

**MINUTE BOOK 24, PAGE 036
CITY OF STATESVILLE SPECIAL COUNCIL MEETING – August 18, 2010
CITY HALL CONFERENCE ROOM – 3:30 p.m.
STATESVILLE, NORTH CAROLINA**

Mayor Costi Kutteh presiding:

Council Present: Gregory, J. Johnson, Eisele, M. Johnson, Huggins, Stallard, Matthews, Steele

Council Absent: 0

Staff Present: Fugett, Hites, Salmon, Gaines, Currier, Smyth, Pressley

Media Present: Jim McNally – Statesville Record & Landmark
Bruce Matlock – Photographer, Statesville Record & Landmark
Dave Veiser – Charlotte Observer

Visitors: 19

Call to Order

Mayor Kutteh called the meeting to order. He reminded everyone a motion had been approved at the August 16, 2010 City Council meeting that any comments made at that meeting for the following three items would also be entered into the August 18, 2010 Public Hearing record.

Regular Agenda

Conduct a public hearing and consider passing first reading of ZC10-02 file by Mulberry School Apartments, LLC for the two properties located at 501 S. Mulberry Street; Tax Maps 4734-93-5587 and 4734-93-7677 from R-8MF HD CU to R-8MF HD CU change of conditions.

Planning Director David Currier reported Mulberry School Apartments, LLC is requesting the rezoning of 2 properties located at 501 S. Mulberry Street from CU R-8MF HD to CU R-8MF HD to change the condition that the use is limited to elderly housing which is defined as persons 55 years of age and older. Both tracts are zoned CU R-8MF HD and contain a total of approximately 2.913 acres. Mr. Currier reviewed the conditions of the Conditional Use Zoning Permit.

The site was rezoned back in March of 2005 to allow 31 elderly apartment units. In May of this year staff received reports from neighbors that persons under the age of 55 were residing on-site. Therefore, staff investigated and confirmed that four persons under the age of 55 were residing in the apartments. Staff then contacted the Landmark Group. They were very cooperative and immediately sent a response letter. Mr. Currier reported there had been a previous incident in 2007 for the same violation and an undocumented incident in 2009. As a remedy to the violation the Landmark Group is proposing a Natural Attrition Agreement in which they are requesting that the 53, 53, 49 and 38 year old persons be allowed to remain until they reach age 55 or voluntarily relocate.

The surrounding zoning districts and land uses are R-8 with single-family homes and duplexes, most in the Historic District. Staff sent the proposed agreement to the city attorney for review and he recommends that if City Council wishes to approve the change of condition that the attached resolution be adopted. The Planning Board's recommendation is unfavorable for change of condition.

Council member J. Johnson asked if the City could penalize the management company for this violation. Mr. Currier explained any violations of the zoning ordinance could go through the civil penalty process. The penalties are \$50.00 a day per violation. Once \$250.00 in penalties is assessed the matter is turned over to the City Attorney who will pursue the matter in court. The \$50.00 a day still continues to accrue.

Council member Gregory asked how much time the residents must be given to relocate if the attrition agreement is denied. Mr. Currier assumed at least sixty days must be given.

Council member Matthews asked if there had been a change in management or staff since 2007. Mr. Currier replied he had been informed there was.

Council member Eisele asked how long the four tenants have lived there. Mr. Currier replied he did not have that information.

Mayor Kutteh declared the public hearing open. He explained Council would first hear from anyone that wished to speak in opposition, then a speaker in favor, alternating back and forth until everyone that wishes to speak has had an opportunity.

Dwight Smith, 622 Highland Avenue, stated he opposes approval of the Attrition Agreement. Mr. Smith believes these four residents were rented a unit with the full knowledge of the management that they were under the age limit.

Blair Maas, Landmark Director of Property Management stated the definition of elderly housing is 80% 55+ and 20% disabled/handicapped. She explained management did not ignore the stipulations of the Conditional Use Permit, it was an internal miscommunication. Ms. Maas reported two of the underage residents are 54, one is 49 and one is 39. Ms. Maas asked Council to approve the Attrition Agreement, and if the agreement is not approved, for Council to allow 180 days to relocate these residents.

Mayor Kutteh asked what the move in dates was for the four residents in violation. Ms. Maas replied 02/15/08, 03/05/08, 03/06/08, and 05/30/08. Mayor Kutteh asked what the birthdates were for the two 54 year old residents. Ms. Maas answered 07/10 and 05/24.

Alan Eisele, 502 S. Mulberry Street, spoke in opposition of this item. Mr. Eisele stated Landmark's confusion does not explain some of their previous violations. Mr. Eisele felt the Landmark group is expert enough to know the difference between Federal tax regulations and municipal zoning ordinances. Mr. Eisele stated due to privacy laws the City could not enforce the Attrition Agreement by depending on reports from Landmark Management Group. Mr. Eisele stated he had e-mailed the company questions about renting a unit and what the age limits were. He felt their reply showed the company never had any intention of abiding by the original Conditional Use Permit.

Scott Alexander, Landmark Regional Property Manager, spoke in favor of this item. Mr. Alexander stated the tenants of Mulberry School Apartments just want to be a part of the Mulberry Street community. He stated there is a low turnover rate and the tenants are not disruptive to the neighborhood. Mr. Alexander asked Council to approve the Attrition Agreement.

Peter Molleur, 510 S. Mulberry Street, spoke in opposition of this item. Mr. Molleur stated he concurred with many items related by Mr. Eisele. He stated the residents are great neighbors, his problem is with management. Mr. Molleur related he had tried to inform Mr. Alexander via e-mail there was a Conditional Use Permit for the property and was ignored. Mr. Molleur stated the conditions were agreed to by both parties and he would like the original Conditional Use Permit upheld.

Katherine Stewart, Mulberry School Apartments Site Manager, spoke in favor of this item. Ms. Stewart stated the residents have done nothing wrong and asked that Council approve the Attrition Agreement.

Teresa Hayden, 516 S. Mulberry Street, spoke in opposition of this item. Ms. Hayden stated the neighborhood, Council and Landmark Management Group had all agreed to the terms of the Conditional Use Permit and the original agreement should be upheld.

Peggy Heard, 501 S. Mulberry Street, spoke in favor of this item. Ms. Heard stated she agreed with the prior comments in favor of approving the Attrition Agreement. Ms. Heard asked Council to consider the tenants that would be displaced if the agreement was not approved.

Mayor Kutteh declared the public hearing closed.

Council member J. Johnson asked if Landmark Management will pay to relocate these four residents. Blair Maas, Landmark Director of Property Management stated the company has not discussed that but she would assist each resident and asked Council to allow 180 days for them to relocate if the agreement was not approved.

Council member M. Johnson asked Scott Alexander, Landmark Regional Property Manager if he felt it was Council's moral responsibility not to displace these residents. Mr. Alexander stated that was correct. Council member M. Johnson stated since the tenants are not the issue and the issue is that Landmark has violated their permit, does Mr. Alexander feel the company should profit from these rents during the time period of the attrition if the attrition agreement is approved. He asked if Mr. Alexander was willing to forebear or forgive the rents. Mr. Alexander stated he could not answer that questions, upper management would make that decision.

Council member Stallard stated the fact is Landmark signed a contract with the key condition that all tenants be 55 years or older. Landmark violated the contract. City Council is not punishing the tenants, they are upholding a contract. The only reason Council is involved is because Landmark did not uphold the contract.

Council member Stallard made a motion to deny first reading of ZC10-02 filed by Mulberry School Apartments, LLC for the two properties located at 501 S. Mulberry Street; Tax Maps 4734-93-5587 and 4734-93-7677 from R-8MF HD CU to R-8MF HD CU change of conditions, with the stipulation that the four residents must relocate within sixty days, seconded by Council member Eisele. The motion was unanimously approved.

Council member J. Johnson asked if Council had ever changed or forgiven a conditional use permit. Mr. Currier stated not to his knowledge.

Council members expressed regret the tenants were caught in the middle of this situation but questioned what kind of precedent this would set for other conditional use permits if the attrition agreement was approved. Council agreed it is the City's responsibility to uphold the conditional use permit and Landmark's responsibility to rectify their mistake.

Mayor Kutteh and Council members agreed to conduct the public hearing for SP10-01 at this time.

Conduct a public hearing and consider approving Special Use Permit #SP10-01 for Iredell Development Company, Inc. for G & B Oil Company, Inc. for the property located at 120 Intercraft Drive; Tax Map 4753-57-3432.

Mayor Kutteh swore in City of Statesville Planning Director David Currier, Rick Caudle - G & B Energy and Matthew Grant - GV Grant & Associates.

David Currier stated Iredell Development Company on behalf of G & B Oil Company, Inc. is requesting a special use permit to allow construction of an office/warehouse/propane distribution business to be located at 120 Intercraft Drive. The property contains 4.970

acres and is zoned HI (Heavy Industrial). Propane Distribution is allowed with a Special Use Permit in the HI District provided the supplemental requirements of Section 50.2.2 and 50.2.3 are met in addition to the other applicable zoning requirements. The proposed site is 505 ft. from the nearest residence which is zoned R-20. The site is located on a major thoroughfare (Intercraft Drive) which is projected in the future to be extended to E. Greenbriar Road. The site plan indicates the additional 20 ft. of future right-of-way. In addition the site has direct access to Salisbury Highway which is also a major thoroughfare. The site is not located within a water supply area and does not impede the normal flow of stream or watercourse as proposed. The office/warehouse and storage tanks meet the 50 ft. requirement measured from the property lines. A six foot chain link fence will be installed around the property with the front portion along Intercraft Drive being black or green coated. The east side of the property and a portion of the south side is wooded and will remain undisturbed. However, due to topography and drainage, the buffer yard required along the north side of the property has been waived in some locations and replanted in others.

Section 50.2.2 Performance Standards in regards to Light, Sound and Vibration must also be met. The type of lighting that G & B proposes to use is outdoor lighting for signage and security purposes around the building and parking lot. In regards to sound, Mr. Caudle states the majority of any noise would be engines running and/or electric motors for about 20 to 40 minutes and there will be no vibration.

Council member Eisele asked if there was a stream on the property. Matthew Grant with GV Grant & Associates stated it is not a stream it is drainage from the culvert.

The Technical Review Committee reviewed and approved the site plan on June 16, 2010 contingent upon fee in lieu of for curb, gutter and sidewalk (however, this requirement has since been eliminated from Intercraft Drive), the submittal of the pump station capacity, sewer easement, panel schedule and riser diagram, driveway permit, and environmental approvals.

Staff's recommendation is favorable because the zoning requirements have been met. If the special use permit is approved, it is contingent upon receiving approval from the Department of Agriculture, the driveway permit, the pump station capacity and the sewer easement being finalized before releasing the zoning clearance. The Planning Board's recommendation is favorable as presented with a unanimous vote.

Mr. Currier stated if this is approved there will be a finding of fact necessary. Mr. Currier reported G & B Oil Company has acknowledged they will forego selling fuel oil or kerosene at this time. If the company desires to start selling fuel oil or kerosene in the future they will revisit Council to amend the Special Use Permit.

Mayor Kutteh declared the public hearing open and reminded everyone any comments made at the August 16, 2010 City Council meeting would be a part of the record of this meeting. He asked if anyone wished to speak in opposition of this item. There were no speakers. Mayor Kutteh asked if anyone wished to speak in favor.

Matthew Grant with GV Grant & Associates discussed the location of a stream with Council. Council member M. Johnson requested an overflow detention system be installed at the manhole. Mr. Grant agreed to add it to the plans.

There being no other speakers, Mayor Kutteh declared the public hearing closed.

Council member Stallard made a motion to approve Special Use Permit #SP10-01, having met the supplemental requirements of Section 50.2.3 and 50.2.4 of the City Code and other applicable zoning requirements with the condition that fuel oil and kerosene distribution is prohibited unless a permitted oil/water separator and a surface drainage unit is installed, seconded by Council member Gregory. The motion was unanimously approved.

Conduct a public hearing and consider passing first reading of ZC10-03 filed by the City of Statesville for the Properties Located on N. Barkley and Dover Roads; Tax Maps 4743-95-9768, 4752-25-7086, 4752-26-8998, 4752-27-5081, 4752-35-5667,

4752-35-7807, 4752-36-6404, 4752-37-4411 and 4752-16-1205 from Iredell County RA and City of Statesville R-20 to City of Statesville PUD.

David Currier stated G. S. Statesville Greenland, LLC completed the purchase of these 9 parcels after the original and second rezoning requests for Exit 45. Two of the tracts are mostly surrounded by property owned by G. S. Statesville Greenland LLC for the Larkin development with the remaining 7 parcels at the end of Dover Road being proposed as a future phase of the development. Due to annexation of 8 of these parcels, the city must apply its zoning to the property instead of Iredell County's zoning.

Mayor Kutteh declared the public hearing open. He asked if anyone wished to speak in opposition of this item. There were no speakers. Mayor Kutteh asked if anyone wished to speak in favor. Shawn Callaway with G.S. Carolina stated he would answer any questions Council may have.

Council member Steele made a motion to approve first reading of ZC10-03, seconded by Council member M. Johnson. The motion was unanimously approved.

Consider approval of Budget Amendment #9 to allocate funds to replace the HVAC unit at City Hall.

Larry Pressley reported the HVAC system at City Hall could be replaced in accordance with the renovation plans. Staff is requesting approval to spend up to \$27,500 for a new 15-Ton a/c unit.

Council member Huggins made a motion to approve Budget Amendment #9 to allocate funds to replace the HVAC unit at City Hall, seconded by Council member Stallard. The motion was unanimously approved.

Council member Steele made a motion to go into executive session to discuss a land acquisition matter.

Upon returning from closed session Mayor Kutteh advised land acquisition matters were discussed but no action was taken.

Council member M. Johnson gave an update on the I-40 and I-77 interchange improvements.

There being no further business, upon a motion by Council member Steele, seconded by Council member Matthews, Council unanimously approved the motion to adjourn.



Court Kutteh

Mayor

ATTEST:

Brenda Torgott

City Clerk