

**MINUTE BOOK 24, PAGE 287
CITY OF STATESVILLE COUNCIL MEETING – October 03, 2011
IREDELL COUNTY GOVERNMENT CENTER – 7:00 P.M.
STATESVILLE, NORTH CAROLINA**

Mayor Costi Kutteh presiding:

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

Council Absent: 0

Staff Present: Hites, Fugett, Gaines, Miglin, Bullins, Cornelison, Hutchens, Salmon, Pressley, Smyth

Media Present: Dave Veiser-Charlotte Observer, Jim McNally-Record & Landmark

Others: 22

Call to Order

Mayor Kutteh called the meeting to order and asked that everyone rise for the invocation and the Pledge of Allegiance.

Invocation

The invocation was given by the City Clerk.

Pledge of Allegiance

Mayor Kutteh led the Pledge of Allegiance.

Mayor Kutteh noted the Cool Springs Boy Scout Troop #363 was in attendance to fulfill a requirement for their Citizenship in the Community merit badge.

CONSENT AGENDA – All items below are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion on these items unless a Council member so requests, in which event, the item will be removed from the Consent Agenda and considered with the other items listed in the Regular Agenda.

- A. Approve the minutes of the Pre-Agenda meeting of August 11, 2011 and the City Council meeting of August 15, 2011.**
- B. Approve 2nd reading of an amendment to Chapter 12, Article 1, of the Statesville City Code by deleting ordinance #52-09 (Section 12-170) as it pertains to the first ten (10) parking spaces on the north side of W. Broad Street as it intersects with Kelly Street, east to 228 W. Broad Street.**
- C. Approve 2nd reading of an ordinance to amend the City Code Chapter 20, Streets and Sidewalks, Section 20-14: Placing Items Within Right-of-Way.**
- D. Approve 2nd reading of TA11-06 filed by the City of Statesville to amend Article 6.07, Sign Regulations, Section R - Sign Standards, for the CB, CBP, Municipal Service and H-115 Districts.**
- E. Approve 2nd reading of TA11-07 filed by the City of Statesville to amend Article 5, Supplemental Regulations/Performance Standards for Specific Uses, Section 5.03 - Temporary Uses and Structures in the CB, CBP and Municipal Service Districts.**
- F. Approve 2nd reading of TA11-08 filed by the City of Statesville to amend Article 6, Development Standards, Section 6.07 Sign Regulations; Table 6-13, Permitted Sign Standards by Zoning District.**
- G. Consider passing a resolution directing the City Clerk to investigate a petition of annexation. Receive City Clerk's Certificate of Sufficiency. Consider passing a resolution fixing a date (10-17-11) for a public hearing on the questions of the petitioned annexation.**
- H. Approve a formal request that the City of Statesville be an official co-sponsor of the 2011 Pumpkin Fest, providing in-kind services.**

- I. **Approve a formal request that the City of Statesville be an official co-sponsor of the 2011 Carolina Balloon Festival to be held October 21-23.**
- J. **Consider passing a motion to close selected streets in Downtown Statesville on Saturday, November 5, 2011 between 5:30 am and 7:30 pm. for the 2011 Pumpkin Fest.**

Council member Steele made a motion to approve the Consent Agenda, seconded by Council member Gregory. The motion carried unanimously.

Mayor Kutteh reported one item would be added under "Other Business" on the agenda - To receive a report on the 3rd Creek Wastewater Treatment Plant.

Regular Agenda

Accept a grant award of \$5,000 from the National Association of Drug Diversion Investigators (NADDI) to be used towards purchase of illegally diverted prescription drugs, and approve Budget Amendment #10.

Sergeant Miglin reported the Statesville Police Department received a \$5,000 grant award from the NADDI, sponsored by Purdue Pharma on August 8, 2011. These funds will be used by our Narcotics Investigators to purchase evidence used to prosecute offenders for the illegal diversion of prescription drugs that is increasingly plaguing Statesville. There is no match required by the City and Sergeant Daniel Miglin is assigned to administer these funds in accordance to grant requirements.

Council member Steele made a motion to accept a grant award of \$5,000 from the National Association of Drug Diversion Investigators (NADDI) to be used towards purchase of illegally diverted prescription drugs, and approve Budget Amendment #10, seconded by Council member Eisele. The motion carried unanimously.

Approve a reciprocal fire protection response contract with Monticello VFD.

Chief Bullins explained this is a continuation of the prior year's contract with Monticello Volunteer Fire Department. The contract includes the terms of reciprocal responses to specific locations in the City and the surrounding County and assures a response of one engine-company with four personnel to supplement response needs in getting the closest fire unit on the scene of the emergency at no cost to the City. The contract will renew automatically in July of each year.

Council member J. Johnson made a motion to approve a reciprocal fire protection response contract with Monticello Volunteer Fire Department, seconded by Council member Huggins. The motion carried unanimously.

Approve a settlement agreement with Carolina Transformer Site Trust.

City Attorney Gaines stated this item stems from a site, Carolina Transformer, which was in operation from 1959 through the late 1980's in Fayetteville, North Carolina. Mr. Gaines reminded Council this matter has been discussed previously in Executive Session because it involved litigation and threatened litigation. He explained the site was a facility where cities and utility companies purchased transformers and sent their transformers to be reworked or scrapped. The transformers that were sent there contained the toxic chemical; PCB's which contaminated the site. The Carolina Transformer facility dumped these chemicals on their site and ended up with a significantly contaminated site which violated the United States law known as the Comprehensive Environmental Response Compensation and Liability Act (CERCLA Act). There is some record evidence that the City of Statesville did business with Carolina Transformer between 1959 and 1986, as did most cities and utility companies in the North and South Carolina area. With regard to transformers, Carolina Transformer was one of the primary facilities for this type of work. The United States Environmental Agency declared this a contaminated site in violation of federal law and took legal action against not only Carolina Transformer, but the cities and utility companies that had done business with the Carolina Transformer site. Statesville and a number of other cities were not involved in this initial action. In the initial action a settlement was reached in 2008 between a number of cities and utility companies in North and South Carolina where the government was paid \$9.9 million. Pursuant to that settlement agreement, the cities that were involved in paying this money reserved the right under federal law to seek contribution from the amount they paid against other cities and utility companies that had not been made a part of this action but had done business with Carolina Transformer. Under federal law a city or utility company can be held liable for its fair share of the contamination of the site even if the city or utility unknowingly sent transformers to the site and those transformers were a part of the contamination by the resulting discharge of PCB's. The cities that settled with the United States Environmental Protection Agency formed a group called the Carolina Transformer Site Trust. The Trust then made a demand upon the City of Statesville, as well as a number of other cities, to make a contribution to their settlement with the government through a formula they devised. The Trust's formula determined that Statesville's fair share was around \$125,000. The Trust prepared a draft

complaint and proposed to file in the United States District Court for the Eastern District of North Carolina and indicated they were going to file suit against Statesville and numerous other cities and utility companies if each did not contribute this amount to the settlement. Some of the cities (not an inclusive list), in addition to Statesville were Albemarle, Cherryville, Cornelius, Denton, Drexel, Gastonia Lexington, Maiden and New Bern as well as numerous other municipal and private utility companies. The City of Statesville joined a group of twenty-two other cities. The group retained the law firm of Pointer and Spruill and declined the settlement offer made by the Carolina Transformer Site Trust of \$125,000. As a result of this negotiation, a settlement has been proposed and accepted by the Carolina Transformer Site Trust whereby the City of Statesville will pay \$25,000 in full settlement and release of any and all claims these people may have under the CERCLA Act. This release will also include the federal government through the contribution act. As a result of this payment the City will be absolved from any and all further liability either to these companies who made the settlement with the government, or the government, for anything arising out of the Carolina Transformer Site Trust. The cost the City would incur to defend itself in federal court would easily exceed the \$25,000 that can settle this matter at this time. Mr. Gaines stated it is his recommendation as City Attorney that City Council accept this settlement offer and pay the \$25,000 pursuant to the settlement.

Council member J. Johnson asked if the \$25,000 included attorney fees. Mr. Gaines replied it did not. Some fees had been incurred with Pointer and Spruill. These fees have already been paid and the cost shared with the other cities in the group.

Mayor Kutteh asked if all the cities in the group settled. Mr. Gaines replied all the cities in our group had settled and would be paying \$25,000 to the Carolina transformer Site Trust.

Council member J. Johnson made a motion to approve a settlement agreement with Carolina Transformer Site Trust in the amount of \$25,000, seconded by Council member Stallard. The motion carried unanimously.

Report on the 3rd Creek Wastewater Treatment Plant.

Larry Pressley reminded Council it had authorized McGill and Associates to apply on the City's behalf to the Department of Natural Resources for a Clean Water State Revolving loan for the 3rd Creek Wastewater Treatment Plant (WWTP) expansion project, as well as to request to remain in the old funding. Staff has been notified that the City was approved for \$23,373,357, which is the bulk of the cost for the 3rd Creek WWTP 6 million gallons per day (MGPD) expansion project. A revised engineering report must be submitted by January 2, 2012. Staff anticipates plans and specs being approved by March 2013. Bids would be received at that point with the project bid being awarded by June 3, 2013. Construction contracts would be executed by July 1, 2013. Stall will present a proposal from McGill at the next Council meeting to authorize them to perform the work necessary to get the project to the bid stage.

Mayor Kutteh asked Mr. Pressley to further explain for the benefit of the Council and the community what exactly this means. Mr. Pressley explained the City is now eligible for low interest funding for a major project. Previously the City only had \$17.5 million in funding. The City will be obligated to have the engineering work performed but the bid will not be authorized until March 01, 2013. This will give the City the ability to determine whether or not to go forward with the project at that time depending upon how the economy is.

Mayor Kutteh clarified the City has until March 2013 to do the preliminary work, then at that time it can be determined if the expansion is needed and if so, if the economy will allow it. He explained if and when the City grows, we have solidified our ability to expand the wastewater treatment plant at the least expensive means possible.

There being no further business to come before Council, upon a motion by Council member Steele, seconded by Council member Matthews, the meeting was unanimously adjourned.




Constantine H. Kutteh, Mayor

ATTEST:


Brenda Fugett, City Clerk