'm looking at the Internet site here of this and I'm looking at a petition plan that is a few months old. Actually the Council is looking at the same thing in their books. I say this to other zoning consultants out there. I'm frustrated that I'm not seeing the up-to-date stuff on the Internet. I don't know if it's you getting it in quick enough or –

Mayor McCrory said me neither. I just want to let you know that, too.

Mr. MacVean said here's what we run into. The zoning ordinance said the last plan we can get officially has to be filed with us four weeks prior to the hearing. That is the site plan you get in your book is the one we get filed four weeks prior. They have submitted a new plan, and we debate back and forth about do we get a new plan and then try to review that before we get to the hearing although the staff analysis has already been written on the previous plan. Sometimes we say do not send us a revised plan; just give us a letter outlining the changes versus trying to get us a plan. In this case, we got a plan, but we only got it last week, so the notebooks had already been printed.

Councilmember Tabor said it's frustrating for us and it's also frustrating for the citizens if they want to see what the latest and greatest is. I understand your problem because then you have to do a new staff report.

Mr. MacVean said we don't have time to do it. We will try to do a better job of putting revisions on the web sooner. We have run into some technical problems where our scanner wasn't working for a while.

Councilmember Carter said could you show me where the curb cut is for Randolph Road.

Mr. Branch used the site map to illustrate his comments.

Councilmember Carter said by the time we get to next month in the discussion with Council, Mr. Putnam, could you please be in touch with me about that five points intersection and this curb cut.

Councilmember Burgess said let me just continue with the Randolph Road access. I believe, Mr. Branch, you said that you could not have one with town homes. Why not?

Mr. Branch said certainly there would be a development that could have an access onto Randolph Road from a City planning perspective, but the way the town homes lay out, at least according to the plans we have done, to try to get 21 town homes on there because they take up such a large footprint the easiest way to do it would be to align those along Randolph Road and have the access upon Laurel. For an access onto Randolph Road, you would have to eliminate town homes.

Councilmember Burgess said another question has to do with parking. It may be for Keith. I have heard both one and a half parking spaces per unit and also 1.7 parking spaces per unit. Was that when you reduced it from 48 to 40?

Mr. Branch said I may not have been clear on that. The R-22MF requires 1.5 parking spaces per unit. That refers to the buy right zoning that could be done without this petition. We currently show about 1.75 spaces on our zoning petition, the point being that our zoning petition actually has more parking than would be required by right.

Councilmember Burgess said it seems to me that both of those are inadequate, and according to the write-up CDOT says there is no on-street parking

Mr. MacVean said there would not be a possibility of doing on-street parking on Randolph or Vail. One and a half spaces per unit has been our standard for multifamily for quite some period

of time. We have not had any serious problems with multifamily not providing parking with the exception in the University area where you have a lot of college students and you are renting rooms and everybody has a car. It gets a little bit out of the norm. But typical what we hear from the apartment industry and from multifamily developers a ratio of 1.8 is a very comfortable ratio for multifamily. At that ratio, they don't experience problems with not having enough on-site parking.

Councilmember Burgess said in R-22 and on a property like this that is slightly less than one acre is it still 22 or is it 21?

Mr. MacVean said probably 21. We would have to do the math. It rounds down and would probably be 21 units.

Councilmember Burgess said I had another question about I believe you said the neighborhood wanted \$150,000 worth of improvements to be in support. Could you tell me what it was they were requesting?

Mr. Branch said I don't think they realized that it added up to that amount. I don't think they would have requested it had they realized it. They wanted to do stamped paved and colored crosswalks along nine intersections – Randolph, Vail, the other side of Randolph there are two intersections where Colville comes in and Laurel comes in, and then they wanted them also along the intersection of Laurel and Vail. Those are almost \$7,000 apiece as I understand it from CDOT. You begin to do that and it adds up quite quickly. Then with all the turn lanes and signalization they wanted to have, it added up to well over 150. We would like to be participating in some of that because it is going to benefit our development, but our position is that many of those issues are there without our development, and we don't feel as though we should have to contribute for those issues that exist now.

Councilmember Burgess said it didn't have anything to do with density of property. Was the stamped concrete on the .97 acres?

Mr. Branch said, no, the stamped concrete was on Randolph Road and the intersections that are already there. Scott Putnam could speak to this more clearly, but my understanding is those are already in the works, but there is an additional about \$7,000 per crosswalk to make them stamped concrete with colored concrete and the signalization that they wanted.

Mr. MacVean said I believe it's stamped and colored asphalt – not concrete – just for clarification purposes.

Councilmember Burgess said did the neighborhood ask for anything that you were unwilling to do to keep it at this density?

Mr. Branch said it was our experience on a recent rezoning of Kenilworth and Romany where we had \$5,000 contribution to CDOT in order to make improvements along Kenilworth. There is a confluence of roads there that is very difficult – not dissimilar from the situation we are talking about. We made a contribution of \$5,000 at the end of our project, and with that \$5,000, CDOT was able to make all those improvements with the stamped, colored asphalt that the Elizabeth community wants. Our position was that we wanted to provide enough of a contribution to jump start those negotiations and to encourage the City to do the extra work to make it beautiful but we didn't want to incur all those costs and simply we couldn't with the economics of our development.

Councilmember Phipps said this question is for the petitioner. In reference to your community meeting of January 7<sup>th</sup>, it appears that the neighbors were concerned about the possibility of this being rental housing as opposed to condominiums and the language in the report seems to suggest that is a possibility. Is that still the case?

Mr. Branch said it is. We find it's difficult to restrict condominiums for rental use because of the financing that those condominiums ultimately require in the secondary market. It is not our plan to make these rental units nor could we afford to at the price points we have. It is possible that as we sell them as condominiums someone could rent that condominium at a future date.

Councilmember Lassiter said I was noticing in the write up that the massing, at least on what is here, is about 86,000 building.

Mr. MacVean said that's correct.

Councilmember Lassiter said if the property was built under its existing zoning, R-22, what's the approximate massing?

Mr. MacVean said it would be impossible to calculate because the multifamily district talks about units, so I could have 21 units, and if I chose to make the units 5,000 square feet each and I wanted to provide three parking spaces for each unit, you could do that and you would only be limited by the number of units, not the size of the structure or the size of the structure plus the size of the parking spaces. If you can make it fit on the site and meet the height requirement, it's very hard to answer that question. I think The Boulevard Company is able to provide you a number because they have done enough planning for their proposal that they can now calculate the square footage of the building, but under existing zoning, 1,200 square feet per unit maybe – 1,500 hundred square feet per unit for a townhouse, maybe larger if they are three-story units. Let's say 2,000 square feet times 20.

Councilmember Lassiter asked are there height differences between the two classifications?

Mr. MacVean said they both allow you to go to 40 feet without increasing the size of the rear yard. Once you go above 40 feet, the urban residential district is more generous in terms of you can go over 40 – from 40 to 50 – but only increase the side and rear yard one foot, whereas R-22MF would require you to increase the side and rear yard by a 1:1 ratio – every foot over 40 is one foot increase in the side and rear. The base is the same. R-22 is more restrictive. The site would start to become smaller and smaller for the actual building under R-22MF as you get higher above 40.

Councilmember Lassiter said I heard a comment that the property below this on Randolph is also R-22.

Mr. MacVean said, yes, it is.

Councilmember Lassiter said that's all currently single-family homes.

Mr. MacVean said yes.

Councilmember Lassiter asked does that property have any vacant property behind it or are those all single-family homes?

Mr. MacVean said all currently occupied with other homes. There are some duplexes sprinkled in there, but all the lots are currently developed.

Councilmember Kinsey said we did talk about in-home businesses earlier. What is the chance that there would be an in-home business here? Obviously that could create additional parking problems.

Mr. MacVean said we would ask for the same restriction here we did ask for on Eighth Street that only customary home occupations be allowed on the site, not non-residential uses as a primary use. Originally I think Mr. Branch mentioned the original proposal actually had a floor of retail/office. That's been removed from the plan. It's now 48 residential units, and someone could run a business as part of their home but not as a separate unit.

Councilmember Kinsey said an in-home business.

Mr. MacVean said an in-home business, yes.

[ Motion was made by Councilmember Tabor, seconded by Councilmember Carter, and ]  
[ carried unanimously to close the public hearing. ]

bvj

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**HEARING ON PETITION NO. 2005-09 BY DON HENDERSON FOR A CHANGE IN ZONING FOR APPROXIMATELY 1.40 ACRES LOCATED ON THE SOUTHEAST SIDE OF EASTFIELD ROAD, SOUTH OF ARBOR CREEK DRIVE FROM R-3 TO INST(CD)**

The scheduled public hearing was held on the subject petition.

**Keith MacVean, Planning**, said we are recommending approval. There are no site plan issues.

[ There being no speakers either for or against, a motion was made by Councilmember ]  
[ Burgess, seconded by Councilmember Cannon, and carried unanimously to close the public ]  
[ hearing. ]

Councilmember Mitchell said I have some questions. This is changing R-3 to a daycare usage.

Mr. MacVean said, yes, INST(CD) for 120 children.

Councilmember Mitchell said the Northeast District Plan calls that R-3, correct?

Mr. MacVean said the Northeast District Plan calls for residential. The district plans typically will not identify locations for daycare centers, so it's evaluated on a case-by-case basis. We think this site on a major thoroughfare at the access road to a neighborhood and is the appropriate size and location for this size of a daycare. Even though the plan calls for residential, this type of institutional use in this location we feel is appropriate and are able to recommend it for that reason.

Councilmember Mitchell said two questions. One concern I have about less than three miles we approved about two years ago a daycare that has not yet actually been established and developed. Did we take that into consideration in approving this daycare?

Mr. MacVean said we typically do not look at market to see are we over-saturated in a certain area with daycares. It's not something we would consider. We would look, however, if there were a lot of daycares already built in real close proximity. We would take that into consideration or if we have a lot of requests in the near future. There is a daycare under construction, I believe, at Eastfield Village. There is a lot of residential development in this area. We tend to not base our decision based on whether there is a market need. We do tend to look at the surrounding areas. If we have already approved the lot, we will take that into consideration, or if it's a lot of daycares on one given street, we will take that into account. We did not see that here.

Councilmember Mitchell asked have we had a community meeting for this rezoning petition?

Mr. MacVean said, yes, they have had a community meeting.

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**HEARING ON PETITION NO. 2005-17 BY LOFTS DILWORTH, LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY .45 ACRES LOCATED NORTH OF THE INTERSECTION OF McDONALD AVENUE AND EUCLID AVENUE**

A protest petition has been filed and is not sufficient to invoke the 20% rule requiring affirmative votes of  $\frac{3}{4}$  of the Mayor and Council members not excused from voting in order to rezone the property.

The scheduled public hearing was held on the subject petition.

bvj

**Keith MacVean, Planning**, said the petitioner does need to mention several changes that have been made. We are recommending it for approval. The height of the building has been reduced. The number of units is noted correctly on our staff analysis. It had originally been 32. Building setbacks have been modified to accommodate on-street parking. Building elevations have been provided as part of this submittal. It's consistent with the Draft Dilworth Area Plan recommendations, which recommend multifamily over 25 units to the acre here. This is also within a quarter mile of a station area for the south transit corridor.

**Bob Young, 1300 S. Mint St.**, said I'm representing the petitioner in this matter, Lofts Dilworth, LLC. In my three minutes, let me try to cover as much ground as I possibly can. This is a project that we are very happy and pleased to bring to you. It's in the very popular South End area, an area we know has seen significant development over the past several years and is going to see an awful lot more with transit plans that are taking place and other development momentum in this area. As Keith mentioned, we have made a number of changes to our proposal since we originally submitted it. Although the site plan has remained basically the same, we have spent a fair amount of time in discussions with individual neighbors along with the Dilworth community at large to address some of the issues that came to our attention – rather significant from their standpoint, and I'm happy to say that when all was said and done, we were able to make changes to the plan so that we secured the blessing of neighbors who had come to us and from DCDA regarding this proposal. As Keith mentioned, it is consistent with Dilworth plans and staff has likewise been in favor of the request.

We did start with actually 36 units, we reduced it to 32 units, and we now have a proposal, which is 30 units. We have attached a revised architectural elevation, which benefited from a lot of discussion with neighbors directly across the street. We have provided a new cross-section of our building that illustrates the height of the building. He used the site map to illustrate his comments regarding the rooftop deck and terrace area. He said we have been able to add a number of architectural details to the request. One very important change that we made was to realign the curb along Euclid and move it back so it would create a cross-section that would enable on-street parking on both sides of Euclid Avenue, not only in front of our building here, but across the way, which is what we wanted and also what neighbors wanted as well. We made a very important change to provide a streetscape cross-section there.

Councilmember Phipps said just want to make sure I'm hearing this correctly. Is the Dilworth Small Area Plan still in the draft stage?

Mr. MacVean said, yes, it is.

Councilmember Phipps said this is sort of frustrating for me because I'm trying to figure out why is it we want to move ahead when the plan is still in draft form. Why don't we let the process run its course? It's a source of frustration for me over on my side of town because I have encouraged some people to defer some projects when another small area plan is under development, so this one right here and some others in here, too, that we might get to that I want to know what is the compelling reason to move forward before the small area plan is completed?

Mr. MacVean said I will be glad to try to address that. We did discuss that issue with the petitioner and made him aware that typically our policy would be to recommend deferral to the City Council of any plan that is in the development stages. The Rocky River Area Plan, for instance, a larger area, a lot of vacant parcels, and we are also encouraging petitioners in that area to defer those hearings and will continue to do that. We had an internal discussion about is that a hard and fast rule about every plan that is under development are we basically going to recommend deferral every single time. The planning director felt we should look at it from the perspective of we are doing a plan and do we need to defer or not or recommend a deferral based on what the request is and how large the site is, where is it located, and in certain circumstances, we felt comfortable with moving forward with a rezoning petition even though the plan is still in the draft stages. This is one of those circumstances where the type of the project, where it is located, we felt moving forward with what the draft recommendations are, and we are a lot further along with the Dilworth Plan than we are with the Rocky River Area Plan, and we were able to draw that distinction. In this case we felt the size of the site, the proposed use, and its location did not necessarily warrant waiting on the final plan recommendation.

Councilmember Phipps said I really do think it undermines the process and really makes it hard when you pick and choose which ones will go forward or not. It makes it hard for neighborhood associations to approach developers when they see there are instances where other projects are allowed to move forward in the draft stage.

Mr. MacVean said I appreciate you raising that issue. We will look for your support when we are doing plans to not let plans move forward when we think – obviously the Council can use its own discretion, but in some cases I think we would wholeheartedly agree with you that moving forward with rezonings would undermine the plan amendment process.

Councilmember Phipps said do you have any idea what are the timeline expectations on when the plan will be completed?

Mr. MacVean said it should be done this year. We will be going back to the Dilworth stakeholders within the next 30 to 60 days with updated recommendations and design guidelines. I would assume we would be done hopefully by the end of the summer, early fall at the latest with the Dilworth Plan. I also would point out, if I may, this site, as I mentioned earlier, is very close to the transit station area along South Boulevard. It actually is within a quarter mile. It was not included in the station area planning because it was zoned R-5. We had made a decision early on that we would not include residentially zoned property in station area plans. The way this site is located it is an odd site – two lots that are actually surrounded by property that is either office, multifamily, or MUDD. It didn't make sense not to include them in the station area plan. The Dilworth Plan basically with its recommendation of 25 or greater kind of reflects what would have been the recommendation on the South End Station Area Plan.

Mr. Young said if I could take 20 seconds because Keith addressed what I was going to say. These are two very small, single-family zoned lots today. Clearly in the area that we are talking about that is not going to be the land use future that some increased density, condominiums and the like, that would fulfill South End goals and particularly fulfill transit goals were exactly what you would be anticipating would come along here. I would certainly concur with Keith that in this particular instance with the scale and the scope of this project it made a lot of sense both from a planning standpoint and from a marketing standpoint to bring this forward to you.

Councilmember Carter said, Mr. Young, if you could reiterate your description of the elevations as we can see them broadcast and the relevance of the elevations next to you.

Mr. Young used the site map to illustrate his comments. He said from the outset we included an architectural elevation with our petition. The original elevation I did not bring with me. It's similar to this but very different in that it got very vertical with its elevation. This element that I'm pointing to here you may not be able to pick up, but as I said from the cross-section is set back from the building face, whereas in our original elevation, this was sitting right on the front elevation of the building. You had the impression of a four-story building from grade along Euclid going up. We were able to change that, and that was a significant change for us architecturally to be able to work that out internally, to be able to make that work out on the deck, but we were able to do that with the residents. We changed from some different type of siding to plank siding, which even though it is in a contemporary setting sort of helps to feed off some of the other plank siding that is in the area and across the street. We were able to add some brick, put a little base on it, again, that some of the neighbors felt was important. We do have a condition about adding and planting trees that are larger than what is required by the code. We actually took the time to add some architectural detail to that feature back on the top. So there were a lot of things that we did through some individual meetings to change what we originally did to be able to produce this.

Councilmember Carter said the elevations on the lots adjacent to this area.

Mr. Young said as you come down Euclid the zoning changes to office. There are some smaller structures, but they are actually zoned office, and, of course, could be something else. If you go across McDonald, the other intersection, that's the Villages of South End. That's a very large project, it's taller, has more mass, so this really in effect is kind of a transition from the Villages of South End to this setting to the setting as you go down Euclid.

Councilmember Kinsey said did the Dilworth Homeowners Association sign off on this?

Mr. Young said, yes, they did. Their vote was contingent upon a cross-section that would allow for parking on both sides of the street. With the realignment of the curb, we were able to do that.

[ Motion was made by Councilmember Turner, seconded by Councilmember Carter, and ]  
[ carried unanimously to close the public hearing. ]

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**HEARING ON PETITION NO. 2005-19 BY HJF SOUTH, LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY .5799 ACRES LOCATED ON THE SOUTHEAST SIDE OF SOUTH BOULEVARD, NORTH OF IDEAL WAY FROM B-2 TO TOD-M**

The scheduled public hearing was held on the subject petition.

**Keith MacVean, Planning**, said we are recommending approval.

[ There being no speakers either for or against, a motion was made by Councilmember Turner, ]  
[ seconded by Councilmember Kinsey, and carried unanimously to close the public hearing. ]

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**HEARING ON PETITION NO. 2005-20 BY CHARLOTTE ARENA OPERATIONS, LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY 11 ACRES LOCATED NORTH OF THE INTERSECTION OF NORTH CALDWELL STREET AND EAST TRADE STREET FROM UMUD TO UMUD-O**

The scheduled public hearing was held on the subject petition.

**Keith MacVean, Planning**, said there was one outstanding issue with regards to trees along 5<sup>th</sup> Street. We originally thought we were removing or the request was to remove required trees. That turned out not to be true. There are more than the required number of trees that will be planted along 5<sup>th</sup> Street. The request along 5<sup>th</sup> Street became one of an issue of trading a larger separation and a larger gap in the street tree spacing to allow a view corridor into the site to one of the video boards that is part of the UMUD optional request. Originally it was thought that three trees needed to be removed to create greater spacing. Again we would still have the number of required trees. Met with the Engineering Department and talked to Mr. Henderson earlier today. They did some site line studies, and it looks like only two of the trees need to be moved to create that visual gap. Since we are only creating a 60-foot gap in the spacing, the number of trees still meets the requirements of the UMUD ordinance. We no longer have an objection to that optional request to create a greater gap for this little view corridor. All the other optional requests have to do with signs, types of signs, and so forth – all things that we think are appropriate for this type of building and this type of setting. I guess I should also say that for the spacing on the trees. Typically we do not like to vary the spacing on trees along streets. It creates that rhythm that is important to the streets. This is an unusual building, an unusual circumstance. We are not reducing the number of trees that are required but are creating a gap for visibility that will liven the streetscape and create that atmosphere that is part of the arena project. We are recommending it for approval.

**Bob Henderson, 719 East Blvd.**, said I am appearing here on behalf of the petitioner. With me tonight is Mr. Barry Silberman and also Mr. Jonathan Fine. Barry Silberman is the executive vice president of the arena operations and entertainment. Mr. Fine is the general council for the Bobcats organization. What you have tonight is a petition that is really a refinement on the UMUD approval that was earlier obtained for the construction of the arena that rises even as we speak. It's a UMUD-O, and the sole purpose of the petition was for the approval of the signage

package. It has been a good process. We had a neighborhood meeting with nothing but positive responses. As staff indicated, the only staff issue had to do with the spacing of the trees. We have resolved that entirely. In fact, there are actually more trees than the tree ordinance would require. We think we have a good petition. There are, as a part of the package that you have, some 12 pages outlining several dozen signs, which I don't think you want me to review one-by-one, and I won't undertake to do that. Certainly if you have any questions about the signage or this tree issue that staff alluded to, I will be very happy to address that. The gentlemen that I earlier introduced are probably better able than myself to answer those questions.

Mayor McCrory said I think part of the design was to use these types of signs to help us out, so welcome.

[ Motion was made by Councilmember Burgess, seconded by Councilmember Mitchell, and ]  
[ carried unanimously to close the public hearing. ]

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**HEARING ON PETITION NO. 2005-26 BY CROSLAND COMMERCIAL, INC. FOR A CHANGE IN ZONING FOR APPROXIMATELY 6.6 ACRES LOCATED ON THE SOUTH SIDE OF JOHNSTON ROAD, EAST OF LANCASTER HIGHWAY**

The scheduled public hearing was held on the subject petition.

Keith MacVean, Planning, said there was a CDOT issue regarding a traffic impact study. They have reviewed that. They have identified the required mitigation and are working with the petitioner on the specific notes that will be added to the plan regarding the proposed right-turn lane from Old Lancaster Highway to New Lancaster. There are a couple of small site plan issues that we would like the petitioner to address. The request is consistent with the land use plans for the area, and we are recommending it for approval.

[ There being no speakers either for or against, a motion was made by Councilmember Lassiter, ]  
[ seconded by Councilmember Burgess, and carried unanimously to close the public hearing. ]

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**HEARING ON PETITION NO. 2005-31 BY THE GHAZI COMPANY FOR A CHANGE IN ZONING FOR APPROXIMATELY 14.6 ACRES LOCATED ON THE WEST SIDE OF W.T. HARRIS BOULEVARD, EAST OF NORTH TRYON STREET**

The scheduled public hearing was held on the subject petition.

Keith MacVean, Planning, said we are recommending approval.

[ There being no speakers either for or against, a motion was made by Councilmember Burgess, ]  
[ seconded by Councilmember Tabor, and carried unanimously to close the public hearing. ]

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**HEARING ON PETITION NO. 2005-33 BY CENTDEV PROPERTIES LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY 14.89 ACRES LOCATED ON THE WEST SIDE OF STATESVILLE AVENUE, NORTH OF W.T. HARRIS BOULEVARD**

The scheduled public hearing was held on the subject petition.

**Keith MacVean, Planning**, said we are recommending approval, working with the petitioner on the final notes that address site plan issues. I think we are almost there. No issues.

[ There being no speakers either for or against, a motion was made by Councilmember Tabor, ]  
[ seconded by Councilmember Burgess, and carried unanimously to close the public hearing. ]

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**HEARING ON PETITION NO. 2005-18 BY LAND USE AND ENVIRONMENTAL SERVICES AGENCY FOR CONSIDERATION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO PREVENT LARGE COMMERCIAL VEHICLES FROM PARKING IN RESIDENTIAL NEIGHBORHOODS**

The scheduled public hearing was held on the subject petition.

Councilmember Burgess said I think he ought to tell the gist of this for the public because this is one thing they have asked for.

**Keith MacVean, Planning**, said this has to do with commercial vehicles in residential areas. The original text amendment uses the wording, “no overnight parking of those vehicles in residential areas.” We have run into a situation where somebody works at night and is home during the day, so the vehicle is parked there during the day. That doesn’t necessarily mean that is exempted from the overnight parking. They are not parking overnight, so this eliminates the word “overnight” and then restricts the parking of commercial vehicles total in residential districts. Obviously they are allowed to go in there to provide services to the residents but not as a permanent parking area.

[ There being no speakers either for or against, a motion was made by Councilmember Mitchell,]  
[ seconded by Councilmember Turner, and carried unanimously to close the public hearing. ]

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**ADJOURNMENT**

The meeting was adjourned at 8:38 p.m.

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Stephanie C. Kelly, CMC, Deputy City Clerk

Length of meeting: 3 Hours, 18 Minutes  
Minutes completed: March 6, 2005