

MINUTES OF A REGULAR MEETING OF THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, OCTOBER 24, 1983, 7:30 P.M.

Mayor Joseph L. Nassif called the meeting to order. Councilmembers present were:

Marilyn Boulton
Winston Broadfoot
Jonathan Howes
Beverly Kawalec
David Pasquini
Joseph Straley
Jim Wallace

Councilmember Smith was absent, excused. Also present were Town Manager, David R. Taylor; Assistant Town Managers Sonna Loewenthal and Ron Secrist; and Town Attorney, Grainger Barrett.

Certificates of Appointment

Mayor Nassif presented the following Certificates of Appointment, expressing appreciation to each for their willingness to serve the Town of Chapel Hill:

--Shann Tracy, Personnel Appeals Committee
--Harold Langenderfer, Orange Water and Sewer Authority

Public Hearing

Regulation of Cable Television Rates. Mr. Taylor stated that the franchise ordinance for cable television was adopted in 1979 which authorized the Council to assume rate regulation. The September 12, 1983, Council memo outlined a procedure for rate regulation, as well as the pros and cons of regulation.

This public hearing was to receive public comments re Council's possible assumption of rate regulation. The Council must decide between September 1, 1983, and November 30, 1983, whether or not to assume rate regulation. A recommendation would be presented to the Council on November 14, 1983.

Mr. Joseph Herzenberg, a Chapel Hill citizen, stated that he did not subscribe to Village Cable, but was aware of their services and he felt they were of the highest quality.

Mr. Herzenberg stated that in 1979 the cable franchise issue was very controversial. He, therefore, felt it would be in the best interest of Chapel Hill citizens for the Council to watch over the delivery of these services on a trial basis to determine its validity. If such regulation were found to be too cumbersome, the Council could abandon the authority.

Mr. Jim Heavner, President of Village Companies, stated that it was thought that "rate regulated monopolies were more profitable and...secure, and virtually guaranteed...a return on investment." He stated that if the Town could work this out..."to have a rate regulated monopoly, Village Cable would welcome this!" He stated that he believed that with or without rate regulation, Village Cable had a responsibility to continue to be a service-based business.

Mr. Heavner stated that studies showed that there was no change in rates in communities with rate regulation, compared to communities without rate regulation. Mr. Heavner referenced comparative data on 84 cable systems in North Carolina and concluded that "the fact is that Chapel Hill still has the model cable system in the south."

He expressed opposition to views that Village Cable was a monopoly, pointing out that "our franchise is not exclusive and I encourage the Council to issue as many cable franchises for Chapel Hill as it has applicants...[and]...that the terms be the same as ours." He asserted that "the only barriers into the cable business in Chapel Hill are economic...not legal barriers...the same constraints that provide only one daily newspaper in Chapel Hill. If...economic considerations justify rate regulations, then it must regulate the subscription rates of The Chapel Hill Newspaper, since it is the only paper in Town....Tell me please, if there is a difference."

Mr. Heavner re-asserted his commitment "to the survival of the Carolina's best cable system...."

No other citizens requested to speak.

Councilmember Broadfoot questioned how the Council would proceed to determine a "fair return." Mr. Barrett stated that the ordinance required that a "fair rate of return be reached." Consultants or financial analysts could be retained.

COUNCILMEMBER KAWALEC MOVED, SECONDED BY COUNCILMEMBER BOULTON, TO REFER THE MATTER TO THE MANAGER AND THE ATTORNEY. THE MOTION CARRIED UNANIMOUSLY.

The public hearing was closed.

Petitions

Mayor Nassif explained that since one Councilmember was absent, petitions could only be received; no action could be taken by the Council.

Mayor Nassif also informed those present that the Council had received citizen comments re Special Use Permit requests during the public hearings and could only consider those comments as they were made under oath; therefore, persons would not be permitted to speak on these items at this meeting.

Ms. Peggy Rundell, a Chapel Hill citizen, submitted a petition from Booker Creek residents re concerns for traffic safety (please refer to the Clerk's files).

Mr. Jerry Barrett requested that (due to the probable length of the meeting) the Council continue Agenda Item #12 (re rezoning request by Little Creek Company) until the next regular Council meeting, should that item not be considered at this meeting.

An unidentified citizen stated that he felt it was unfortunate that substantial and new information brought to the Council's attention (re Agenda Item #5, Thoroughfare Plan) could not be considered by other individuals.

No other citizens requested to speak.

Minutes

COUNCILMEMBER KAWALEC MOVED, SECONDED BY COUNCILMEMBER BOULTON, ADOPTION OF THE MINUTES OF SEPTEMBER 26, 1983, AS CIRCULATED. THE MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER KAWALEC MOVED, SECONDED BY COUNCILMEMBER WALLACE, THAT THE MINUTES OF SEPTEMBER 27, 1983, BE ADOPTED AS CIRCULATED. THE MOTION CARRIED UNANIMOUSLY.

Resolution Adopting an Updated Thoroughfare Plan

Mr. Taylor stated that the staff had evaluated citizens' concerns, future traffic needs, growth patterns in Chapel Hill, environmental issues, and had reviewed evidence from public hearings, citizens' letters, and Planning Board and Transportation Board minutes in preparing the Thoroughfare Plan recommended at this meeting. He stated that the worth of this document would be "greatly compromised" if parts of the Plan were eliminated, and encouraged the Council to consider the Plan in its entirety.

Mr. Taylor stated that there had been a general consensus on the majority of the Plan; but the following areas had involved considerable controversy:

1. Estes Drive Extension. This would provide a spine for the orderly future growth of the eastern portion of Chapel Hill; would provide a major street to serve this area; and would reduce traffic through established neighborhoods.

2. Parker Road. Originally proposed through Mason Farm; now proposed to cross the Botanical Gardens, pass near the Mason Farm Wastewater Treatment Plant, cross Morgan Creek and Finley Golf course to N.C. 54 west of Barbee Chapel Road. The area would be constructed as a "parkway." Mr. Taylor expressed appreciation to the University community, representatives of the Botanical Gardens and UNC Biology Department for their assistance in reaching this workable solution.
3. McCauley Street Connection to Merritt Mill Road. Management did not feel that the formerly proposed extension should be recommended, but rather recommended the upgrading of Merritt Mill Road to a major thoroughfare status, rather than a minor thoroughfare status.
4. Downtown Area
 - (a) Pittsboro Street Extension to Airport Road. Would allow new capacity to the north/south cross-town street system; was the least disruptive way to increase the capacity of Columbia Street. Interim traffic operational changes in this area would be recommended.
 - (b) One-Way, Franklin Street/Rosemary Street. This safety valve would be implemented when traffic congestion became intolerable; even though this would not be recommended at this time, this plan should remain on the books for future consideration.

COUNCILMEMBER WALLACE MOVED, SECONDED BY COUNCILMEMBER BROADFOOT, ADOPTION OF RESOLUTION 83-R-156c.

Councilmember Wallace stated that this resolution:

1. Would widen and upgrade Merritt Mill Road;
2. Would extend Franklin Street;
3. Would not connect McCauley Street with Merritt Mill Road;
4. Would not "one-way" Franklin Street/Rosemary Street;
5. Would "one-way" Pittsboro Street;
6. Would not extend Estes Drive; ✓
7. Would add a southern loop, portions to lie in Durham and Chatham Counties, with Chapel Hill to construct a small portion; this would provide an improved access to N.C. 54 (near the proposed I-40 intersection) for traffic from commercial and residential areas to the Research Triangle Park, to Raleigh, and to Chatham County;
8. Would "four-lane" U.S. 15-501; and
9. Would include the proposed "parkway."

Mayor Nassif added that he had been informed by the Chair of the Chatham County Commissioners that the Chatham County portion of the southern loop had been approved.

Councilmember Broadfoot expressed appreciation to the Mayor, Manager, UNC administration, and Town staff for their work in formulating this proposal. He stated that he opposed portions of the Plan as he felt that "only...[persons]...making money on this were the winners." He concluded that Chapel Hill citizens should "wake up and do what we can to rescue this Town; I'm not sure what that is, but the [Development] Ordinance comes to mind."

VOTE ON THE MOTION TO ADOPT THE FOLLOWING RESOLUTION, CARRIED UNANIMOUSLY:

A RESOLUTION ADOPTING AN UPDATED THOROUGHFARE PLAN (83-R-156c)

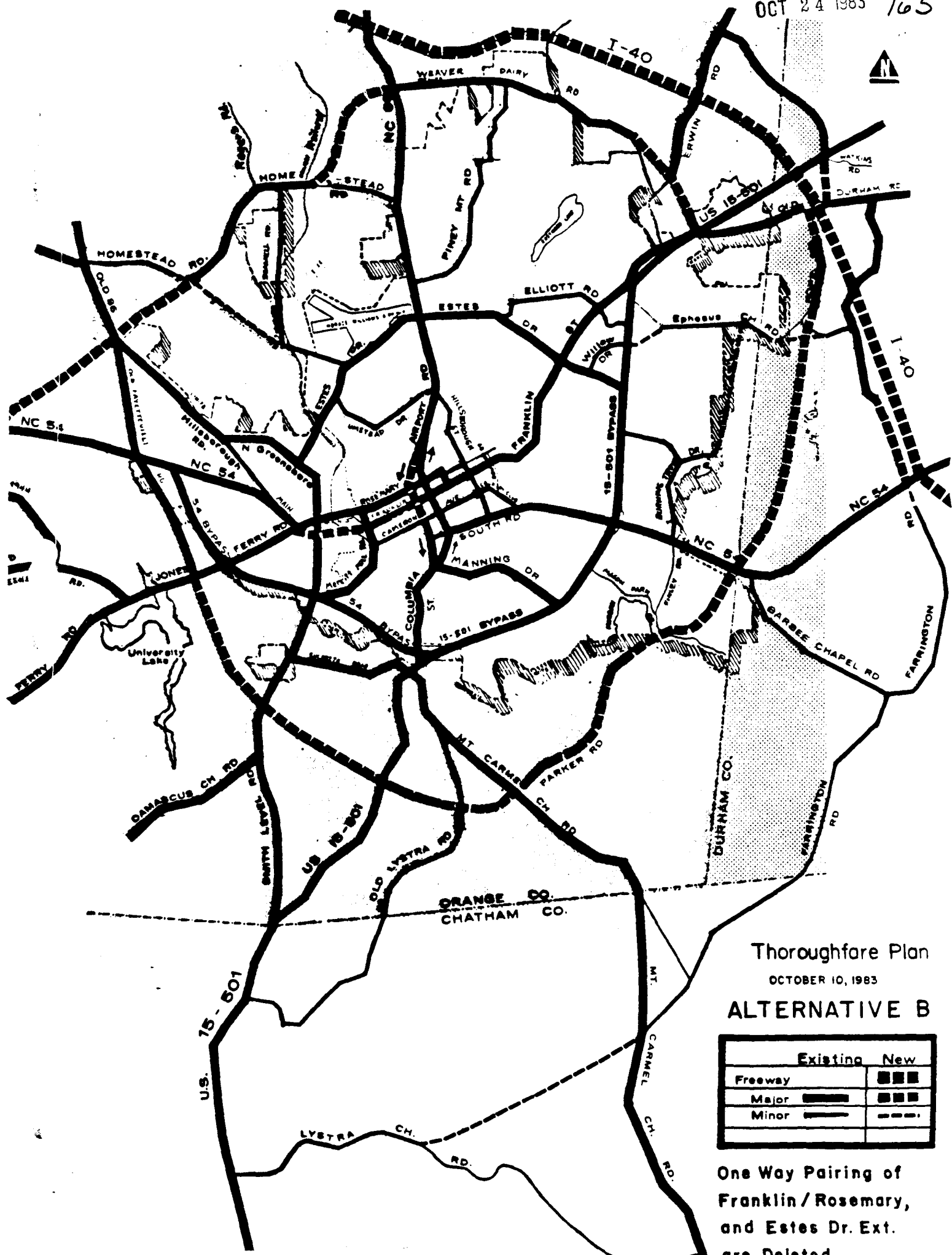
WHEREAS, the Town of Chapel Hill and the Department of Transportation are directed by the North Carolina General Statutes 136-66.2 to reach an agreement for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality; and

WHEREAS, it is recognized that the proper movement of traffic within and through the Towns of Chapel Hill and Carrboro is a highly desirable element of a comprehensive plan for the orderly growth and development of the urban area; and

WHEREAS, after full study of the plan the Town Council of the Town of Chapel Hill feels it to be in the best interests of the Town to adopt said plan and recommend its adoption to the North Carolina Department of Transportation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Chapel Hill that the Thoroughfare Plan as shown on a map dated October 24, 1983, Alternate B, and prepared by the Planning Departments of the Towns of Chapel Hill and Carrboro with the cooperation of the Planning and Research Branch of the North Carolina Department of Transportation, be approved and adopted as a guide in the development of the street and highway system in the Chapel Hill-Carrboro urban area and the same is hereby recommended to the North Carolina Department of Transportation for its subsequent adoption.

This the 24th day of October, 1983.



Thoroughfare Plan

OCTOBER 10, 1983

ALTERNATIVE B

Existing		New
Freeway	—————	=====
Major	-----	=====
Minor	—————	-----

One Way Pairing of
Franklin/Rosemary,
and Estes Dr. Ext.
are Deleted

Proposed Amendment to the Development Ordinance, Section 5.11.1, -.2, and -.3
(to reduce the height limits to 50 feet in all zones in which the limit is now greater, except OI-3)

Mayor Nassif stated that the Planning Board and Manager recommended denial of the proposed amendment.

COUNCILMEMBER BROADFOOT MOVED ADOPTION OF ORDINANCE 83-O-53b, TO BE AMENDED THAT THE TC-2 DISTRICT REQUIRE A 70-FOOT SECONDARY LIMITATION. THE MOTION FAILED FOR LACK OF A SECOND.

Mayor Nassif stated that if no motion were passed by the Council, the Development Ordinance would remain unchanged.

No action was taken by the Council.

Proposed Amendment to the Chapel Hill Development Ordinance, Section 5.9.11 (to exempt buildings in TC-2 zones from requirements for interior and solar setbacks where buildings are adjacent to TC-1 or to a zoning lot)

Mr. Jennings stated that the proposed amendment would allow flexibility to extend the portion of the building on the alley side and back sides of buildings in TC-2 zones, but not on the street side. The proposed amendment would not increase the amount of buildable area.

Mayor Nassif stated that if no motion were passed by the Council, the Development Ordinance would remain unchanged.

No action was taken by the Council.

Resolution Authorizing Publication of a Request for Proposal for a Joint Public Parking/Private Development Project in the Town Center

Ms. Sonna Loewenthal, Assistant Town Manager, stated that the Request for Proposal (RFP) was the result of past studies re the need for parking in the downtown area.

Formerly, the RFP had proposed development on both Municipal Parking Lots #1 (between the Post Office and NCNB) and #2 (between NCNB and the corner of Rosemary Street and Caldwell Street), but it had now been determined that it would not be feasible to include Lot #2 in the proposal at this time. Further negotiations with the property owners was necessary and staff requested the Council's permission to continue these negotiations.

Ms. Loewenthal stated that a two-phase downtown parking development was proposed:

Phase 1. Construction of parking and possible additional private development on Lot #1.

Phase 2. Acquisition of land or development rights to Lot #2 with eventual construction of parking and possible additional private development.

If the RFP were approved, proposals could be received on February 1, 1984. Staff would review the proposals and submit a recommendation to the Council. Finalists would make presentations, with final Council decision proposed for March or April of 1984.

If bond financing were proposed, a referendum could be held in November of 1984. If no proposals were submitted for private development and the Council chose to construct a 440-space parking deck, a bond referendum could be scheduled for May of 1984.

Ms. Loewenthal stated that the RFP was based on what was felt to be the Council's consensus during the August 1983 work session. The deck height limitations were established in the Development Ordinance. It was hoped that proposals for private development around the public parking lot would be submitted.

Mayor Nassif recommended to the Council:

1. Adoption of resolution 83-R-157;
2. Selection of three (3) Councilmembers to form a committee with the Manager and staff. The committee would meet with the developers to keep the Mayor and Council informed during the process.

Councilmember Broadfoot stated that he would oppose any proposal with a height of up to 90' on this lot.

COUNCILMEMBER PASQUINI MOVED ADOPTION OF RESOLUTION 83-R-157 WITH THE DELETION OF THE WORDS "and to negotiate terms for the acquisition of the properties containing Municipal Parking Lot #2 (Tax Map 80A, Lots 1, 2, and 3A) for consideration by Council." FROM THE LAST PARAGRAPH. THE MOTION FAILED FOR LACK OF A SECOND.

Councilmember Pasquini also felt any references to Lot #2 should be removed from the RFP until a decision was reached with the property owners. In addition, he felt the wording of the RFP should encourage private development of the air rights to a greater extent to enhance the vitality of downtown Chapel Hill.

Mr. Taylor responded that it was intended that the RFP would permit proposals for the parking lot only, or parking lot with development of air rights. He felt that a development that included air rights would be preferred.

Councilmember Pasquini also felt that the Post Office Lot should be an option and not necessarily considered as a part of Lot #1.

COUNCILMEMBER KAWALEC MOVED ADOPTION OF RESOLUTION 83-R-157 WITH THE FOLLOWING CHANGES: (1) THAT THE WORD "use" BE INSERTED ON PAGE 4 OF THE RFP UNDER "Responsibilities" AS FOLLOWS: "...shall be limited to review of the development's use [emphasis, Clerk's], siting, massing,..."; AND (2) THAT REFERENCE TO THE POST OFFICE LOT IN THE RFP BE RE-WORDED TO SHOW IT TO BE AN OPTION.

COUNCILMEMBER PASQUINI SECONDED THE MOTION.

Councilmember Wallace urged the Council to state clearly in the records that "there was no binding on the part of the Council to accept any proposal regardless of what that proposal says."

Mr. Barrett stated that the RFP stated under Selection Process that "the Town reserves the right to reject any or all proposals."

Councilmember Broadfoot felt that the Council, in receiving RFP's, should not lose sight of the fact that the problem of the downtown area was the need for parking: (1) Lot #1 was previously proposed to accommodate 440 parking spaces and now the number of spaces would be divided between Lots #1 and #2. He asserted that the Council should be quite sure of the status of Lot #2 before accepting a proposal for Lot #1 at that level of parking; and (2) a proposal for development for student housing would not create "a mix of shoppers," that would promote revitalization of the downtown area, and would also not address the parking problem. He would rely on the Town's "right to reject any or all proposals."

Councilmember Wallace added that regardless of these words, the Town "must act reasonably and without arbitrariness and capriciousness and otherwise according to the law" in consideration of proposals.

Mr. Barrett stated that Lot #1 was land belonging to the Town and the Town "would be acting as the landlord...and not as a regulatory body...." in its review of proposals. Lot #2 would involve a greater area for misunderstandings.

COUNCILMEMBER PASQUINI MOVED AN AMENDMENT TO THE MOTION, THAT THE WORDING OF THE FIRST PARAGRAPH OF THE RFP BE CHANGED TO READ "The Town seeks to provide at least 250 public parking spaces and encourages the private development of the air rights that will enhance...." (the words originally read "...parking space and will consider proposals for private development of the air rights that will enhance....")

COUNCILMEMBER KAWALEC SECONDED THE MOTION. She felt that encouraging the development of the air rights would help to "ensure the continued vitality of downtown Chapel Hill.

Councilmember Wallace felt these words were too strong.

Mayor Nassif stated that he felt the original words "to consider" gave needed flexibility to the Town staff and Council and would receive more overall support. He also felt that the three Councilmembers could meet with the Manager and thereby have additional input into a final decision.

VOTE ON THE AMENDMENT WAS DEFEATED 2 TO 6 WITH COUNCILMEMBERS KAWALEC AND PASQUINI SUPPORTING, AND COUNCILMEMBERS BOULTON, BROADFOOT, HOWES, STRALEY, WALLACE, AND MAYOR NASSIF OPPOSING.

VOTE TO ADOPT THE FOLLOWING RESOLUTION (with the two changes in the RFP) CARRIED UNANIMOUSLY:

A RESOLUTION AUTHORIZING PUBLICATION OF A REQUEST FOR PROPOSAL FOR A JOINT PUBLIC PARKING/PRIVATE DEVELOPMENT PROJECT IN THE TOWN CENTER (83-R-157)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby authorizes the Town Manager to issue the Request for Proposals for the joint public/private development of Town-owned property in the Town Center (Tax Map 80A, Lot 10 and the northern third of Lot 12), as presented to Council by the Manager on October 24, 1983; to receive and evaluate responsive proposals for consideration by Council; and to negotiate terms for the acquisition of the properties containing Municipal Parking Lot #2 (Tax Map 80A, Lots 1, 2, and 3A) for consideration by Council.

This the 24th day of October, 1983.

The Council elected to wait before determining which members would be part of the committee proposed by Mayor Nassif.

Resolution Denying a Special Use to John Crumpton (Booker Creek Village)

Mr. Taylor responded to Councilmember Boulton that if the request were denied, the plans for the original 21 dwelling units would still be in effect.

Councilmember Straley asked what timetable would be followed for development of access from this development to Erwin Road. Mr. Jennings responded that this depended in part on the development of Hickory Hills; the remaining portion could be handled through the Town. No specific timetable could be given. It was likely that the development of this road could precede the development of this property, but this could not be guaranteed.

Councilmember Broadfoot stated that he felt that construction timetables should be substantially shortened, expressing concern for the drag time between formal approval and completion of development.

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER BROADFOOT, ADOPTION OF A RESOLUTION TO BE NUMBERED 83-R-158b TO DENY THE REQUEST. (Clerk's Note: On November 14, 1983, the Council adopted Resolution 83-R-168 to clarify reasons for denial. See Minutes of November 14, 1983, during the Section "Minutes.")

THE MOTION CARRIED 7 TO 1 WITH COUNCILMEMBERS BOULTON, BROADFOOT, HOWES, KAWALEC, PASQUINI, STRALEY, AND WALLACE SUPPORTING, AND MAYOR NASSIF OPPOSING.

Resolution Denying a Special Use Application for Additional Parking at Wendy's Restaurant

COUNCILMEMBER PASQUINI MOVED, SECONDED BY COUNCILMEMBER BOULTON, ADOPTION OF THE FOLLOWING RESOLUTION:

A RESOLUTION DENYING A SPECIAL USE APPLICATION FOR ADDITIONAL PARKING AT WENDY'S RESTAURANT (83-R-159b)

BE IT RESOLVED by the Council of the Town of Chapel Hill, that with respect to the Special Use Application received by the Town on August 11, 1983 for a Planned Development-Community Shopping Center on Tax Map 27A-B-4, that Council fails to find that said application will conform to the general plan for the physical development of the Town, in this case as embodied in the Comprehensive Plan, including particularly policy B(4)(d). The record fails to show that this application will maintain the living environment of the University Heights area and this intrusion of commercial activity into the residentially-zoned district would threaten the stability of the current residential area on the west side of Scarlette Drive between Legion Road and Old Durham Road.

This the 24th day of October, 1983.

Councilmember Boulton responded to Councilmember Broadfoot's question that her motion to deny was based on her feeling that the request encompassed more than the Council's original intent was when granting the request for Wendy's Restaurant. Councilmember Howes concurred and commended the staff for their thoroughness in the report.

THE MOTION CARRIED UNANIMOUSLY.

Ordinance Amending the Chapel Hill Development Ordinance (off-street parking for churches)

Mayor Nassif turned the meeting over to Mayor Pro-tem Boulton.

COUNCILMEMBER STRALEY MOVED, SECONDED BY COUNCILMEMBER HOWES, ADOPTION OF THE FOLLOWING ORDINANCE:

AN ORDINANCE AMENDING THE CHAPEL HILL DEVELOPMENT ORDINANCE (83-O-55)

BE IT ORDAINED by the Council of the Town of Chapel Hill that the Chapel Hill Development Ordinance be amended as follows:

SECTION I

Amend Article 6.6.2 (Methods of Providing Required Parking and Loading) to add:

- v) Upon appropriate findings by the Town Council, churches may use off-site parking to provide required parking without obtaining a restriction on the title to the land providing the off-site parking spaces. Appropriate findings shall include reasonable assurance of the continued availability of off-site parking and that sufficient excess livability space exists on the church's zoning lot to provide the required off-street parking should the off-site parking become no longer available.

SECTION II

That all ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 24th day of October, 1983.

THE MOTION CARRIED 7 TO 0 WITH COUNCILMEMBERS BOULTON, BROADFOOT, HOWES, KAWALEC, PASQUINI, STRALEY, AND WALLACE SUPPORTING (MAYOR NASSIF ABSTAINED).

Mayor Pro-tem Boulton turned the meeting over to Mayor Nassif.

Discussion of Zoning Map Amendment Request by Little Creek Company

COUNCILMEMBER BROADFOOT MOVED, SECONDED BY COUNCILMEMBER WALLACE, ADOPTION OF RESOLUTION 83-R-160, TO DENY THE REQUEST.

Councilmember Straley stated that he would oppose the motion as he felt this request was an appropriate zoning change.

Councilmember Boulton concurred with Councilmember Straley, but felt an R-3 zone would be more appropriate. An R-3 zone would still require a Special Use Permit.

VOTE ON THE MOTION TO ADOPT RESOLUTION 83-R-160 TIED 4 TO 4 WITH COUNCILMEMBERS PASQUINI, BROADFOOT, HOWES, AND MAYOR NASSIF SUPPORTING, AND COUNCILMEMBERS STRALEY, BOULTON, KAWALEC, AND WALLACE OPPOSING. Mayor Nassif stated that no action could be taken at this meeting and the item would be carried over to the next meeting.

COUNCILMEMBER BOULTON MOVED ADOPTION OF ORDINANCE 83-O-56, WITH THE AREA REZONED FROM R-2 TO R-3.

Mayor Nassif asserted that the Council had never voted a tie vote before and then permitted another motion to follow. MAYOR NASSIF DECLARED THIS MOTION OUT OF ORDER.

COUNCILMEMBER HOWES REQUESTED THAT VOTE ON THE ORIGINAL MOTION TO DENY THE REQUEST BE RECONSIDERED, FOR CLARIFICATION PURPOSES. MAYOR NASSIF did not feel that clarification was necessary and STATED THAT THE RECORDS SHOW THAT THE 4/4 TIE VOTE ON THE ORIGINAL MOTION WOULD STAND.

COUNCILMEMBER BOULTON MOVED TO CHALLENGE THE RULE OF THE CHAIR. Mayor Nassif stated that this would require a 2/3 vote to carry. COUNCILMEMBER STRALEY SECONDED THE MOTION. THE MOTION TIED 4/4 WITH COUNCILMEMBERS STRALEY, HOWES, BOULTON, AND WALLACE SUPPORTING, AND COUNCILMEMBERS BROADFOOT, PASQUINI, KAWALEC, AND MAYOR NASSIF OPPOSING. THE DECISION TO CONSIDER THE MATTER AT THE NEXT MEETING WOULD STAND.

Proposed Amendment to the Chapel Hill Development Ordinance (re beauty parlors in OI zoning districts)

Mayor Nassif stated that no action was required for the Council to deny the request.

No action was taken by the Council.

Resolution Approving the Site Plan for Holland Offices

Mr. Jennings stated that the property was located on Airport Road. The original request had been approved under the old Zoning Ordinance, but was never completed. The applicant now proposed a change in the site plan.

COUNCILMEMBER KAWALEC MOVED, SECONDED BY COUNCILMEMBER WALLACE, ADOPTION OF THE FOLLOWING RESOLUTION:

A RESOLUTION APPROVING THE SITE PLAN FOR HOLLAND OFFICES (83-R-161)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council finds that the office development proposed by Herb Holland Company on Chapel Hill Township Tax Map 83, Block A, Lot 4, if developed in accord with (a) the site plan received by the Town on September 21, 1983, and (b) the condition listed below, would comply with all applicable provisions of the Development Ordinance:

1. That a storm drainage plan with hydrologic calculations be approved by the Town Manager prior to issuance of a Zoning Compliance Permit.

BE IT FURTHER RESOLVED that the Council of the Town of Chapel Hill hereby approves the site plan for Holland Offices received by the Town subject to the above condition.

This the 24th day of October, 1983.

THE MOTION CARRIED UNANIMOUSLY.

Discussion of Proposed Amendments to Articles 8.3, 8.4.6, and 19.1 of the Development Ordinance

Councilmember Broadfoot stated that the Council needed to amend the Procedures Manual to require that a motion be made to adjourn.

Re Article 8.3 of the Development Ordinance, Councilmember Broadfoot felt the old Zoning Ordinance wording ("that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development....") was better wording than that of the current fourth finding in the current Development Ordinance: "That the use of development conforms with the general plans for the physical development of the Town...."

Re Article 8.4.6, Councilmember Broadfoot suggested that the words "clear, cogent, and convincing" be used as the degree of proof required of an applicant rather than "the applicant shall bear the burden of presenting evidence sufficient to establish conclusively...."

Councilmember Broadfoot felt that words of Article 19.1 bound the action of future Councils. He suggested that the present section on "Intent" be substituted with the following words:

Intent: Any and all amendments to this ordinance shall have 'the purpose of promoting health, safety, morals, or the general welfare of the community' as stated in the grant of power by the General Statutes of North Carolina.

COUNCILMEMBER BROADFOOT MOVED, SECONDED BY COUNCILMEMBER WALLACE, TO REFER THESE CONCERNS TO THE MANAGER, TOWN ATTORNEY, AND PLANNING BOARD. THE MOTION CARRIED UNANIMOUSLY.

Audit Report for 1982-83.

Mr. Mike Nelson, representing Touche Ross and Co., expressed appreciation to the Town for the opportunity to serve the Town. He stated that the Report was presented in accordance with generally accepted accounting principles of the Financial Accounting Standards Board and the National Council on Governmental Accounting for Municipal Governmental Units. The financial condition had improved and was continuing to improve with a Fund Balance level of 10.6% of one year's General Fund budgeted expenditures as recommended by the Local Government Commission. This percentage was a result of the Carol Woods property taxes (\$234,000) which were received at the end of the year.

COUNCILMEMBER HOWES MOVED, SECONDED BY COUNCILMEMBER PASQUINI, TO RECEIVE THE AUDIT. THE MOTION CARRIED UNANIMOUSLY.

Mayor Nassif expressed appreciation to the auditors and staff for the thoroughness and progress of the audit.

Proposed Amendment to the Chapel Hill Housing Code (to change the definition of rooming house)

Ms. Loewenthal stated that four issues had been referred to the Manager on September 12:

1. To require search warrants for all inspections. The Town's Minimum Housing Code and State statutes gave authority to Housing Inspectors to inspect and enforce housing codes. Such power was considered to be a protection for the public good and in the public interest. Staff did not feel that such power had been exceeded and a warrant had never been considered or used in the enforcement program. An attitude of cooperation had existed in the past between the Housing Inspectors and property owners. Councilmember Broadfoot had questioned this use of police power, but Ms. Loewenthal asserted that the same power was used to enforce the Town's Building Code.

In the spring of 1981, systematic housing inspections were discontinued and since then inspections were done only on request, which came mainly from tenants and neighbors of rental units.

The Town Attorney felt that a warrant would be a permissible policy approach to the Town's Housing Code enforcement. Staff, however, felt that a warrant would create "a more formal and adversarial relationship, rather than a co-operative relationship between inspector and owner."

2. Inspection of public housing units. A co-operative relationship existed between the Inspections Department and the Housing Authority and every

housing unit was inspected by the Town every two years to ensure that all public units met the Housing Code standards. Management recommended that the automatic inspection of Housing Authority units would be discontinued due to (1) the reduced need and (2) the dramatic increase in construction in Chapel Hill. The Inspector would, however, respond to requests for inspections; the Housing Commissioners had concurred with this suggestion.

3. Uniform enforcement of the Housing Code throughout Chapel Hill. In 1981 the rotation system of housing inspection was discontinued. Concentration of Code enforcement/inspection had been in the areas having the most need.

The Council's policy of not demolishing a housing unit until residents were provided alternate housing had been followed by the staff, but in October of 1982, the Council asked that this policy be reconsidered. Staff planned to consider options during FY 1984-85 that would (1) preserve the housing stock, (2) protect residents from substandard housing, (3) avoid moving families, unless alternative housing were available, to improve their housing situation.

4. Inconsistent Definitions of Rooming House. Councilmember Broadfoot had felt that the definition in the Minimum Housing Code of Chapel Hill, the proposed Minimum Housing Code of Orange County, and the Chapel Hill Development Ordinance were not consistent. Ms. Loewenthal stated that the Town ordinance could be changed from 5 or more persons to 3 or more persons as boarders, leaving two definitions for "rooming house" in Town statutes, since the wording in each document served a different purposes.

Adoption of ordinance 83-O-58a would accomplish this amendment to the Housing Code.

Ms. Loewenthal stated in response to a previous question by the Council that privilege licenses were not currently required for rooming houses, as they were not considered a commercial use. A staff report would be forthcoming.

Councilmember Broadfoot stated that his primary concern was re the search warrant issue, which he felt was at the heart of civil liberties. The N.C. Supreme Court had ruled that warrants were valid if certain criteria were met. Probable cause was necessary when there was a program. Mr. Barrett stated that the "program" was the Housing Code. Councilmember Broadfoot stated that the Housing Inspector should be required to show probable cause when enforcing the established requirements for health, safety, and welfare of the community.

Councilmember Broadfoot stated that he also supported equal protection/even justice under the law in and out of the Community Development neighborhood.

Ms. Loewenthal responded that she did not feel that this had been the case. The law had been enforced equally throughout Chapel Hill. There were many more dilapidated houses in one area of Town than in other areas.

Mayor Nassif responded to Councilmember Broadfoot that federal funds were allocated to areas identified as needing assistance. Just because there were no matching funds for other areas did not mean this was not a legitimate use of funds, when speaking about equal justice re demolition of properties. The use of funds was legitimate because Chapel Hill had a program--a Community Development program.

Mayor Nassif stated that the Council needed to make known its support of the Chapel Hill Housing Authority. Housing inspections would continue to be done on request from the Authority and there was no reason for the Town not to continue its cooperation with the Authority. The Authority belonged to the Town and the Manager had the right to grant inspection requests to the Authority. Councilmember Broadfoot stated that a written policy was needed, but asserted that he had no further questions on inspection of public housing.

COUNCILMEMBER BROADFOOT MOVED, SECONDED BY COUNCILMEMBER WALLACE, ADOPTION OF ORDINANCE 83-O-58b (which would add the requirement of consent or due process to the Minimum Housing Code).

COUNCILMEMBER WALLACE MOVED, SECONDED BY COUNCILMEMBER BOULTON, TO TABLE THIS CONCERN AND TO REQUEST THE MANAGER TO REPORT TO THE COUNCIL ON QUESTIONS THAT HAD BEEN RAISED. THE MOTION CARRIED UNANIMOUSLY.

Resolution Receiving a Petition for Paving of Emily Road and Farrington Drive

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER WALLACE, ADOPTION OF THE FOLLOWING RESOLUTION:

A RESOLUTION RECEIVING A PETITION FOR PAVING OF EMILY ROAD AND FARRINGTON DRIVE (83-R-162)

WHEREAS, the Town has received petitions for paving of Emily Road and Farrington Drive with curb and gutter, and the petitions have been determined to be valid under G.S. 160A-217(a); and

WHEREAS, the Town does not now have funds available for this project;

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council receives said petitions for paving of Emily Road and Farrington Drive, and the petitions shall be considered for funding in the 1984-85 budget in conjunction with other Town-wide street improvement needs.

This the 24th day of October, 1983.

THE MOTION CARRIED UNANIMOUSLY.

Quarterly Reports

Councilmember Howes urged Councilmembers to attend the Triangle J Council of Governments' "Horizons Unlimited Conference" on October 27, 1983. Councilmember Straley stated that the Conference would address the tremendous growth and the need for quality development in the Triangle area.

Mr. Taylor submitted Quarterly Reports from the Town's departments.

Consent Agenda

COUNCILMEMBER HOWES MOVED, SECONDED BY COUNCILMEMBER BOULTON, ADOPTION OF THE FOLLOWING RESOLUTION:

A RESOLUTION APPROVING VARIOUS RESOLUTIONS (83-R-163)

BE IT RESOLVED by the Chapel Hill Town Council that the Council hereby adopts the following resolutions as submitted by the Manager:

- a. Right-of-way encroachment for landscape planters at the Happy Store (Franklin and Columbia Streets) (83-R-164).
- b. Rejection of bids for bus shelters (83-R-165).
- c. Award of contract for asphalt supplies (83-R-166).
- d. Award of contract for refuse truck (83-R-167).

This the 24th day of October, 1983.

THE MOTION CARRIED UNANIMOUSLY.

Resolutions Adopted on the Consent Agenda

The following resolutions were adopted on the Consent Agenda:

A RESOLUTION GRANTING AN ENCROACHMENT AGREEMENT TO THE HAPPY STORE (83-R-164)

WHEREAS, the Town Manager has received a request from the Happy Store to construct brick planters on the right-of-way of East Franklin Street and South Columbia Street; and

WHEREAS, the Town Manager has determined that said construction would not present a safety hazard or maintenance problem or interfere with any known future construction of these two streets;

BE IT HEREBY RESOLVED by the Council of the Town of Chapel Hill that it approves, and authorizes the Town Manager to execute on behalf of the Town, subject to the concurrence of the N. C. Department of Transportation, an encroachment agreement with the Happy Store owners to permit construction and installation of such planters in the rights-of-way of Columbia and Franklin Streets, as shown on the Town Manager's memorandum dated October 24, 1983, a copy of which shall be retained in the record of this meeting; provided the Happy Store agrees to be responsible for maintenance of the above-noted improvements and liable for any damages or injuries caused by their presence, construction, installation, or maintenance and to indemnify the Town from damages or injuries arising from or in connection with the above-noted improvements within the public right-of-way; and further provided the Happy Store agrees to remove said planters at its own expense if requested by the Town.

This the 24th day of October, 1983.

A RESOLUTION REJECTING BIDS FOR CONSTRUCTION OF 13 BUS SHELTERS (83-R-165)

WHEREAS, the Town of Chapel Hill has solicited formal bids on August 31, 1983, and re-advertised said bid notice in accordance with G.S. 143-132 on September 22, 1983, and the following bids were received in response to said readvertisement:

Gaither Contractors, Raleigh, N.C.	\$ 36,860
Morrow Construction Company, Mebane, N.C.	\$104,000
Security Building Company, Inc. Chapel Hill, N.C.	\$ 49,900

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Town rejects all bids received for construction of thirteen (13) bus shelters for the reasons cited in the Town Manager's report on this matter dated October 24, 1983.

This the 24th day of October, 1983.

A RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT FOR I-2 ASPHALTIC CONCRETE, H-B ASPHALT AND TACK COAT (83-R-166)

WHEREAS, the Town of Chapel Hill has solicited formal bids on September 18, 1983, and re-solicited for formal bids on October 6, 1983, in accordance with the provisions of G.S. 143-132, and the following bid has been received:

Bidder: Nello Teer Co.

<u>Item</u>	<u>Unit Price</u>	<u>(Estimated Annual Cost)</u>
Est. 2000 tons of I-2 Asphaltic Concrete	\$23.60	(\$47,200)
Est. 350 tons of H-B Asphalt	\$20.54	(\$ 7,189)
Est. 7000 gallons of tack coat	\$ 1.05	(\$ 7,350)
		\$61,739

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Town accepts the bid of Nello L. Teer Co. in the amount of \$23.60/ton for I-2 asphaltic concrete, \$20.54/ton for H-2 asphalt, and \$1.05/gallon for tack coat.

This the 24th day of October, 1983.

A RESOLUTION ACCEPTING BIDS FOR ONE (1) CAB AND CHASSIS AND A REAR-LOAD PACKER BODY (83-R-167)

WHEREAS, the Town of Chapel Hill has solicited formal bids on September 20, 1983 and the following bids have been received:

<u>Company</u>	<u>Cab & Chassis</u>	<u>Rear Loading Packer Body</u>	<u>Installation</u>	<u>Total Bid</u>
Carolina Waste Equipment Hamlet	\$31,817.00	\$16,725.00	Included in Body Price	\$48,542.00
KABCO Inc. Raleigh	\$30,689.00	\$15,310.00	Included in Body Price	\$45,999.00
North State Ford Sales, Inc. Raleigh	\$30,618.00	No Bid	No Bid	\$30,618.00
John Robbins Motor Co., Inc. Greensboro	\$34,926.00	No Bid	No Bid	\$34,926.00
SANCO Corp. Winston-Salem	\$33,997.00	\$12,154.00	\$1,000.00	\$47,151.00
Suburban Sanitation Madison	THIS BID PROVIDED NO PRICE BREAKDOWN			\$57,165.00
Worth-Keeter Inc. Charlotte	No Bid	\$13,702.00	\$ 506.00	\$14,208.00

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Town rejects the bids of Carolina Waste Equipment, KABCO, Inc., North State Ford Sales, Inc., SANCO Corporation and Suburban Sanitation Service for a cab and chassis as non-responsive and accepts the bids of John Robbins Motor Co. Inc., for a cab and chassis in the amount of \$34,926.00 and further rejects the bid by SANCO Corporation for a rear-load packer body (including installation) as non-responsive and accepts the bid of Worth-Keeter, Inc., for a rear-loading packer body (including installation) in the amount of \$14,208.00.

This the 24th day of October, 1983.

Nominations--Historic District Commission

Councilmember Boulton nominated Ms. Luke Page to serve on the Historic District Commission.

As there was no further business to come before the Council, the meeting was adjourned at 10:22 P.M.



Joseph L. Nassif, Mayor



David B. Roberts, Clerk