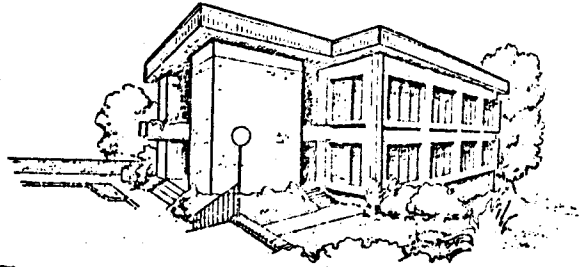


TOWN OF CHAPEL HILL

306 NORTH COLUMBIA ST.
CHAPEL HILL, N.C., 27514
(919) 929-1111



street paving

NOTICE OF SPECIAL MEETING OF THE BOARD OF ALDERMEN OF THE TOWN OF CHAPEL HILL

TO: Gerald Cohen
Robert Epting
Thomas Gardner
Jonathan Howes
Shirley Marshall
Marvin Silver
R. D. Smith
Edward Vickery

You, and each of you, are hereby notified that the Board of Aldermen have called a Special Meeting, to be held in the Meeting Room, at 7:30 P.M. on November 15, 1976, to discuss the street paving assessments.

James C. Wallace
MAYOR

ACCEPTANCE OF NOTICE

I, the undersigned, members of the Board of Aldermen of the Town of Chapel Hill, hereby accept notice of a Special Meeting of the Board of Aldermen, called by Honorable James C. Wallace, Mayor, to be held in the Meeting Room, November 15, 1976, at 7:30 P.M.

James C. Wallace
MAYOR

Edward Vickery
Gerald Cohen
Shirley E. Marshall
Jonathan B. Howes
Marvin Silver
Thomas B. Gardner
Robert Epting
R. D. Smith

MINUTES OF A SPECIAL MEETING OF THE MAYOR AND BOARD OF ALDERMEN
TOWN OF CHAPEL HILL, MUNICIPAL BUILDING, NOVEMBER 15, 1976
7:30 P.M.

Mayor Wallace called the meeting to order at 7:40 p.m. Present were:

- Gerald Cohen
- Robert Epting
- Thomas Gardner
- Jonathan Howes
- Shirley Marshall
- Marvin Silver
- R. D. Smith
- Edward Vickery

Also present were Town Manager K. Jenne, Town Attorney E. Denny, and Town Clerk D. Roberts.

Mayor Wallace announced that the special meeting had been called to discuss the matter of policy relating to the resurfacing of streets with or without petition, and improvements generally, and relating to assessment. In addition there was one specific item relating to a specific street--that of the petition of Mrs. Barrett referring to street improvements in front of her property on Laurel Hill Road. He stated that at the end of the meeting, the Board would go into executive session for the purpose of discussing personnel matters.

Petition

Dr. Posner asked the Board to allow him to read a petition. Dr. Posner was petitioning the Board to resolve the problem of a commuter parking lot across from the Glen Lennox Shopping Center. He related the problems of deterioration in the parking lot and the traffic flow from the lot. As this lot was privately owned and could be closed soon, Dr. Posner was requesting the Board to purchase land in the near proximity and prepare it in a satisfactory manner for a commuter parking lot. ALDERMAN COHEN MOVED, SECONDED BY ALDERMAN GARDNER, TO RECEIVE THE PETITION AND REFER IT TO THE TOWN MANAGER FOR CONSIDERATION. THE MOTION WAS CARRIED UNANIMOUSLY.

Street Improvement Assessment Policy

Mr. Denny had distributed the following report to the Board.

The following is submitted to assist the Board in establishing a consistent assessment policy. It appears highly desirable that the Town establish a uniform and consistent assessment policy, and that is not to say that there should be assessment in every instance or non assessment in every instance. In all probability, the policy should be flexible enough to meet the demands of the varied situations which have and will occur within the Town. While projects can be considered on their own merits as they occur from time to time, I consider it undesirable from a legal standpoint that the Board make such determination on a project by project basis without some pre stated written guidelines. It is too difficult for the Aldermen to remember all of the factors which entered into a determination six (6) months or even two (2) years after the fact, and it may be that several Aldermen voted as they did for totally different reasons. The problem is not limited to street assessment, but also involves sewer assessment, as was pointed out in my previous memorandum with respect to the NDP Area, and the direct federal funding of a portion of the improvements. This situation will again arise with respect to sewers under the CD Program. I am unable to accept a criterion such as "in the public interest" or "public necessity requires the improvement" inasmuch as the Courts have indicated in a number of cases that public interest or necessity is not a sufficiently definitive criterion. The Board should seek to establish a policy which will admit of the Board making a factual determination of finding of fact with respect to various projects, and therefore determine from the pre set criteria into which category a particular project falls. The following tentative outline is suggested.

1. Petition for paving - with or without curb or gutter - if petition legally sufficient assess all property owners in the project area.

- 2. Paving with or without curb or gutter - without petition, and the project does not qualify under the Special Act provisions, i.e. to connect portions of two previously paved streets, but is necessary in the public interest - no assessment inasmuch as Town is without legal authority.
- 3. Without petition - with or without curb and gutter - the project qualifies under the Special Act:
 - a. Assess - when:
 - 1. Major benefit of the project enhances the value of the private property affected.
 - 2. Cuts down on dust affecting adjoining properties.
 - 3. Storm drainage and water run-off to benefit property owners.
 - 4. Reduce maintenance costs to Town.
 - b. No assessment - when:
 - 1. Already has paved street along one side of property.
 - 2. Public purpose outweighs value of benefits to adjoining property.
 - (a) Bus route
 - (b) High traffic
 - 3. Is part of an overall neighborhood improvement program where certain streets are already improved in a portion of the area, and this completes a project area.
 - 4. Where assessment of the project would result in unequal treatment of improvements in a neighborhood, some having been done under circumstances which did not lend themselves to assessment, i.e. direct federal funding.

Mayor Wallace asked for questions and comments from the Board members on Mr. Denny's report. Alderman Vickery felt the Town should not assess property owners when paving was done to reduce maintenance costs to the Town and requested this item to be listed under the "no assessment" category. Mr. Denny explained that in the report he had tried to define the parameters of the problem and the reasons why he believed there should be a written policy in which factually a particular project could be placed in a category. The particular breakdown he had given was suggested only for discussion purposes, it was not a recommendation. He had tried to define categories, although his list was not exhaustive, and the Board should decide its policy for each category.

Mayor Wallace asked Mr. Denny to distinguish between the meaning of the phrase "in the public interest" which he had used in two places. Mr. Denny explained that in the first instance if the phrase were used without being defined, the courts would not accept it. In the second instance he had used the term in a broad sense, leaving it for the Board to determine its meaning. However, in the second instance the term had not been used as a criterion for assessment. He stated the safest and surest procedure--and on any project where assessment is proposed, there must be a public hearing--is to assess all or assess none. Mr. Denny then discussed the difficulty of having a middle ground in which the Board would have to determine a sufficient set of guidelines to say a project was being done in the public interest.

Mayor Wallace suggested dealing with the specifics of Mrs. Barrett's petition and then setting a general policy for future use. Alderman Cohen thought Mrs. Barrett's situation identical to that of Coker Street residents and suggested she not be assessed. Alderman Howes objected saying that although the residents of Kings Mill Road had petitioned for paving, the paving was necessary for the same reasons as the paving in front of Mrs. Barrett's property. If Mrs. Barrett was not assessed, he would feel these citizens justified in complaining of unfair treatment. There was disagreement between Alderman Vickery and Alderman Howes as to whether the policy set now should only apply in future cases or as Alderman Howes believed, should also apply to Kings Mill Road residents and Mrs. Barrett. Alderman Gardner asked for Mr. Jenne's opinion.

Mr. Jenne reminded the Board that when the issue had first come up, he had recommended on two separate occasions assessment should be levied in all cases. He had pointed out several facts at that time. Paving currently unpaved gravel streets is similar to what is required in the subdivision ordinance which requires paved streets and the cost is born by the property owners. In addition, Mr. Jenne did not feel the presence

of the bus route was a criterion for non-assessment because of the changing nature of the bus routes. There was a consensus of the Board to consider Mrs. Barrett's petition first. Alderman Epting said if the Town agreed to pave Laurel Hill Road without assessment and then set a policy to assess other residents would be assessed later under circumstances similar to Mrs. Barrett. He believed it better to reverse the decision and assess Ward and Weiner Streets. Alderman Epting moved, seconded by Alderman Silver, to reconsider the action of September 13 to assess Ward and Weiner Streets and Coker Drive. Mr. Denny clarified the questions about a public hearing in this case by explaining that although it would be better if the property owners involved had attended this meeting, he did not think they would be prejudiced since the Board had passed a preliminary resolution of intent and had held a public hearing on the matter. If the vote was to reconsider, the resolution to pave Ward and Weiner Streets and Coker Drive without assessment would be on the floor. The motion was carried unanimously. The motion to adopt a resolution to pave without assessment was defeated by a vote of six to two with Aldermen Epting, Gardner, Howes, Marshall, Silver and Smith opposing this rescinding the September 13, 1976 action. The resolution of July 12 to pave with assessment was now in effect.

Mr. Alexander, representing Mrs. Barrett, stated it was his understanding that Laurel Hill Road, Ward and Weiner Streets, and Coker Drive would all be paved at the rate expressed in letters sent to property owners notifying them of the Board's intention to pave and assess for paving. Mrs. Barrett was therefore withdrawing her petition not to be assessed for paving.

Alderman Gardner stated there was only a small number of unpaved streets left in Chapel Hill. The citizens benefitted from the paving and many are still paving off the assessment. He believed the Board should continue to pave streets and assess for paving. Alderman Howes suggested it might be appropriate for the streets committee to review the paving policy before the Board acted on it. Alderman Smith suggested that with any annexation the subdivision ordinance would require paved streets, therefore the Town should pave its few unpaved streets with petition only. Mayor Wallace reminded the Board that in the past two months they had approved two subdivisions with gravel or substandard streets, and when these areas were annexed, the Town would have to pave the streets. ALDERMAN VICKERY MOVED, SECONDED BY ALDERMAN HOWES, TO REFER THE POLICY TO THE STREETS AND PUBLIC SAFETY COMMITTEE. MR. DENNY REMINDED THE BOARD THIS POLICY WAS THE SUGGESTION OF THE ATTORNEY NOT THE RECOMMENDATION OF THE TOWN MANAGER. THE MOTION WAS CARRIED UNANIMOUSLY.

Miscellaneous

Alderman Cohen announced that at their last meeting, the Library Board of Trustees agreed to the proposal for voter registration at the Library for the calendar year 1977. The Carrboro Board of Aldermen would consider a similar item at their next meeting.

Mr. Alexander asked that the Board of Aldermen confirm the opinion that Laurel Hill Road was in the same category as Ward and Weiner Streets and Coker Drive for any future action on these streets. The Board refused to confirm this because it would reduce their flexibility.

Alderman Silver moved, seconded by Alderman Gardner, to adjourn the meeting into executive session. The meeting was adjourned at 9:15 p.m.

James C. Wallace

Mayor James C. Wallace
David B. Roberts

David B. Roberts, Town Clerk

MINUTES OF A PUBLIC HEARING AND MEETING OF THE BOARD OF ALDERMEN AND MAYOR OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING, MONDAY, NOVEMBER 22, 1976, 7:30 P.M.

Mayor Wallace called the meeting to order. Present were:

- Gerald Cohen
- Robert Epting
- Thomas Gardner
- Jonathan Howes
- Shirley Marshall
- Marvin Silver
- R. D. Smith
- Edward Vickery