

**DINNER BRIEFING**

The City Council of the City of Charlotte, NC, convened for a Dinner Briefing on Monday, December 20, 2010, at 5:23 p.m. in Room CH-14 of the Charlotte-Mecklenburg Government Center with Mayor Anthony Foxx presiding. Councilmembers present were: Councilmembers Michael Barnes, Warren Cooksey, Andy Dulin, David Howard, Warren Turner

**ABSENT UNTIL NOTED:** Councilmember Edwin Peacock III arrived at 5:30 p.m.; Councilmember Nancy Carter arrived at 5:35 p.m.; Councilmember Patsy Kinsey arrived at 5:41 p.m.; Councilmember James Mitchell arrived at 6:00 p.m.

**ABSENT:** Councilmembers Patrick Cannon, Jason Burgess

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**Tammie Keplinger, Planning**, provided additional information and updates pertaining to the decisions and hearings scheduled to come before Council this evening. Ms. Keplinger also answered clarifying questions posed by Council.

The briefing was recessed at 5:31 p.m. for the Council to move to the Council Meeting Chambers.

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**ZONING MEETING**

The Council reconvened at 6:10 p.m. in the Council Meeting Chambers of the Charlotte-Mecklenburg Government Center with Mayor Foxx presiding. Council members present were: Michael Barnes, Nancy Carter, Warren Cooksey, Andy Dulin, Patsy Kinsey, Edwin Peacock III.

Mayor Foxx said as you may have noticed there are several Council members who are not here tonight. Many of them have family plans during the holidays and so forth, so we are a little skeleton crew tonight, but we are going to get through our Zoning meeting.

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**INVOCATION AND PLEDGE**

Mayor Foxx gave the Invocation and led the Council in the Pledge of Allegiance to the Flag.

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Mayor Foxx explained the Zoning Meeting rules and procedures. He recognized the chairman of the Zoning Committee and the Planning Commission, Steven Rosenboro, who introduced her committee.

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**DEFERRALS**

[ Motion was made by Councilmember Barnes, seconded by Councilmember Howard, and ]  
[ carried unanimously to defer Item No. 1, Petition No. 2008-032, for three months; Item No. ]  
[ 3, Petition No. 2010-037, for two months; Item No. 5, Petition No. 2010-051 for one month; ]  
[ Item No. 10, Petition No. 2010-069 and Item No. 11, Petition No. 2010-072 for one month; ]  
[ and withdraw Item No. 2, Item No. 2010-037. ]

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**DECISIONS**

**ITEM NO. 4: ORDINANCE NO. 4571-X AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.95 ACRES LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF INTERSTATE 485 AND INTERSTATE 77 AND TO THE WEST OF STATESVILLE ROAD FROM B-D TO I-1**

Mayor Foxx said the Zoning Committee found the petition to be consistent with the NorthLake Area Plan and reasonable and in the public interest.

[ Motion was made by Councilmember Barnes, seconded by Councilmember Dulin, and ]  
[ carried unanimously to approve the Statement of Consistency and Petition No. 2010-050 ]  
[ for the above rezoning by DavidLand, LLC as recommended by the Zoning Committee. ]

The ordinance is recorded in Ordinance Book 56 at Pages 905-906.

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**ITEM NO. 6: ORDINANCE NO. 4572-X AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.06 ACRES LOCATED ON THE SOUTH SIDE OF FAIRVIEW ROAD BETWEEN PARK SOUTH DRIVE AND PIEDMONT ROW DRIVE FROM MUDD(CD) TO MUDD-O**

Mayor Foxx said Item 6 is a matter that has had a slight change, and we need to have a vote by the Council to move forward with this action without going back to the Zoning Committee.

The Zoning Committee found that the banks or financial institutions, retail and office uses, and restaurants of this petition are found to be consistent with the SouthPark Small Area Plan and that the drive-thru service windows to be inconsistent with the plan but to be reasonable and in the public interest.

[ Motion was made by Councilmember Howard, seconded by Councilmember Kinsey, and ]  
[ carried unanimously not to send this item back to the Zoning Committee. ]

[ Motion was made by Councilmember Howard and seconded by Councilmember Barnes, and ]  
[ carried unanimously to approve the Statement of Consistency and Petition No. 2010-070 ]  
[ for the above rezoning by Fairview Plaza Associates LTD Partnership as modified and as ]  
[ recommended by the Zoning Committee. ]

The modifications are:

1. A note has been added limiting the number of drive-thru service lanes for a bank or financial institution to a maximum of three (two teller windows and one ATM lane).
2. A parking agreement has been submitted by the petitioner and approved by the Zoning Administrator.
3. A note has been added indicating that only one bank or financial institution may be permitted on the site.
4. A note has been added that to mitigate the impact of the removal of trees from the site in connection with development thereof the petitioner shall plant on the site two large mature trees, each of which shall be of a minimum of five inches in caliper at the time of installation. These trees shall be in addition to any trees that are required to be planted under the applicable ordinances in effect at the time of the approval of this rezoning.

The ordinance is recorded in Ordinance Book 56 at Pages 907-908.

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**ITEM NO. 7: ORDINANCE NO. 4573-X AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY .324 ACRES LOCATED ON THE NORTH SIDE OF AROSE AVENUE BETWEEN EAST MOREHEAD STREET AND DILWORTH ROAD FROM R-4(HD-O) TO UR-C(CD)(HD-O)**

Mayor Foxx said the Zoning Committee found the petition to be inconsistent with the Central District Plan but to be reasonable and in the public interest.

[ Motion was made by Councilmember Barnes and seconded by Councilmember Howard to ]  
[ approve the Statement of Consistency and Petition No. 2010-071 for the above rezoning ]  
[ Covenant Presbyterian Church as modified and as recommended by the Zoning Committee. ]

Councilmember Kinsey said this is one of those cases that caused me a little bit of a problem. I support rezoning, but I don't think it's reasonable, quite frankly, or to require them to put in an eight-foot sidewalk and a six-foot planting strip when the sidewalks along there are five and the planting strips are probably two or three. I did not get out of my car today to measure them, to tell you the truth, but it just seems inconsistent. It would be the only spot on the block where the six-foot sidewalk and eight-foot planting strip – I may have said that backwards earlier – and it just doesn't make sense to me. The yard is not that deep. I don't know why we do it in an urban setting like that, and I would support it, and I'm happy to make frankly either a friendly amendment or substitute motion approving it without the six-foot sidewalk and eight-foot planting strip.

Mayor Foxx said I hear a request for a friendly amendment. Is there a staff response?

**Tammie Keplinger, Planning**, said unfortunately the district will not allow that. It is a requirement of that district to have the sidewalk and planting strip.

Councilmember Kinsey said didn't we approve the districts? Why could we not override that?

Ms. Keplinger said it would have to go through the proper process to do that, through a text amendment to that specific district.

Councilmember Kinsey said that doesn't make me very happy, but then I don't feel very well tonight anyway. But I think we ought to look at that. It just doesn't make sense to put that sidewalk and planting strip there. It totally destroys that look of that one block. I don't know who suggested using that particular zoning category, but it just doesn't look right, and I don't think it makes sense.

Ms. Keplinger said, Ms. Kinsey, we are looking at those issues because we have run into them with our urban districts, so that is something that staff is currently working with.

Councilmember Kinsey said could just delay having them do the sidewalk and planting strip until after we look at the –

Ms. Keplinger said don't know the timing on the process that we are entering into, but it's something that we can look into, and if the ordinance allows us, we will work with the petitioners.

Councilmember Kinsey said I would appreciate that.

Councilmember Carter said I was wondering about the establishment of the board that reviews this in a quasi-judicial setting – if this is an innovative request, which it might be, going against what is regulant in that district. This would be a new challenge for us.

Ms. Keplinger said are you referring to variances?

bvj

Councilmember Carter said not the variance but –

Ms. Keplinger said the ZBA?

Councilmember Carter said not that – the one that we have just established. It hasn't been done yet. Thank you very much, but it's something that I think would be very applicable for that group to consider.

**The vote was taken on the motion and recorded as unanimous.**

The modifications are:

1. The petitioner has removed the note reserving the right to pursue a variance from the requirements of Section 12.216(2) of the Zoning Ordinance in order to eliminate the vehicular turnaround area as depicted on the site plan and to allow vehicles to back directly onto Arosa Avenue from the driveway serving the site. Note VIII(A) stating that vehicular access to the site shall be as generally depicted and shall remain on the site plan.
2. A parking agreement has been submitted by the petitioner and approved by the Zoning Administrator.
3. Note VI(C) has been amended to state that the petitioner shall submit to the Zoning Administrator for review and approval of a letter demonstrating that Covenant Presbyterian Church's hours of demand for the two parking spaces located on the church parking lot do not substantially overlap with the hours of demand of the office uses to be located on the site.
4. The language in the site plan notes pertaining to the proposed number of shared parking spaces has been clarified by removing Note VI(D).
5. Reference to "Section 12.203(1)" has been modified to read "Section 12.203".
6. Note VII (B) has been removed from the site plan.

The ordinance is recorded in Ordinance Book 56 at Pages 909-910.

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**ITEM NO. 8: USDG TEXT AMENDMENTS**

Councilmember Barnes said motion to approve, and, Mr. Peacock, my motion is with the modification that we refer to the Housing and Neighborhood Development Committee as requested by Councilmember Kinsey and others a review of the potential impact of the ordinance on affordable housing.

[ Motion was made by Councilmember Barnes and seconded by Councilmember Peacock to ]  
[ refer to the Housing and Neighborhood Development Committee a review of the potential ]  
[ impact of the ordinance on affordable housing. ]

Councilmember Howard said I was just wondering if that would work better if we divided those – one being the ordinance just the way it is and then the other one –

Councilmember Barnes said that would be fine, too. Either way we would accomplish the same thing. For clarity's sake that would be fine. Mr. Peacock, my motion would be to approve Petition 2010-074 and Petition 2010-073 as well as the Tree Ordinance Text Amendment as laid out under the information provided for Decision No. 8.

Councilmember Howard said I would like to speak to it, if I could. First of all, I wanted to thank the committee. This ordinance went through the Transportation and Planning Committee, and I wanted to thank the committee – Mr. Barnes, Ms. Kinsey, Ms. Carter, and Mr. Cooksey, the majority of us here tonight – for the hard work. This was one of those ones that came to us every month, and I wanted to make sure we pointed out the staff work on this. Mr. Peacock, I did want to take a minute, if I could. If you notice in Zoning Committee's write-up, they did differ a bit

with staff and with the motion we have on the table tonight, and I just wanted to, if it's okay, maybe to give the chairman just a minute or so just to kind of hear them out on it because it was something that was important to them, and it's the part about not the main ordinance but the review committee. If that's okay, Mr. Peacock, if we could give the chairman just a few minutes to explain their stance on that.

**Steven Rosenboro, Chair, Zoning Committee**, said this is one of the few times I think that we need to look at a minute the bigger picture. Staff in both Planning and Transportation has done an excellent job on this particular document and on getting public input and on the results that are produced. It really has been a compliment to the process if you see the detail. I have spent four years on the City Housing Commission and in June four years on the Planning Commission. This is one of the few times where my entire commission is in agreement. We have a concern, not with the Urban Street Guidelines (USDG). They are absolutely excellent, and they will define the way the city looks like from a street perspective for the next 50 years. All of that is good.

We don't think there should be another special committee to deal with any discrepancy or change that is required under these guidelines. We think that the interlocal agreement has established a Planning Commission that comes from different backgrounds with different expertise and that the Planning Commission is more than capable of handling this issue, so we would ask that you support this except for the clause where we have a special committee.

Councilmember Dulin said we have gone around and around on this. This is big stuff here. I have been pretty consistent over the years about adding cost to the citizens' lives in Charlotte, adding run-off to the creeks and streams and our storm water system by making shorter blocks, by putting more asphalt down, by putting restrictive ordinances on people of Charlotte that affects affordable housing. It doesn't just affect just affordable housing; it affects all housing, and the costs that this motion would add to the land that a home is built on, the permitting that the builder has to go through, the materials in some cases, the land he is not able to use because of other storm water and so forth. I think this goes too far, and I plan on voting no tonight.

Councilmember Peacock said just for clarification, Mr. Dulin, I'm going to have the maker of the motion, Mr. Barnes, to speak to it, but before he speaks, I believe you are making a motion to have something looked at closer; is that correct?

Councilmember Barnes said the first motion, Mr. Peacock, was to approve Decision 8 as written, and then I was going to make a subsequent request that we refer to the Housing and Neighborhood Development (HAND) Committee an examination of the impact of these actions on affordable housing in Charlotte. If I may speak to my colleague, Mr. Dulin's concerns, I have been, as the chair of the committee indicated, involved with the USDG for quite some time now as have a number of us. What we are trying to do is find a way to make development in our community both aesthetically appealing, not drive up costs unnecessarily, but also be sensitive to the environmental impact of development.

As you know, Mr. Dulin, a lot of the flooding issues we have in the southern part of the city are caused by a lot of the clearing and repaving of certain parts of the city that created a tremendous amount of storm water run-off, and the creeks, McAlpine and others, tend to overflow, so the USDG is an effort by staff and by the committee, I believe, to create streets that look good because they have trees, they have wide sidewalks that allow people to walk around. And, I know the application isn't perfect just as indicated by Councilmember Kinsey, but ultimately what we are hoping is that over the course of the next few decades you will see a community that has an adequate street system, bike lanes, planting strips, street trees; that it's an attractive community. We recognize or I recognize that there are costs associated with that, but my concern is the cost that we will pay if we don't do things that are intentional to assure the quality of Charlotte in the future.

By the way, I have had a debate with people in the industry and people representing folks in the industry, and I understand the cost issues, but the fact of the matter is that if we don't provide for our tree canopy, if we don't provide for bicycle lanes and other amenities of that fashion, what we will have is a large city that nobody really wants to live in because it won't be an appealing environment for them if they are walking, if they are riding a bike, and in many instances if they

are driving just because of the nature of the way roads are going to be designed under the USDB. I might add in conclusion, Mr. Peacock, that I'm very sensitive to the City not following ordinances that we are requiring the private sector to follow, and there's a part of this that has come up in another bit of our work, and there was a temptation for us not to follow it, and I said but we have to. If we are asking everybody else to follow it, we have to follow it. So, the private sector is following it, and the City will follow it because I believe it's in the best interest of Charlotte, so I would ask you to support it.

Councilmember Dulin said, thank you, Mr. Barnes, and there are many parts of it that I do support. For instance, ladies and gentlemen, I'm a firm believe sidewalks make neighborhoods better places to live. Sidewalks make our kids safer. Sidewalks make the moms and the dads and the families when they are walking safer, but just tonight, Ms. Kinsey, on the previous motion that we just went through, you had a problem with the eight-foot planting. This is an eight-foot planting strip and a five- or six-foot sidewalk. It's 14 feet into that church's backyard. I have got neighbors that are coming to me saying, sir, why do they come 14 feet into my front yard, and in one case we have been able to move it back 24 inches, and 24 inches doesn't sound like much – that's two feet – but that is that much land that this man is very much glad that we are not going to take from him for this sidewalk project.

There is another one where it's only five feet – five-foot planting strip and five-foot sidewalk, but our folks are being very firm that they need five and five, and in some cases this sidewalk on this meandering road – it's a beautiful road – is going to come within 15 or 20 feet of the front door of the house. They are moving it for some trees. They have been very responsible over there about trees, but they are not being very responsible about people's yards and people's front doors and people's driveways. In this case, right now these people on this particular street can park two cars in their driveway. We are going to take a five-foot planting strip and five-foot sidewalk and put it through there where they park the second car, and it's going to make it illegal for those people to park that second car because you can't block the sidewalk we are getting ready to put in. Our folks are going no problem; just let them park on the street because you can have on-street parking, and the people are saying, well, I don't want to park on the street. I want to park in my driveway. I went over there and did a walking tour, and there was something like 32 houses that would lose the ability on this one – now, it's a long stretch, and it's going to be a great project some day, but 32 houses that are going to lose the ability to park that second car.

We have a long way to go for the City to roll into – we have all said along this process we are going to pass this, but the City says they are going to be more flexible, and in some cases, we have been, and the staff is good – they listen – but I think this is going in many cases farther than we need to go. Ms. Kinsey, this is a great example tonight of eight-foot planting strip and a six-foot sidewalk on the back side of a church for half a block or one block. There are things that don't make sense about this. We have a police station site that the City has clear-cut. We didn't leave a bush. We clear-cut it right up to the property line, and Mr. Barnes has said tonight, well, they are going to plant trees back. Well, the idea was to save trees. Now, we have a tree ordinance that says you got to have 15% tree save on not some but every single building site in the City of Charlotte. I just think that's too restrictive and particularly to those folks, and this Council we work every week trying to build a house that people that don't make much money can buy for their family. This crowd, we are working on homelessness, we are working on loan programs for the poor, and this adds costs to those folks. Now, you might think it's only 50 bucks a month or 100 bucks a month; that is a lot of money, and I'm trying to speak up for the people that aren't here to speak for themselves tonight. I did that with the tree ordinance a couple of weeks ago and got voted down on that one, but there are a lot of people in this community that would like to be able to afford a house, and we are going in the wrong direction with some of this.

Councilmember Peacock said, Mr. Barnes, if you could repeat your motion again?

Councilmember Barnes said, Mr. Peacock, my motion was to approve Decision Item No. 8, which includes Petition Nos, 2010-074 and 2010-073 as well as the Tree Ordinance Text Amendment by CDOT.

Councilmember Peacock said that also includes a referral to the HAND Committee?

Councilmember Barnes said yes. Mr. Howard wanted me to separate those, which I'm willing to do as well.

Councilmember Howard said let me run through a couple of issues, if that's okay, Mr. Peacock. The first thing I want to do is respond to my good friends on the Planning Commission. I have actually had the conversation with the chair that you just explained to the public several times, and after listening to the staff, their explanation, and even going through committee, I'm comfortable where we are tonight. I wish we could have brought you guys along with us, but I wanted to make sure you understood we heard you, and it's understood being a former proceeding chair, I definitely appreciate your hard work, so thank you.

The next thing is that I want to remind my good friend, Mr. Dulin, that this is already policy. We are just moving it through to make this ordinance. We already are functioning this way, and I would argue with you that what we are trying to do, and my colleague, Mr. Barnes, said it great. We are trying to build the city not for today but for tomorrow. You are right. We try to build good houses every week, but we also are trying to build a good city period. And, you need to be able to get around, and I'm not going to repeat what Mr. Barnes said, but that's important as well, and I don't want to lose that.

What I feel like this policy is trying to do is put in the context where certain things make sense and how we apply it. That's why I think Ms. Kinsey is going to be okay with it because what we are talking about it context in doing it and what's appropriate. We are talking about new communities more than we are talking about existing communities in this, and I also want to point out that this has the support of people like NCDOT, who has actually picked up a lot of the same policy and now adopted it to be used across the state – something they are taking our lead on. We have support from the business community as well as the real estate community on this. This didn't come overnight, and there has been a lot of hard work put into this, so I join with Mr. Barnes in asking you to reconsider your support for it tonight because I think it would send a strong message to the community if we were unanimous on it – at least the seven of us that are here tonight.

Councilmember Kinsey said I am going to support these two petitions as well. I do wonder though and maybe we need to ask staff what would happen if we don't approve these petitions tonight. What is the outcome; what will happen?

Ms. Keplinger said in talking with our attorney this afternoon you do have the option of approval, of denial, or deferral. If the petitions are approved, of course, they would go into effect. If they are denied, then we believe that we could reapply for these text amendments to come back to the Council within a short amount of time, and, of course, if they are deferred, then we would pick this up next month.

Councilmember Kinsey said I would encourage us to go ahead and support them tonight. There has been an awful lot of work. I don't agree with everything in them, but I think we need to go ahead and support them tonight, and I would ask that we do that; and, then, of course, support the second motion as well.

Councilmember Cooksey said I move to defer these to the next zoning meeting of Council.

[ Motion was made by Councilmember Cooksey and seconded by Councilmember Dulin to ]  
[ defer this item to the next zoning meeting. ]

Councilmember Cooksey said being in the minority on an elected body is a tricky thing because you have to figure out when to just say no to things and when to know the train is coming so you participate in it with the compromises that you try to get along the way even knowing that the end result is not necessarily something that you like. We are at a very interesting position at this point. Two votes in the negative on this petition, and it drops here, and as Ms. Keplinger has just pointed out, it would have to be reintroduced and gone through one more time with more Council members here to pass. Given this is a situation where the "no" vote matters, my inclination is to vote no, which count the no's and that's 5-2, and it would not pass tonight. The majority of Council would have to give direction to have it resubmitted, and I suspect that will happen. Particularly picking off of Councilmember Howard's comment about what kind of

message the vote sends to the community, I think it is better that we have this vote when we are at fuller strength than to do 5-2 tonight and have the vote later when we are full strength. So I offer a motion to defer it to our next zoning meeting.

Councilmember Barnes said, Mr. Cooksey, I just want to ask a personal clarification. Are you suggesting that you are going to vote against it in order to create a deferral; and, if that's the case, what is the reason for the deferral?

Councilmember Cooksey said if we defer it the vote occurs in January. If it fails, the vote occurs at some indefinite point in the future.

Councilmember Barnes said what is the reason for deferring?

Councilmember Cooksey said because I'm going to vote no on it because we are in a moment where my vote matters a good bit more than if there are 11 Council members here. Like I said, any time when you are in the minority in an elected body – well, we'll see how Mr. Turner votes. This may be a non-issue, but when you are in the minority, you pick and choose the battles. This is a moment where if I disagree with the general gist of the ordinance my "no" vote matters.

Councilmember Barnes said is that what you are saying though? You disagree with the ordinance.

Councilmember Cooksey said, yes, indeed. I'm trying to do it procedurally in January rather than now, although it may be a moot point at this stage.

Councilmember Howard said I really hope it is because I am extremely disappointed. Mr. Cooksey, you sat on this committee with us as we went through this, and if I'm not mistaken, we had a unanimous coming out of committee. I would hope we wouldn't hold up the business of the people just for a principle of saying I can and I will. I don't even know where to begin with this one, so if that's where we are going, we will definitely defer it if that's what we need to do, but we have talked about this for more months than I even – I mean including you sitting at the table, so I'm a little bothered by the fact that we would just do this on principle because we can.

Councilmember Dulin said it's standing on principle is what we are down here to do. That's why I have raised my hand up to have a discussion about this.

Councilmember Barnes said that's true, Mr. Dulin, but I think what Mr. Howard is saying is it came out of committee unanimously, and it sounds like Mr. Cooksey is saying I'm going to vote against it in order to create a deferral because I can because I'm normally in the minority, I normally have no power, and tonight I have the ability to defer something. I would rather vote and let it fail and let them bring it back than to go through something like that because that's ridiculous.

Councilmember Cooksey said, all right, fair point.

**Councilmember Turner arrives at 6:39 p.m.**

Councilmember Carter said, Ms. Keplinger, about what time delay are we speaking about?

Ms. Keplinger said I would like to clarify one point about if the petitions are denied. Portions of these petitions are actually part of the Subdivision Ordinance and portions of them are part of the Zoning Ordinance. Those parts that are part of the Zoning Ordinance would have a two-year delay. The ones that are part of the Subdivision Ordinance are not subject to that. So the portions that I'm talking about are the text amendment to the Tree Ordinance and Petition 10-73, which is the text amendments to the Zoning Ordinance.

Councilmember Peacock said there is a motion on the floor for Item No. 8, USDG text amendments along with the second broken out item to refer to the HAND Committee. Excuse me, we have Mr. Cooksey's motion here to defer at this moment. Mr. Turner, are you caught up to speed on where we are?



Councilmember Turner said, yes, I am. Thank you.

**The vote was taken on the motion to defer to the next meeting and recorded as follows:**

**AYES:** Councilmembers Carter, Cooksey, Howard, Peacock, Turner

**Terri Hagler-Gray, Assistant City Attorney**, said that is five votes, so that won't pass.

Councilmember Peacock said, Ms. Hagler-Gray, we have a motion to defer, which has just failed. Now we are back to the original motion, which is where we are currently right now.

Mr. Hagler-Gray said yes.

Councilmember Peacock said who was the original maker of the motion for this – was it Mr. Barnes? There was a second from Mr. Howard, I believe.

Councilmember Turner said what was that motion?

Councilmember Howard said wait, please, Mr. Peacock. I want to make sure we all are clear what we were just voting on a second ago. Can I back up a second just –

Councilmember Peacock said, yes, you may, for clarification purposes.

Councilmember Howard said, please. I don't even know where to start. I would hope that if deferral is what we are really saying will keep this moving forward, and actually I'm talking to my vice chair, Mr. Barnes, if that is what will get us to where we do what's good for the public and move this forward. I would ask for us to be clear on the fact that if we defer this at least we get a chance at the end of next month. If not, what we are talking about is putting this off for months to come. Although I don't agree with what Mr. Cooksey is doing, I would rather do that then put it off for months and months and months, and God only knows what that process will be. So in talking to Mr. Turner, Mr. Turner is okay with deferring tonight, and that is what he just was indicating, and I wanted to make sure, Mr. Peacock, if maybe we could go through that one more time so that we are clear on where we are tonight so we can all move this forward, and I would ask even my committee to do the same thing so that we are not talking about this months from now; we are talking about this next month when we can have more people at the table to talk about it. So, I want to make sure we were all clear about what our votes were on the last motion, so can we just redo that so we are clear on that, Mr. Peacock?

Councilmember Peacock said let me check with Ms. Hagler-Gray on this real quick. Can you give us some clarification? That's why you are here as our rules keeper.

Ms. Hagler-Gray said I would just like to clarify with that last vote I wasn't sure which way Mr. Turner was voting with the deferral.

Councilmember Turner said we only called for a deferral. I voted for the deferral.

Ms. Hagler-Gray said you voted for the deferral. And, Mr. Peacock, you did as well?

Councilmember Peacock said I voted for deferral.

Ms. Hagler-Gray said so that would be six votes.

Councilmember Howard said if you want to go through with the original motion I'm okay with that.

Ms. Hagler-Gray said that would be six votes to defer.

**Councilmember Mitchell arrived at 6:45 p.m.**

Councilmember Turner said, Madam Attorney, what were those votes because you have now got me confused. You said it was five.

bvj

Ms. Hagler-Gray said I'm sorry. I thought you had not voted with the affirmative. If you voted with the affirmative, then there were the six votes to defer. It's deferred to January. At this time, the vote to defer has passed with six votes.

Councilmember Peacock said, correct, so Item No. 8.

Councilmember Dulin said excuse me then. You have to have a roll call on that. It was five a second ago, Mr. Peacock. We are not going back and revote as many times as it takes for you to get the outcome you need, Mr. Howard, but I would like to know the names of the people that voted to defer because you said six; I thought it was five.

Ms. Hagler-Gray said I will confer with the deputy city clerk.

**Ashleigh Martin, Deputy City Clerk**, said I have that Councilmember Cooksey, Councilmember Carter, Councilmember Howard, Councilmember Peacock, and Councilmember Turner voted. That is five. If there was a sixth person –

Councilmember Dulin said then you never asked for the “nays”.

Councilmember Turner said that was my point. It was made as if I was the difference, but I know I had voted, so it failed then unless you are going to –

Councilmember Peacock said, Ms. Gray, we are back to the original motion; is that correct?

Ms. Hagler-Gray said that's correct.

Councilmember Peacock said the original motion – what we see before us on Item No. 8 as well as a referral to the HAND Committee. All those in favor of doing such, raise your hand in the affirmative.

**The vote was taken on the motion to approve Item No. 8 as well as a referral to the HAND Committee and recorded as follows:**

**AYES:** Councilmembers Barnes, Carter, Howard, Peacock, Mitchell, Turner

**NAYS:** Councilmembers Cooksey, Dulin

Councilmember Peacock said six votes.

The ordinances are recorded in Ordinance Book 56 at Pages 911-1012.

This concludes the decisions portion of this evening's discussion. We are now to the hearings portion.

\* \* \* \* \*

## **HEARINGS**

**ITEM NO. 9: HEARING ON PETITION NO. 2010-068 BY LIGHTWAY PROPERTIES, LLC FOR A CHANGE IN ZONING OF APPROXIMATELY 6.50 ACRES LOCATED ON THE NORTH SIDE OF BALLANTYNE COMMONS PARKWAY BETWEEN ANNALEXA LANE AND PROVIDENCE PROMENADE DRIVE NORTH FROM UR-2(CD) AND R-3 TO O-1(CD) AND O-1**

The scheduled public hearing was held on the subject petition.

**Tammie Keplinger, Planning**, said this petition is to rezone 6.5 acres. There are two portions – one from R-3 to O-1 and one from UR-2(CD) to O-1(CD). There are sufficient protest petitions related to this rezoning request. A little bit of history on this particular property, which is shown

bvj

here in the orange. The property was rezoned to UR-2(CD) in 2008 for the development of 27 townhomes. The site currently has been graded, a six-foot masonry wall has been installed around the north and west property lines. The zoning in the area, as you can see, there is a mixture of commercial, multifamily, and single family residential. In terms of land use, it follows the pattern of the zoning. In terms of the future land use, it shows the subject property as residential based on the 2008 rezoning.

I would like to explain the portion of the property, which is to rezone to O-1(CD) is the majority of the site. The remaining portion is to be rezoned to a conventional O-1. This property is not owned by the petitioner, and therefore, he could not place conditions on this property. The section that is proposed to be rezoned O-1(CD), the larger portion, has the following conditions. It will be limited to 25,000 square feet of medical office uses, 7,000 square feet of general office use, one 4,500 square foot financial institution with accessory drive-thru windows. There will be no more than four buildings, which may be combined into two, and that does not include the financial institution. The buildings will be one story.

In terms of the site plan, a 36-foot buffer is required along the northern property line, and the petitioner is actually showing a 75-foot buffer. A 36-foot buffer is required along the western property line, and that is shown on the site plan. The building elevations are also included as a part of this petition. You can see the bank at the top and then the office buildings beneath it. There are two access points consisting of full movement onto Ballantyne Commons Parkway and a connection to Providence Promenade Drive. There is a note on the site plan that says that the development of the site is contingent upon that connection actually happening and being in place. The phasing is to allow financial institution to be built first with the office uses to be built later.

As I indicated, the Providence Road/I-485 Area Plan update from 2000 amended by Rezoning Petition 2008-027 recommends the 27 townhomes that are approved for the site currently, but staff supports the general and medical office use component of this site. We do not support the financial institution, which is located in this area. The reason for that is because this adds more intense office uses that are not in keeping with the surrounding residential uses. Staff believes that it should be eliminated. For this reason, staff is not recommending approval of this petition in its current form.

Councilmember Kinsey said I did get a phone call with concern about the exit onto Ballantyne Commons Parkway particularly if they are trying to make a left turn there is a curve there. I didn't see anything in the backup material that addressed that.

Ms. Keplinger said I would like to ask Mike Davis to come up and address that issue.

**Mike Davis, Charlotte Department of Transportation (CDOT)**, said the driveway you are referring to we didn't put anything in in terms of outstanding comments because we are actually comfortable with that access proposal. It would be full movement at that location. You are referring to –

Councilmember Kinsey said there was concern that a left turn out of there would be very dangerous. I don't travel out there. That was just what a constituent indicated to me, and there didn't seem to be any concern on the part of CDOT or NCDOT. I understand this is a state road.

Mr. Davis said that's true. This stretch of Ballantyne Commons Parkway is maintained by NCDOT. CDOT and NCDOT have each taken a look at this and are confident from what we know about this proposal that this can operate as full movement. As always with conditional zonings, we are able to make changes to the access after the zoning, and if ever we have any kind of cause to make changes for the purposes of safety, we can do that and we will do that.

Councilmember Carter said I would like to know what changes you would propose if there is a difficulty with it. Would that be closing the median at that point?

Mr. Davis said it could come up in some different ways, but that would be the most common way to solve that problem would be to restrict – well, there would be two ways to do it. One

way would be to close the median entirely. Another way to do it is there is a treatment called a leftover, which would allow for lefts in but restrict lefts out.

**Rick McCorkle, Petitioner**, said I am the owner of this property and the developer as well and acquired this property in 2006 with the intention of changing the zoning to multifamily. As Tammie mentioned, we did successfully pass in 2008 and had pre-sales, in fact, for the villas – we had four pre-sales. In 2008 when the residential market downturn came about, we lost those pre-sales and found ourselves kind of spinning around in circles thinking of what we were going to do with this property because the residential just was not coming back around, so we went to Berkley to offer them some kind of concession here because we had taken the property and cleared it and put the infrastructure – about 60% of the infrastructure in place now, which we will have to tear out. We took all these beautiful trees down and exposed the back of their houses. It was just an unfortunate situation that the market crashed and we could not build 25 \$600,000 villas.

So, we went to Berkley back in June of this year to propose that we would bring in a large buffer – a 75-foot deep buffer – with enormous trees planted at the time we were planning would be 16 foot tall. We are proposing 113, 16-foot tall evergreen trees where our current zoning of UR-2 has us in a 24-foot buffer with 40 trees eight to ten foot tall, so we are more than doubling everything that we are doing. In some cases, we are tripling it – tripling the size or doubling the size, so we basically will have an instantaneous green wall back there that would buffer them from Ballantyne Commons Parkway forever. But right now they are exposed to Ballantyne Commons Parkway, and it's just an open field graded. It's unfortunate, but it was our intent to build these townhomes, these villas, but the market is just not there, and I have no clue if it's ever coming back. If it is, it's going to be way down the road.

So we have proposed this buffer to Berkley. We have been working back and forth with Berkley. They have hired an attorney, and lately I have been working with him. The size of the square footage that we are putting on the ground currently in UR-2 is 65,000 square feet of ground floor if you take into consideration the 25 villas. Under our proposed new zoning, we will be using 38,000 square feet – almost 30,000 square feet less of ground floor, and we are only using 21.5% of the actual gross amount based on the land size of O-1. So when Tammie has told us, and staff has been very supportive of what we are doing except for the bank, and when they wanted us to eliminate the bank because of the intense usage, that was our whole purpose of going forward with just 38,000 square feet including the bank and nothing bigger so it would kind of balance off that usage, so we'll not have 60,000 square foot of medical office. We have 32,000 and a 6,000 square foot bank, so it will balance that down. So the bottom line is we are only using 21.5% of the gross amount there.

The bank, to be quite frank with you, fuels this development. Without the bank, there is no other part of it because we can't speculate – obviously we can't build a bank speculating, so if we have a bank user, it will fuel the other part of our development. Our traffic flow, as they have mentioned before, maybe across. He used slides to illustrate his comments and said there's the elevation of the buildings. Our traffic flow as it relates to lining up right here, as was mentioned, this median here is not in yet. It is planned to be built, and it was planned to be built under our UR-2 zoning. It has 150 foot of storage and gives our ability to turn to the left here. We line up right across the street from Home Depot currently, so people accessing Providence Commons where Home Depot is are either coming in or coming out right here. So they are turning left now, and it doesn't seem to be a problem. Our people will be turning left as well.

We also have, as Tammie mentioned, this rear access point which you can come down to this red light of Ballantyne Commons Parkway and Providence Promenade Drive. The other nice thing about it is you can actually turn left and you can go back out on Providence Promenade Drive to Providence Commons Shopping Center or you can swing on around – you can't see it on the map, but you can swing on around and go out to Providence Road. So we have many points of accessibility to this site here.

You can see currently a few shots we have where banks are adjacent, behind, whatever you want to call it, of residential single family homes just as we have proposed the use, too – a couple of different bank sites here with residential all around it. We have worked with Berkley, like I say,

and I believe that we have offered all we can offer to get this project off the ground and look forward to moving forward with it.

**Kenneth Abner, 4521 Sharon Dr., Ste, 375**, said I'm an attorney here in Charlotte. I am here tonight on behalf of two interested groups of folks. First of all, I represent the owners of seven adjacent pieces of property – property that is immediately adjacent to the subject site. I am also here on behalf of the Berkley Homeowners Association. Berkley is the neighborhood that is immediately to the north and behind this site on the site plan that you are looking at. It has a membership of roughly 400 homeowners. I only have a few brief remarks. Obviously the adjacent owners and the homeowners association have some concerns with this petition. The proposed uses are inconsistent with the applicable area plan. The commercial uses that are proposed for the site may bring adverse impacts on the adjoining owners in terms of on-site traffic, off-site traffic, lighting, signage, compatibility of architecture, building height, all of those sorts of things. However, and I want to emphasize this however, we have been working with Mr. McCorkle very hard over the past few weeks to address our concerns regarding all of those issues, and he has satisfactorily addressed all of those concerns with one exception, and that one exception relates to the timing of the installation of the buffer that is on the site plan. If we are able to get a confirmation that the changes that we have requested included in the site plan, and I will mention that the site plan that Tammie showed and the site plan that Rick showed are different. The site plan that Rick put up on the screen incorporates all of our requested changes. If we are able to get confirmation that those changes are included and we are able to reach an agreement with the developer regarding the installation of the buffer, then we are prepared to withdraw our protest petition and support this rezoning. I do want to comment on staff's concern regarding the intensity of the financial institution use. Again, I'm representing seven owners who are immediately adjacent and a 400-owner association. Subject to again getting confirmation that the changes the developer has already agreed to actually get incorporated, my clients are okay with the financial institution being next to the neighborhood.

**Jay Fulcher, 5527 Ballantyne Commons Pkwy.**, said I represent the owners of a property across the street, Ballantyne Commons Storage Center. We are not opposed to necessarily the rezoning and we just spoke with Mr. McCorkle this afternoon, but we are not opposed to the change for the use. Our issue is actually with the median that you guys saw that is directly in front of our driveway. As Mr. McCorkle said, he has several entrances to his property. We have one, and if that median is put in as it's designated on the plans, we have no access for folks turning left into our property. Most of our customers come from Providence Road, 485. They turn onto Ballantyne Commons and then turn left into our property. We have a lot of tractor trailers, U-Haul trucks, and that sort of thing. There is no way they can make a U-turn ever much less on Ballantyne Commons Parkway. There is no even turning into another neighborhood, which I'm sure the residents of the neighborhood wouldn't like. You couldn't turn into a neighborhood, go down, and make a cul-de-sac turn because those neighborhoods have dead-end streets and don't have cul-de-sacs even. There is really no access if you put that median and cut off our left-turn access. You have killed a business that was just approved to be rezoned just a few years ago without any of these restrictions. So, that's our big thing. I just spoke with Rick with DOT. There may be some things we can do, but we would ask that you look at that and let's figure out a different way to do that median or remove that median.

Mr. McCorkle said the only thing that I will say is that this median has been here since the last rezoning. It was something NCDOT or CDOT wanted us to put in along with the road widening we have agreed to. We have already dedicated the right-of-way for that road widening – six-foot sidewalks, eight-foot planting strip. All of that has been put in place, and that has been on the plan, and we actually have a permit for our subdivision currently, and we got it November 20, 2008, and like I said, about 60% of our infrastructure is in, so this median has been there. It's not just something we put in with this 2010-068 zoning. It's been there all along, and that's the only rebuttal I would like to make.

Councilmember Barnes said I just wanted to share general observations and concerns that I have. The first one is that I tend to agree with Mr. Fulcher that the median would dramatically limit access to the entrance to that storage facility. Secondly, Mr. Dulin and I were discussing the treatment of that intersection across from Home Depot I believe when you were initially discussing it, but that is going to be in my estimation a high accident area because there are a

number of left turns that can be made. There is no signalization. Is that true that there won't be any signalization?

Mr. McCorkle said that's right, but that rear entry for Home Depot – I'm there all the time. It's not used much at all. There is a red light access. There are two other accesses or three other to Providence Promenade Shopping Center.

Councilmember Barnes said so that is not the main entrance.

Mr. McCorkle said no. There is a red light not 700, 800 feet up from there that comes right between the BB&T and some restaurants there, and that's what everybody uses when they come out of there, or they will take the other way out and it will dump them right onto Providence Road, so it's very accessible. There is very little traffic out there now on that. With our project, it may obviously intensify things, but right now currently it's not.

Councilmember Barnes said okay. I appreciate it. Again, the entrance to the storage facility is an issue for me, and it seems you are addressing the issue regarding that intersection, but still I could see growth occurring that might create a problem there. Okay, I see it right there. Thank you.

Councilmember Dulin said Mr. Barnes and I discussed it, and he brought up the issues about the entrance into the storage facility, but I just want to make sure and remind Council because I believe this is correct, but we just rezoned that a couple – isn't that the old church site? We did that rezoning just a couple of years ago, and I have driven by it; I have seen your project. It sits down off the hill.

Mr. McCorkle said (inaudible – not near a microphone)

Councilmember Dulin said, sir, we do have a problem with the potential of the median blocking his access.

Mr. McCorkle said we did not ask for that. That's something that the powers to be put in place back in the 2008-027 petition that we did.

Councilmember Dulin said, Tammie, would that have been because of the Urban Street Design Guidelines?

Ms. Keplinger said, no, sir, it would not have been.

Councilmember Dulin said not to bring it up again.

Mayor Foxx said I understand there was some interesting dialogue about that.

Councilmember Dulin said, yes, sir, there was.

Councilmember Cooksey said just want to get this very clear for the record, and let me ask Ms. Keplinger this. If the property is built out according to what has been referred to around here, the previous Council rezoning in 2008, would the median get built?

Ms. Keplinger said I believe that Mr. McCorkle has stated the median is in place. I'm sorry. I was in the –

Councilmember Cooksey said I didn't remember it last time I was past there.

Ms. Keplinger said I'm sorry; I misheard. If it were built out based on the 2008 petition, yes, it would be required to be built.

Councilmember Cooksey said the second question to Mr. McCorkle is we have heard from a representative of some Berkley homeowners about this buffering timing issues. What's your response to the question, or do you have one at this point?

Mr. McCorkle said putting the buffer in? No, we are more than willing to put it in. I'm not going to put it in – I think they wanted me to put it in before I got it rezoned, and I said I can't do that, so now we are just working on when I can put it in based on if I get rezoned.

Councilmember Cooksey said I would like to ask Mr. Abner. Could you be very specific for us as to what the homeowners are looking for on that buffer?

Mr. Abner said in terms of what? I'm sorry.

Councilmember Cooksey said the one issue that your clients have left regarding the buffer what specifically are they looking for?

Mr. Abner said we have reached, again subject to the site plan being revised, with the agreement that we have reached with the developer that we are satisfied with the buffer in terms of the location of the trees, the types of the trees, the heights of the trees, species of the trees, etc. We are looking for an agreement with the developer on the timing of the installation of that buffer. We would like to see that buffer go in within a reasonable time following the approval of the rezoning if that were to occur.

Councilmember Cooksey said, Mr. McCorkle, you can work out the reasonable time arrangements?

Mr. McCorkle said there is no problem with that. I will just bring up two. In our 2008-027 petition, one of the notes we had to agree to was that we would start our masonry wall up that we had drawn in at the time we got our subdivision permit. We completed that wall six months prior to getting our subdivision permit. So we didn't start it then. We completed it six months before that, so we have no problem putting it in as long as we get the rezoning, but we are not going to put it in if we are not rezoned.

Mr. Abner said if I might just add a further comment.

Councilmember Cooksey said what would you add to that?

Mr. Abner said Mr. McCorkle has been pretty candid about the moonscape that was created out there at the time his residential development failed, and the seven owners I represent have had to look at that moonscape now for quite some time and we don't want to have to not have that area buffered pending construction of a project out there. We would like to go ahead and have that buffer put in. There are significantly more intense uses that my clients are agreeing to support on the site, and we think it's reasonable to request that a buffer be put in following a successful rezoning.

Councilmember Cooksey said the Berkley neighborhood for years has been very active in maintaining its quality of life with all the development that occurs around it, so I'm sure that you all will come to an agreement by the time we vote.

Councilmember Carter said a statement and two quick questions. Mr. Fulcher, I certainly sympathize with you. We rezoned for a Shell gas station on Albemarle Road. NCDOT came in and closed the whole median. It is devastating to a business, and I am sorry. I hope this can be mitigated. Number one, did the homeowner association protest the original proposal for UR-2(CD); in other words, multifamily development?

Mr. McCorkle said, Tammie, you may know more about it than I do, and I know the gentleman that handled that is sitting in the audience tonight. I think the answer to that is yes, but ultimately that petition was withdrawn.

Ms. Keplinger said, yes, that's exactly as I recall it.

Councilmember Carter said, number two, for the developer, Mr. McCorkle, will there be, and I need verification that I can ask this question. It's a question about urgent care, and if urgent care is involved, that's a different set of transportation issues to me. Is it appropriate to ask that question?

Ms. Keplinger said, yes, ma'am.

Councilmember Carter said will urgent care be part of the medical offices?

Mr. McCorkle said it could be. It is not written that it is. I don't have a user, but we were leaving it open to a user.

Councilmember Carter said I think that's an issue then for our transportation people because I think that changes the dynamics to some degree.

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

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**ITEM NO. 12: HEARING ON PETITION NO. 2010-075 BY WOODIE ENTERPRISES, INC. FOR A CHANGE IN ZONING OF APPROXIMATELY 0.474 ACRES LOCATED ON THE EAST SIDE OF CARMEL ROAD NEAR THE INTERSECTION OF CARMEL ROAD AND PINEVILLE-MATTHEWS ROAD (HWY 51) FROM B-1(CD) AND O-1 TO B-1(CD) SPA AND B-1(CD)**

The scheduled public hearing was held on the subject petition.

**Tammie Keplinger, Planning**, said this petition is to rezone .474 acres from B-1(CD) to O-1 and from B-1(CD) SPA. As you can see, the property in question is B-1(CD) surrounded by O-1 and B-1(SCD) across Carmel Road. A little bit of history on this site. In 1982, this property was rezoned from O-15 to B-1(CD) to allow the construction of an ABC store, which is approximately 3,500 square feet of heated floor space. The current request we have for this rezoning is two phased. One would be to reuse the existing building, to retain it to be used as an ABC store or as offices or to construct a new business, which you can see in this site plan, which will be an automotive service station without gasoline sales, but it would include minor adjustments and repairs and lubrication.

The maximum office use for the site would be 3,300 square feet. The maximum automotive service station use would be 5,350 square feet. The existing building outline is shown as well as the proposed footprint. The petitioner is agreeing to dedicate right-of-way measuring 50 feet from the center line of Carmel Road. Staff is recommending approval of this petition upon the resolution of the outstanding issues. It is inconsistent with the South District Plan, but it is currently being used as an ABC store and is compatible with retail and office uses that are adjacent to it.

**John Carmichael, 214 N. Tryon St., 47<sup>th</sup> Floor**, said on behalf of the petitioner. With me is Mr. Bradley E. Woodie of Woodie Enterprises. We will be real brief. Mr. Woodie is here to answer any questions you may have. They operate automotive repair centers throughout the city. They have one downtown off the intersection of Morehead and McDowell. We think this is a really good location for this use. It will be supported by the nearby office tenants and office users. The site is surrounded by office uses and retail uses. It will be a new building, redevelopment of the site. About 53,050 square feet would be the maximum. We will be submitting architectural elevations of the front elevation of the new building to the Planning staff in advance of the Zoning Committee. We had a neighborhood meeting and had some folks from the nearby community come by. We are not aware of any opposition at this point to the request, and we are happy to answer any questions that you may have. They are very hopeful to get a location in this vicinity, and they think it would be really successful.

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

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**ITEM NO. 13: HEARING ON PETITION NO. 2010-076 BY ANDERS PLATT FOR A CHANGE IN ZONING OF APPROXIMATELY 3.4 ACRES LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF WEST BOULEVARD AND DR. CARVER ROAD FROM R-22MF AND I-1 TO INST(CD)**

The scheduled public hearing was held on the subject petition.

**Tammie Keplinger, Planning**, said this petition is for 3.4 acres from R-22MF and I-1 to INST(CD). The subject property is located at the corner of Dr. Carver Road and West Boulevard. You see there are various land use and zoning within the area. In terms of the adopted future land use plan, it calls for multifamily. The current proposal is for an 85-unit multifamily elderly housing development. We do have elevations that have been submitted as a part of this proposal. The building materials will be Hardie plank and brick. There will be a wrought iron fence with gated pedestrian entrances. There are various amenities associated with the multifamily elderly residential housing, which includes on the inside security cameras, intercom systems, office management, common areas, community rooms, common washers and dryers. Then they will have outside amenities as well such as grills and sitting areas and patios.

They are proposing six-foot wide sidewalks along all street frontages, eight-foot planting strips fronting on Dr. Carver and Dewberry with a 12-foot planting strip along West Boulevard. They are also including a CATS pedestrian waiting pad along West Boulevard. They are dedicating additional right-of-way. They will have 64 parking spaces and provide buffers as required by the ordinance.

There is a note on the site plan that the petitioner may request future variances to eliminate the pedestrian connections to West Boulevard and to Dewberry Trail. The reason for this is for topological reasons. The petition is inconsistent with the Central District Plan, however many of our plans do not tell us where institutional uses such as housing for the elderly should locate, so staff is recommending approval upon the resolution of the outstanding issues.

**Florence Webb, Retirement Housing Foundation, 911 N. Studebaker Rd., Long Beach, CA**, said I'm here to speak in favor and support of the project. If you have any questions, I am prepared to respond to them as well as our architect, Mr. Tise, and our civil engineer, Mr. Smith, are available to respond to any questions you might have of us.

**Don Tise, Tise Kiestler Architects, 119 E. Franklin St., Chapel Hill, NC**, said I was really here as a hired gun for Florence in case you guys have some specific architectural questions, but the staff did have a few issues and comments, and we have addressed those and have made some adjustments, and we'll be making adjustments along the way from an architectural standpoint. So you will know, one component of the financing for this is through the North Carolina Housing Finance Agency out of Raleigh, which is low-income housing tax credits. They have very strict standards, design standards, in terms of the type of amenities, the size of the units, the quality of materials. A lot of people confuse the term "affordable" or "workforce" housing with the quality of construction, and that's not the case. The quality of construction is like any market rate construction. The affordability component refers to only the financing mechanism that allows people like Florence to offer these units at a more affordable rate, but the construction method and material is like anything else that you have seen tonight or seen in the city. There shouldn't be too many questions about the look or quality.

**Wesley Smith, EMHT Engineers, 301 McCullough Dr.**, said I'm basically here just to answer any questions that the Council may have.

Councilmember Howard said, first of all, just so the petitioner knows I actually grew up in Kings Park Apartments, which are right up the street, so I have walked by this corner most of my life – I mean like since I was six. I don't live there now, but my mother is still there, so I have a real concern. It's Judy Williams. I think you talked to her. She talked highly of you, Ms. Webb. I would love to meet with you between now and next month just so I can learn more about it. Being in the industry, I kind of understand. I think I understand the materials, the layout, the programming, but I would like to hear more about it one-on-one, if that's okay. I think it could be transformative if done right. I just would like to have more information about it.

Ms. Webb said certainly. I would appreciate the opportunity to meet with you, and I will call your office and make arrangements.

Councilmember Carter said two points. Number one, please keep the connection with the streets. We need to take advantage of our elderly population, make sure they are engaged with our neighborhoods and that walking access is really important.

Ms. Webb said actually that came from the neighborhood. We had a neighborhood meeting. Councilmember Turner was at that meeting as well. It was at the police substation in the area, and the neighborhood group suggested – they were adamant that there not be openings because they were concerned about if there was a gate people would break through and enter the property. They were the ones that brought up the fact that we should not have gates there.

Councilmember Carter said card access or something like that.

Ms. Webb said they thought any gate would be vulnerable for vandalism and people entering off of Dewberry or West Boulevard onto the property. That came from the residents that we met with.

Councilmember Carter said I find that a bit distressing, but I do understand what you are saying, and we do want to protect our senior citizens, but that principle of involving our senior citizens in our neighborhoods is just one of the most enriching principles that we have. The other point that I would like to make is that you would be most welcome on the east side. We do need facilities for our seniors over on the east side.

Councilmember Turner said I just wanted to touch on the outstanding issues. It appears that we are moving along in the right direction, and I hope that we can continue to do so with the four outstanding issues that staff has brought to our attention. One of the things I wanted to make sure and I didn't see it on here, and I just wanted to get it clarified. Are we still going with two inches, or did we finally get that cleared up about the gate entrance for just one versus two.

Ms. Webb said there would just be the vehicular gates off of Dr. Carver. We are proposing to come back with a variance that would allow us to do that. Ms. Waddy and some of the neighborhoods that we met with you, if you recall, and also police officers that were there suggested that we not have the pedestrian access off of Dewberry and West Boulevard.

Councilmember Turner said, staff, I see here as number one on your outstanding issues that we want to get some clarification in regards to the measuring 40 feet from the center line before we issue them their building permit. Can you bring me up to speed on that?

Ms. Keplinger said that's a very common request if we do not have 40 feet from the center line of the road. Because of the impact that the new development will have, we will often ask petitioners to dedicate and convey that right-of-way, and we will ask them to do it prior to the issuance of building permits so we make sure that we do receive that.

Councilmember Turner said with that 40 feet does that have any negative impact on the current land use as well as the detention pond based on where – when I looked at the diagram, it indicated where we were proposing that the detention pond go on their drawings. I think there were some questions concerning about that. Did we find that to be a negative impact to that or would that have any negative impact based on the square footage of the building that they are proposing to build?

Ms. Keplinger said I think those are issues that we can work out with the petitioner between now and the time we get to the Zoning Committee and come back before the Council for decision. The site plan probably just needs some minor adjustments that we can work with.

Councilmember Howard said I will say this when we meet, but I just feel I need to maybe say it in public. I kind of agree with Ms. Carter, and I hear the neighborhood and I hear the concerns of the community, but you are also locking people in when you don't have access out, and knowing the way that property works, they would have to walk all the way around to Dr. Carver,

down to West Boulevard if they wanted to go back up towards where the shopping areas are. Even if it was card access or some type of code, I think that would be better than just limiting people – it's not just keeping people out; it's keeping them in. Just a thought on that one.

Councilmember Dulin said I agree with you, Mr. Howard and Ms. Carter.

Councilmember Howard said I appreciate that for once, Mr. Dulin.

Councilmember Dulin said I do have one question. This is how close to Richardson Stratford Y? It has to be virtually next door?

Councilmember Barnes said about 200 yards.

Councilmember Dulin said, great, because the senior programs at Richardson Stratford are fabulous.

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

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**ITEM NO. 14: HEARING ON PETITION NO. 2010-067 BY MECKLENBURG COUNTY PARK & RECREATION DEPARTMENT FOR A CHANGE IN ZONING OF APPROXIMATELY 1.64 ACRES LOCATED ON THE SOUTH SIDE OF BEVINGTON PLACE BETWEEN ELM LANE AND REA ROAD FROM R-15(CD) TO NS**

The scheduled public hearing was held on the subject petition.

**Tammie Keplinger, Planning**, said just a point of clarification that Gwen Cook and Gary Wirth are representing the petitioner. This petition is for 1.64 acres from R-15(CD) to NS, neighborhood services. The site, a little bit of history, was rezoned in 1989 as part of the Piper Glen rezoning. The conditional rezoning plan designated this portion of the site for greenway for the Four Mile Creek Greenway. As a part of that, an accessory use to the greenway is parking, so parking is permitted under the current zoning; however, what has brought us here tonight is the fact that there is a 40-foot setback required off of Bevington, and because of the presence of floodplain it allows very little area for parking on the site. Rezoning the property to NS would reduce the setback on Bevington to 18 feet plus a five-foot planting screen for a total of 23 feet, and it would allow the parking as proposed.

The site plan that the petitioner is showing shows 40 parking spaces, which would either be asphalt or gravel. It is to be located as I indicated 23 feet from the back of curb. They are to have detached lighting, which would be no taller than 30 feet in height and will be directed away from adjacent properties, and the access to the site will be provided through a driveway through Bevington Place. The South District Plan recommends retail uses for the area where the parking lot is planned; however, the location for the park facilities like many of our institutional uses are not fully detailed in our plans, so staff is recommending approval of this petition upon the resolution of the one outstanding site plan issue.

**Gwen Cook, Planner, Mecklenburg County Park and Recreation Department**, said with me is Gary Wirth of Wirth and Associates, who is our consultant on this particular project. A little bit of context and history for you. The Four Mile Creek Greenway, this section between Rea Road and Johnston Road, which you may be familiar with, planning began as early as 2002 on that, so it has been talked about for quite a while. Public meetings occurred around 2006, construction started in mid-2007, and by fall of 2008, the greenway opened to rave reviews. Its popularity continues to be significant, and the greenway is sought by citizens as a connection to desired destinations, an escape into the natural world, and a place for social interaction, health and fitness. It is beloved beyond anyone's expectations.

This greenway totals about six miles in length. It is the second longest run in the County greenway system. It includes public parking of about 50 spaces at the McMullen/Highway 51

trail head, approximately 35 spaces at the Johnston Road trail head, which was built as part of this new last project, which opened in 2008. Those trail head parking lots are often full of greenway users. The need for additional trail head parking at Rea and Bevington is now evident. The option was discussed among staff early on in the planning process; however, a detailed design was not pursued because of site limitations including the zoning that she mentioned, and with the addition of the trail head parking at Johnston Road, a second trail head parking was not considered seriously at the time. The popularity of the open greenway though has soared beyond anyone's expectations, which is a wonderful thing. It's a happy problem. Citizens want safe and convenient access to their greenway.

Mecklenburg County Park and Recreation has received valuable assistance from the Charlotte Department of Transportation and our consultant, Gary Wirth. Many options concerning traffic studies and parking lot siting were considered. What is being presented to you tonight represents the most optimal solution that we were able to come up with of all the studies done, which provides up to 40 off-road public parking spaces available for greenway users. This solution does require your approval of this zoning petition in order to reduce that setback.

Citizens have recommended remote parking lots that are a third to a half mile away from this location. We have already begun discussions with public agencies that own parking including McAlpine Elementary and the Rea Road Library. They are both open to those discussions, open to greenway parking at a time when they are closed so not during active use of the library or the school. We will continue to consider for public/private joint parking. There are many issues involved in that, but we are actively moving in that direction. We think it would be beneficial countywide actually.

So, none of these opportunities though provide trail head parking close enough to the greenway to be used regularly and reliably and to minimize illegal greenway parking at our private neighbors parking lots all the way up and down Bevington. We ask that you support this petition to enable us to provide off-road access for greenway users, and Gary Wirth is here to tell you a little bit more about the site.

**Gary Wirth, Wirth & Associates**, said we are landscapes architects here in Charlotte. I have been involved in the design of the Four Mile Creek Greenway from its inception, and originally some parking was considered in this particular location, but due to some of the environmental site constraints as well as the current zoning, it was not feasible to actually build a parking lot in this area. Just to reiterate a little bit that in addition to some topographic constraints there is also the FEMA floodplain as well as a community flood fringe which limits the area available for the construction of the parking area. In addition to the floodplain, there is also 100-foot SWIM buffers, which also restrict the developable area for the parking lot.

The site is currently zoned R-15(CD), which requires a 40-foot setback from the street right-of-way. What we are asking for here with the NS district is to allow the petitioner to reduce the current setback to 18 feet from the back of curb at Bevington Place. The 18-foot setback plus a five-foot requirement for screening would place the parking lot 23 feet from the street as opposed to over 50 feet from the street under the current zoning with the 40-foot setback. The reduced setback allows for enough space to accommodate the parking lot above the aforementioned environmental constraints to construct the parking lot. You can see this site has many challenges, but a balance can be struck between the hardships and making the parking available for greenway users with your approval of this rezoning request, and thank you for your time and consideration.

**Bob Otten, 4530 Park Rd.**, said I'm president of Lat Purser and Associates. I'm here representing the owners of the Shops at Piper Glen that sit directly across from the proposed parking along with 18 various business owners and operators, who as stakeholders, wish to express strong support for Mecklenburg County Park and Recreation rezoning request that will allow the construction of this much needed additional parking for this heavily used and widely popular Four Mile Creek Greenway that terminates at Rea Road. We feel the additional parking associated with this rezoning request will go a long way in furthering a harmonious relationship with the many greenway users who also enjoy the services and businesses of the Shops at Piper Glen. We encourage and appreciate your support in further approving this great community amenity.

**Terri Otten, 9424 Radner Ln.**, said I'm speaking on behalf and as president of the Touchstone Homeowners Association. We are in favor of the rezoning. Four Mile Creek Trail is in Touchstone and borders 55 of our single family homes. We support rezoning for two main reasons. Public parking should be provided at the trails so the trail is safely accessible. We see on a daily basis that people are parking as close as possible to the trail, and they are parking in our neighborhood. They ignore the many "no greenway" parking signs that are posted in nearby businesses and up and down Elm Lane, which is a very dangerous road. Rezoning opponents have suggested satellite parking areas. These areas are available now, but the fact is people would rather risk being towed than walk any distance to get to the trail. Second, parking for the general public should be provided outside the Touchstone neighborhood as was presented to us at the design workshops. Park and Rec stated the trail would have minimal impact on the privacy and safety of our neighborhood because they would provide adequate public parking outside the neighborhood. They also pledged that the two pedestrian entrances located within Touchstone were intended for use of the residents, not the general public, so we would appreciate your support.

**Jeff Gaound, 9070 Deer Spring Ln.**, said I have my wife's permission to say that I am the owner of the Great Harvest Bread Company here in Charlotte. We own the two Great Harvests here in Charlotte, one which is in the Shops at Piper Glen, and I will be brief. We are supporting this parking lot for two very important reasons. One is safety. There isn't a day that goes by that I'm not at Piper Glen Shopping Center sometimes seven days a week, and every day I go by I see a family – parents, usually mothers struggling with young children, toddlers, animal companions, and strollers – getting out of their cars on Bevington and trying to cross over to that area. The relatively modest cost, and every cost is important, but the relatively modest cost of building this parking lot far outweighs the increased risk of not building it and having a child or killed on that parking lot just getting those numbers of spaces. That's my first main concern. The second one is a commercial concern. As a tenant in the Shops at Piper Glen, a lot of the greenway walkers and riders are coming into the Shops at Piper Glen parking lot and taking up spots that our clients are using. Since the city has not found it to be able to have adequate parking to meet the needs of this really terrific asset, and I do believe the greenway is a great asset, they are using our parking lot. Now, we are in a no win situation. We can either get tough and tow cars, which makes people angry and makes them not want to come back to the shopping center, or we can do nothing and have those spaces taken up for people that would be clients of ours. I get a lot of complaints every day, especially this week with the holidays, of not having adequate parking there, so we support and we hope the Council will consider this parking lot as a possible partial solution.

**Robert Landers** said I'm a resident of Keswick, which is right opposite Starbucks at the corner of Rea Road and Bevington. I signed up to speak in opposition to this petition not because I'm opposed to the parking but I'm opposed to elements of the design, and I wanted to bring attention to that. My first concern has been and continues to be that the right-in, right-out design of the parking lot necessarily involves U-turns at Rea Road and Bevington and U-turns right in front of the Shops at Piper Glen driveway. Residents going to the greenway are going to have to either come from Rea Road or have to come from Elm Lane. They are going to get to the parking lot. When they leave, those that have come from Elm Lane are going to have to turn right out, go up to the intersection, make a U-turn, and go back to Elm Lane. The same thing with those coming from Glenmoor Lakes. They are going to have to make – if they are coming to the greenway, they are going to have to make a U-turn right in front of the entrance on the northerly side. So that is my first concern. I think that the location of the parking lot is fine. The driveway, if it were centered and aligned with the driveway for the Shops at Piper Glen, that problem would be resolved. Users would be able to get in and out and make either a right turn or a left turn. My second concern really reflects and goes back to what Councilmember Barnes was talking about, and that is the imposition of public standards on public projects. Across the street we have lighting standards, we have paving standards, construction standards for the parking lot at the Shops at Piper Glen. The site plan submitted by the County says it may be gravel. Well, the Piper Glen master association has a substantial amount of money invested in the maintenance of Rea Road, and everybody loves to come down Rea Road. Well, who pays for that? It's not the City; it's not the County. Piper Glen paid for that landscaping and that maintenance that takes place several days a week year-round. So we think that the standards that the Shops at Piper Glen are subjected to should be equally applied to this parking lot. I point out the lighting

requirements that they be shielded, that they be full-cap lights, no more than 25 feet in height. The site plan now says, well, they are going to be 30 feet in height, and we don't know what they are going to be made of. The same thing with respect to trees and the landscape planning. I would like to see a lot more detail on how that landscaping is going to be done. The final point I want to make, and I will be very brief, is that the parking, regardless of this parking lot, the parking on Bevington Place needs to be on the south side and not on the north side. Well, some would say on the north side is for the Shops at Piper Glen for overflow. There are only two spaces on the north side that abut the Shops at Piper Glen. The rest are Fairway Apartments. Nobody parks on the north side except users of the greenway, and, as Joe said, mothers, dogs, children, bikes, fathers get out of the car, cross the street, and get to the greenway. City Council has the authority, the right, the responsibility to get that parking on the south side and do it this week. That costs nothing. It just requires a decision, and that's my major concern that as Joe mentioned the great danger that I see every day because unfortunately I go to Joe's place and eat the bread, and I walk the greenway and try to walk it off.

**Larry Huelsman, 7401 Broken Oak Ln.**, said I served as the Park Commissioner during this whole Four Mile Greenway as far as the layout and the greenway, public meetings, and so forth. The issue that I would like to speak to is the South District Plan. It's inconsistent with the South District Plan. Elements in the staff recommendation alludes to that. The focus of the feature that City Council in the South District Plan speaks of is that this land use for transportation efficiency, and it should decrease automobile dependency. Building this parking lot does not do that, and also it says to promote development, protects the natural plan. SWIM buffers, this thing is impacted by the SWIM buffers, which is important. Safety is another issue. U-turns, as was mentioned regularly, I was just out there Sunday, and I almost was in a wreck because somebody came out of the on-street parking and did a U-turn right in front of me. So, this happens. I suggested to the petitioner that we look at life changes. The Park and Rec Commission and the Park and Rec Master Plan deals with connecting neighborhoods, biking, running, and walking of residents and connectivity of neighborhoods, so what I would like to see is behavior change and look at lifestyle behavior and look at ways that we can mitigate automobiles in these areas and get more people walking and using our bodies to move, so that's my deal.

**Joan Huelsman, 7401 Broken Oak Ln.**, said I would like to address two issues. One is this is the first we have heard about the lighting. We went to all the meetings, all the community meetings, public meetings. Lighting was never mentioned. If it's a greenway parking lot, why do you need lighting if the greenways are closed from dusk to dawn? Second, on the U-turns, every car coming in that parking will have to make a U-turn. The Department of Transportation has said by their best guesstimate they think there will be 150 trips a day. That's 150 more U-turns a day. If they don't make a U-turn, if they put up signs to make the U-turn illegal, that means the cars will have to go into Touchstone neighborhood, into Piper Glen neighborhood, or into the shopping center to turn around.

Ms. Cook said our goal with this parking lot, just like the other two parking lots that are on this particular greenway system, is to get greenway users off road. That's where the baby strollers should be, that's where the people who transport their bikes by car should be, that's the intent of this project is to provide an opportunity for that to happen off road. That is a very important part of the greenway system. In terms of the lighting, we are not currently planning to do that – do not currently plan to light that parking lot. We don't light most of our parking lots. That is part of the rezoning package in case it becomes necessary years from now. We just don't know what the future holds, but we are not currently funding lighting for that parking lot and have no plans to do so in the near future. I would like to ask Mike Davis to speak. Mike's department, the Charlotte Department of Transportation, worked really closely with us on the traffic issues, and he is going to be much better to speak to that than I.

Mayor Foxx said hold on.

Councilmember Cooksey said may I recommend that the speaker fill out the two minutes of rebuttal and then when Council questions come up I bet Mike will have something to respond to.

Ms. Cook said that's a good plan.

Mr. Wirth said if I could just add one more thing about the entrance trying to line it up here right across from the Shops at Piper Glen entrance, the SWIM buffers actually come all the way up almost to the sidewalk right in here and coming straight across and accessing a parking lot in this area would impinge upon the SWIM buffers and get close to the floodway district that curves up right to that area.

Councilmember Cooksey said, Mike, could you elaborate a little bit about the traffic movement in and out of the driveway and the concern about safety and U-turns?

**Mike Davis, Charlotte Department of Transportation**, said the first comment is this is kind of a complex problem, and it has been studied for longer than this has been submitted as a petition. A lot of different solutions have been contemplated. It would solve a lot of problems if the driveway that is proposed could be lined up with the access to the north. The issue with that is that it would encroach into a SWIM buffer, so I think the current location reflects an attempt to try to preserve the environmental impacts that would cause. Once you determine then that driveway is going to be located off-set from the driveway to the north, we feel like it is best that the median that is existing continue to operate or continue to exist out on that stretch of Bevington so you don't get turning conflicts in that close proximity with the driveway to the north. It does create concerns as it relates to U-turns. U-turns would be proposed to be restricted at the west end of this median. U-turns are permitted, and for the foreseeable future would continue to be permitted at the east end of the median. One of the speakers spoke about the parking that is currently located along the north side of Bevington. There was a time when on-street parking was actually allowed on both sides of the street, and it was determined that was actually just too tight to operate, so we decided to leave on-street parking available on one side of the street only. One of the reasons that supports it being on that side of the street is when you consider that in conjunction with the U-turn dilemma, the proposed parking lot on the south side of the street easily supports eastbound movements. The on-street parking on the north side of Bevington naturally supports westbound movement, so we feel they can kind of work in harmony. The last thing I would just comment on is Bevington is the subject of ongoing study by CDOT with folks from a variety of technical backgrounds including safety and traffic calming. We are considering some different options that don't need to be tied to and actually wouldn't be appropriate to tie to the parking lot itself. The choices that CDOT will make in terms of how best to operate Bevington will in part be informed by what decisions are made about this parking lot, so if this design is approved, one of the focus areas would be trying to ensure safe crossing of Bevington from the on-street parking spaces to the north to a logical crossing here, and it would take some additional engineering features, design features, to make sure that is done safely. The last thing I would mention is that in conversations with the Fire Department they are supportive of traffic calming along this stretch of Bevington.

Councilmember Cooksey said another question for Ms. Cook. Given that the County basically owns the south side of Bevington Road here because of the greenway, could you talk about why the Rea/Bevington location with this median was the selection for parking instead of somewhere else along Bevington where the median wouldn't be an issue?

Ms. Cook said this is really the only place between Rea and the Johnston trail head where you can get a parking lot of substantial size that is up to 40 cars -- that is kind of average for our greenway trail head parking -- mostly out of the floodplain. I won't say completely out but mostly out of the floodplain. If you move further down Bevington toward Elm, you are into some serious floodplain issues there, and it's buildability issues on and on. Also, this being sort of the end of the line, if you will speak for a while as a trail head, that is kind of an obvious place to want to have it, so it can capture parking from the Elm/Read area whereas Johnston Road, which is also a right-in, right-out trail head, it gathers traffic further to the west. Does that answer your question?

Councilmember Cooksey said it does. And, lastly, where are you on the gravel versus asphalt discussion?

Ms. Cook said we are planning for this to be an asphalt parking lot in keeping with its neighborhood.

Councilmember Howard said you said you couldn't line the driveways up really with the shopping center because of the floodplain?

Ms. Cook said that's right. It pinches up against Bevington Place at that point. The creek moves to the north.

Councilmember Howard said I was just wondering if there was a way to make an entrance in and then make a second entrance out further down the parking lot just so you could at least get a little bit in?

Mr. Wirth said if I could just show you that the creek itself runs right up. This is the entrance that you are trying to line up right here, and the creek you can see runs right up there. The floodplain then really is all the way up in there. Without having to do some sort of flood study or mitigation or letters of map reduction with FEMA, it really becomes prohibitive to try to line those up.

Councilmember Dulin said can you go back one slide. That creek comes up and pinches in on Bevington so tight that section is actually a boardwalk. It's a wooden boardwalk through there for 100 yards or so.

Ms. Cook said actually the boardwalk is a little bit further to the west. A short boardwalk; that's right.

Councilmember Dulin said whoa.

Ms. Cook said at the bottom of the hill there is a short boardwalk.

Councilmember Dulin said there's a boardwalk there because I use it. I'm one of your customers, and I'm surprised. That is an odd-shaped piece of property there, but this area does need parking. There are moms with strollers getting out of their cars on street-side parking in Bevington. I don't know you, sir, Mr. Otten, from Lat Purser, but I'm one of the ones that jacks a parking spot in your parking lot every now and then, and I'm real glad it doesn't get towed. I do use the center out there though for lots of services – shopping.

This section of greenway like many of them is fabulous, and it adds to our community. If you go down there, folks, it is nature at its very best, and we have to have more parking. I have got to agree though that this in and out and you just have zero places you can put it. Y'all it falls off from Bevington, boom, right into the wetlands. I'm surprised you can shove 40 sites in there, Larry, I'm one of the folks who can't get there on a bicycle. It takes an automobile to get me to come use this beautiful greenway. I have to ride in a car to get to most of them that I use, and I use them a lot, so we would like to get people out of their cars and onto their bikes to the greenways, but the fact of the matter is that this is a big city and there are many folks, like myself, that have to use a car to go use it, and it would be nice that we didn't have to pirate a spot out of a parking lot where people are trying to park and have people come to their businesses.

I would like for us to look at this really hard. Forty spaces don't solve the problem; it really doesn't, but the parking lot at Johnston Road is great. It has an informational booth, a couple of bathrooms. The parking lot at McMullen Creek Market on the other end, on 51, they have doubled the size of that thing because that's where the high school kids, and they have high school running races down there. Nancy, you would just love it. I mean it's unreal. I hope you can work this out. The one way in and one way out is a big concern, the U-turns are a big concern. I mean these neighbors live it every day, so y'all are going to have to please keep working on that and try to figure this thing out. To the neighbors about the lighting, I think the lighting will be all right. They are going to put lighting in there that there is no wash, so I'm pretty comfortable with that.

Councilmember Turner said I really didn't have any questions until there was one concern I had in regards to U-turns, but I think that has been addressed. But, you left me with one concern when you just told us that this is going to be asphalt. I hear this Council talking about environment issues all the time. Why would we pave something that has absolutely no catch



ponds? It's going directly into the stream. There is no major buffer that would allow that to do that before it gets to the wetlands, so that leaves me with some concern, and you don't really have to answer that, but to me it just doesn't make good sense when we have spent so much time and energy making other folks conform to that, and we are going to do the very opposite, so that's my point and that's my opinion.

Councilmember Barnes said just briefly I want to say that I agree with Councilmember Turner on that issue with regard to the paving of the property.

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

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**ITEM NO. 15: PETITION NO. 2010-078 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO ADD A NEW DEFINITION FOR HEATING, VENTILATION, AND AIR CONDITIONING (HVAC) AND REVISE THE REGULATIONS**

The scheduled public hearing was held on the subject petition.

**Tammie Keplinger, Planning**, said this is a text amendment to the heating, ventilation, and air conditioning units. There is a long-standing interpretation that HVAC units were considered part of the structure, but it wasn't actually in the zoning ordinance. So, over time because it wasn't in the zoning ordinance, some of these HVAC units have actually been placed in violation of that interpretation. Staff realized that this is a widespread issue, so we put together a stakeholders group that included neighborhood representatives, HVAC representatives, and people from the building industry, and the result is the text amendment that is before you tonight, which is a consensus document.

This text clarifies and defines the terminology for air conditioning units, HVAC units. It also says that they are considered to be part of the structure; that they are not to be located in any setback, site distance, triangles, required buffers, or screening areas. There is an encroachment that is allowed, 50% encroachment into the required side or rear yard. The text amendment also relocates the nonconforming provisions for accessory utility structures and back-flow preventers to the nonconforming section of the ordinance and it also updates the names of the City and County departments, and staff is recommending approval.

**Karla Knotts** said I'm here to represent REBIC. I did not want to lose the opportunity tonight to thank staff, Planning, Linda, Beverly for pulling that group together. We worked with her on this issue. We support the clarifications that are in the text amendment. Thank you.

Councilmember Carter said I think we might be a little short-sighted in this. We need to look further at what is coming down the pike – solar panels, potential wind turbines. They are not in here, and we might be cutting ourselves short. I do support it as it stands, and I have the same problem with the next item as well. We need to look forward, not backward.

Councilmember Howard said Karla and staff are in agreement. We should move real fast on this one.

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

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**ITEM NO. 16: PETITION NO. 2010-079 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO ADD A NEW USE, DEFINITION, AND PRESCRIBED CONDITIONS FOR AN ECO-INDUSTRIAL FACILITY**

The scheduled public hearing was held on the subject petition.

**Tammie Keplinger, Planning**, said this is a text amendment for eco-industrial facilities. It defines what an eco-industrial facility is, modifies the definition for a public utility structure, and it allows the eco-industrial facilities in the I-1 and I-2 zoning districts under prescribed conditions, and those are that you have to be a size of 350 acres, the site must have direct rail access, and the development standards of 91.105 in Chapter 12 must be met. Staff is recommending approval.

Councilmember Carter said this is where I have the same objection. On the page that is the text amendment summary in the middle, the first section under proposed regulations, you refer to the relay towers. I have a feeling that would extrapolate also to wind turbines, but there is no phraseology addressing solar panels, so I would like some consideration there, if you could, please.

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

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**ITEM NO. 16-A: RECOMMENDATION TO CANCEL THE JANUARY 3, 2011, WORKSHOP MEETING**

Mayor Foxx said this was added to the agenda by staff requesting that we cancel the January 3<sup>rd</sup> meeting, which is a Workshop. I actually am going to recommend against doing that because there is an item on the agenda for that day, but I also think it may be an opportunity for us to discuss other items, perhaps even we may even have an update by the Retreat Committee at that point. I know there have been some requests for full Council discussion of that Retreat. I would like to ask that we not take that action. We don't have to take the action, by the way. Is that okay? Without objection, we'll just keep it on the calendar.

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**MAYOR AND COUNCIL TOPICS**

Councilmember Howard said just to reminder. I told you about Claire Fallon. She actually is part of our Zoning Committee and is not with us tonight because she actually – her husband, I told you had a heart attack a couple of weeks, and he actually passed last week, and they buried him on Saturday, so keep her in your prayers. He was also on our International Cabinet, and they had been married for like 42 years, so let's keep them in your prayers. They served this community well.

Mayor Foxx said thank you, and we will absolutely keep the Fallon family in our prayers.

Councilmember Turner said I have a comment for our assistant city manager. The issue has come to my attention, and I have requested some information about this, but I have not gotten anything back from staff. The hotel Wingate is located at Tyvola and Nations Ford Road. The gentleman there owns quite a large parcel there. We have several hotels on that property. If you are familiar with that area off of Tyvola, we have had in the past some issues with vagrants where people come on the property and was living in the wooded area out in front of the hotel. What the owner had done was, out of his own pocket, he paid for someone to come in and clear about four to five acres underbrush where you could see underneath the trees there, the bigger trees.

Apparently the owner is not from Charlotte. They live out of state, and they were fined a large amount of money for cutting down some trees, I think, that might have had a diameter of about four inches. It has come to my attention. It's a very large amount of money. Actually I know the amount, but he feels that, one, he didn't know the policy; but, two, for me, it was a safety issue. I ride by that property just about every day, and the neighborhood there off of Sleepy Hollow Road, appreciated it. The church, Nations Ford Church, appreciated it because it was an issue, and then the Police Department appreciated it. So, in one hand, we removed a hazard an unsafe issue, and it cost the owner, and I was hoping that we could get someone from staff to respond to him and try to work with him because the job they did is actually an improvement to the problem we had there. We actually referred that problem to him because it was on his property where they were staying at in the woods there, so when he alleviated that matter, it cost him twice now because now we have fined him for doing so. If you could have someone to contact them and really try to resolve this matter, I would appreciate it.

**Ron Kimble, Deputy City Manager**, said we will do so, Mr. Turner, and we'll talk with you tonight or tomorrow about getting the contact information and we'll make direct contact.

Mayor Foxx said if no other questions or announcements before we adjourn I have gotten some feedback from some Council members that they wish to have a little more opportunity to review agenda items like Consents and other things, so I'm going to open the floor in January to Council members to come to the Agenda Review that I do at 11:00 with the City Manager, so that is another opportunity for you to put your questions out there and maybe get answers in advance of the meeting. We'll try it in January and see how it goes.

Also this is the last meeting before the New Year, and I want everyone's families and loved ones well over the holiday season. Please be safe and please have a very good holiday season, and we look forward to getting back together in the next year. We have worked very hard. I know the staff has worked extremely hard this year, and we don't always say so, but we do appreciate the work that you all do to help this city move forward. I was remarking a couple of days ago when we got some inclement weather just how efficient our staff handles things from simple things such as getting the streets ready for people to transport themselves, to public safety, to fire fighters, to all the functions that happen here, so we are just grateful to be in such a wonderful city, and we look forward to even greater things happening in 2011.

Councilmember Dulin said two things that are important. In our write-up this week, I just sort of wanted to let the folks know, the historical markers to be restored was the title of our write up. The two historical markers that were erected in 1938 and came down and have been put back up are going back up on Tryon Street in two different places. One of them is for the Battle of Charlotte and one of them is for Nathaniel Green. The Battle of Charlotte historical marker will mark the place where the Revolutionary War began when the British Legend Calvary led by General Cornwallis charged the American defenders at the courthouse in downtown Charlotte-Mecklenburg, September 26, 1760. We are a wonderfully old, historic community.

The second one, the Nathaniel Green marker will be located mid-block. It is where Major General Green arrived at Col. Thomas Polk's house on December 2, 1780, and where Green took command of the Continental Army Southern Department in a ceremony the next day, literally in what is now downtown Charlotte, 1780. That's important.

And, one more thing, sir. Last Friday I participated in Operation Exodus at the Airport at the USO Club. We had roughly 6,000 soldiers leaving Ft. Jackson in Columbia, South Carolina, and going home for the Christmas holidays. The volunteers and our staff at the Airport took these men and women in, gave them a place to rest, take a nap if they needed to, a phone to call their homes, a computer to check whatever they might want to check, and got them out on their way to a Christmas holiday without incident, and it truly is one of my favorite days of the year, and our City Airport staff and the USO volunteers at the Airport came through with absolute flying colors, and I just want to let the community know that.

Mayor Foxx said your announcement reminds me of a couple of things as well. Number one, there is a pending request, I believe, by Friendship Missionary Baptist Church for a commemorative landmark sign in the downtown area around Brevard Street, and I didn't know of the request until recently, but they have been waiting on an answer for quite a while, so if we

can figure out where that is. Secondly, going into the new year, I have noticed that as we get to the end of meetings people have things that they want to say that I invited them to say, and they chose not to, and as we go into the next year, we are going to need to be a whole lot more efficient in the way we get through our meetings, so when I invite you to say something and you have something to say, I would appreciate you saying it then, and if you feel you have to say it at some point later, you may find that the time to say it has passed. I do wish you all a very happy new year and look forward to seeing you after the break.

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**ADJOURNMENT**

The meeting was adjourned 8: 21 p.m.

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Ashleigh Martin, Deputy City Clerk

Length of Meeting: 2 Hours, 58 Minutes  
Minutes Completed: February 16, 2011