

**MINUTE BOOK 24, PAGE 519
CITY OF STATESVILLE COUNCIL MEETING – December 03, 2012
CITY HALL COUNCIL CHAMBERS – 7:00 P.M.
STATESVILLE, NORTH CAROLINA**

Council Present: Mayor Costi Kutteh presiding, J. Johnson, Eisele, West, M. Johnson, Matthews, Huggins, Stallard, Gregory

Council Absent: 0

Staff Present: Pressley, Fugett, Smyth, Byerly, Currier, Watts, Salmon, Harrell, Sexton

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

Others: 2

Call to Order

Mayor Kutteh called the meeting to order.

Invocation

The Invocation was given by the City Clerk.

Pledge of Allegiance

Mayor Kutteh led the Pledge of Allegiance.

Consent Agenda – All items below are considered to be routine by 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 November 15, 2012 and the City Council meeting of November 19, 2012.**
- B. Consider approving a resolution to adopt the 2013 Statesville City Council Regular meeting schedule.**

Mayor Kutteh noted there will be one full day planning retreat on February 28, 2013 instead of two half days.
- C. Consider approving 2nd reading of changes to the Sewer Use Ordinance as recommended by the NC Division of Water Quality.**
- D. Consider approving the Airport Safety/Maintenance Program agreement with the NCDOT-Division of Aviation (DOA).**

Council member J. Johnson made a motion to approve the Consent Agenda, seconded by Council member Eisele. The motion carried unanimously.

REGULAR AGENDA

- V Consider approval of a semi-annual write-off of approximately \$35,902.86 in utility accounts.**

Lisa Salmon stated that since December 1994 the City has performed a semi-annual write-off of utility accounts that had been placed for collection eighteen to twenty-four months prior to the write-off date. These accounts were returned to the City by the collection agency after no significant progress had been made on the accounts and they had ceased collection activity. At this time, staff plans to perform a semi-annual write-off of utility accounts that had been placed for collection between January 1, 2011 and June 30, 2011 in the amount of \$35,902.86. This amount may decrease slightly should monies be collected on an account prior to the actual write-off date. She pointed out that this amount is much lower than the normal range of \$100,000 - \$150,000 due to the fact that during this period of time, the contract with the previous Collection Agency was terminated and it was several months before a new Collection Agency was put in place. Staff felt that it would be beneficial to move the accounts that went to collection status during that time to the new Collection Agency and give them time to work those accounts. The accounts included in this write-off are accounts that would not have

benefited from being moved to the Collection Agency, such as bankruptcy accounts, etc. Staff expects to see a low amount of write-offs for the next couple of write-off periods, and then expects to see a much higher amount after that. These accounts will still show in our computer system for a minimum of three years after the write-off with a zero balance and a notation of the amount we have written off. During the 2011 fiscal year, the City was able to collect \$41,024 in bad debt. Mayor Kutteh pointed out that on an annual basis, the City bills between \$45 and \$50 million in utility billings, so this amount is well below ½ of a percent of the total receipts.

Council member Stallard made a motion to approve a semi-annual write-off of approximately \$35,902.86 in utility accounts, seconded by Council member J. Johnson. The motion carried unanimously.

VI Conduct a public hearing and consider approving first reading of an ordinance to annex the JC Faw Property located on the northwest corner of the intersection of Highway 90/64 and Marble Road.

David Currier reminded Council they had approved the pre-requisites to allow for the public hearing and first reading of this item at their previous meeting. He displayed a map of the property and pointed out that the property is located to the northwest of the intersection of Highway 90/64 and Marble Road in the City's extra-territorial jurisdiction and is approximately 1.432 acres in size. The property is zoned City of Statesville General Business (B-5) zoning district, which would permit the proposed use as a Dollar General Retail store. The subject property is contiguous to the primary corporate limits of the City of Statesville, and is being processed as a voluntary contiguous annexation. Mr. Currier advised that the applicant is requesting to use City water, which is available to the site, so is required per City ordinance to apply for annexation. The property does meet all the requirements for annexation. Mr. Currier stated that Mr. Barry Bush who represents the property owner, Mr. J. C. Faw, and Mr. Frank Fawcett, who is with Primax representing Dollar General, are both in the audience to answer any questions Council may have.

Council member J. Johnson stated as he understood this, the applicant wished to be annexed and build his own septic system. Mr. Currier replied that is correct, that the current City Unified Development Code says that if a sewer tie-in is within 400' ft. of the site, then the applicant must extend and connect to City sewer. This site is further than 400' ft. and the current regulations allow a septic system to be installed, which is what Dollar General is proposing.

Council member Gregory asked how much further than 400' ft. is the site from the closest City sewer line. Mr. Currier replied he must defer this question to engineering, but he thought it was between 450' and 500' ft.

Council member West asked if they must tie in at their expense if they are within 400' ft. Mr. Currier replied that is correct. West asked if the City runs the line from the invert on Anna Drive to within 400' ft. of the site, if the applicant would be required to tie in at that point. Mr. Currier replied that is correct. Mr. Pressley stated that to get to gravity sewer the line would need to tie in at Anna Drive and that distance is 740' ft.

Council member J. Johnson asked if the City had a policy that says if a site is annexed they may stay on their septic system until it needs to be repaired, then they must tie into City sewer. He stated it would not be fair to annex a piece of property and allow them to install a septic system. He pointed out parcels in the Country Club community that were required to tie into the City sewer system after they were annexed. Mr. Pressley pointed out that the sewer system was extended past those lots, so those were the ones that were required to tie into the available system.

Mayor Kutteh stated that under the existing policy, the applicant will build a septic system whether they are annexed or not. Mr. Currier agreed and stated that Council does not have to approve the annexation or extend water.

Council member Eisele asked if the annexation is just for the Dollar General property, and if the remaining property used to be a landfill. Mr. Currier reviewed the map showing the portion to be annexed. He explained that a previous survey indicated a landfill on the portion outside of the Dollar General property and that Mr. Fawcett has had to bear the expense for sub-surface testing in his immediate area of interest

because the State was considering the entire site as potential landfill but no evidence of this was found. Mr. Bush has stated that the only thing that could be done on that site would be parking and that would be after putting 4' ft. of fill in to compact it or remove 4' ft. of existing soil and put 4' ft. of compacting soil back in. If it were ever developed beyond a parking lot, any building or foundation would probably need to be put on piers. Mr. Currier stated that in light of this information, he did not know what the marketability or the ability to develop the balance of the site is, beyond what Mr. Bush has said.

Mayor Kutteh asked where the City water line is to this site. Mr. Currier replied City water is on Marble Road.

Council member M. Johnson asked if Mr. Fawcett has a septic permit. Mr. Currier replied he does and this would be required prior to any type of City permitting. Council member M. Johnson asked Attorney Gaines if Council can require annexation on this property and hold the annexation indefinitely at the pleasure of Council. Mr. Gaines stated he did not think that could be done. Mr. Currier stated he believes that Council has up to six months to effect the date on a petition.

Council member Stallard asked if this 1.4 acres is the only portion that can be built on. Mr. Currier pointed out other areas that were shown on the map that were outside of the landfill boundaries. Council member Stallard asked if the City can furnish water to the applicant without annexation. Mr. Currier replied that has been done, the applicant would simply pay outside water rates.

Mayor Kutteh declared the public hearing open and asked if there is anyone present who wished to speak in opposition of this item. There being no speakers opposing this item, Mayor Kutteh asked if there is anyone present who wished to speak in favor of it.

Frank Fawcett with Primax Properties, 1100 E. Morehead Street, Charlotte, stated he was surprised as he had tried to do everything correctly and would like to be a part of the City. He stated he had checked early on with City staff about bringing sewer to his site, and was informed it was not feasible, so before he invested any more money in the project he checked into the possibility of installing a septic system, for which he received a septic permit from Iredell County. Mr. Fawcett advised that he went to the Design Review Committee and followed all the steps and has a DOT permit as well. He said that he had invested a considerable amount of money in this project and would like to be a part of the City and to have Council's support.

Barry Bush, Director of Real Estate for J. C. Faw, 206 Country Club Hills Drive, Wilkesboro, gave a brief background on the property. He stated a portion of the property had been leased to Iredell County years ago for a pre-regulatory municipal landfill. He reviewed the area on the map that can only be used for parking and stated he had a copy of the Sub-Surface Exploration Report that was done January 2, 1987. He stated there are many challenges to develop this property and fortunately Primax has found a use for a portion of it. He has been working with DENR trying to get a Brownfield classification and hopes the state will use funds that it has to clean it up to their standards.

Council member Gregory asked which way the septic system will flow and will it inhibit future development of the property. Mr. Fawcett reviewed the location on the map and stated it would not inhibit future development of the property.

There being no further speakers for this item, Mayor Kutteh declared the public hearing closed but asked Mr. Fawcett and Mr. Bush to remain at the podium to answer any additional questions.

Council member M. Johnson asked Mr. Currier if the state was considering this site contaminated as well. Mr. Currier replied that according to Mr. Fawcett the state of North Carolina were considering the entire tract, including the Dollar General site to be subject to landfill and Mr. Fawcett has had to bear the expense to prove that it is not. Council member M. Johnson asked Mr. Fawcett if the alternative of drilling a well has been addressed. Mr. Fawcett stated it has not because everything seemed very straightforward concerning the water line that is available on Marble Road and Taylorsville Highway and he did not think he would be required to drill a well. Council

member M. Johnson asked if Mr. Fawcett was under the impression that the City of Statesville is obligated to allow him to tap into the water line. Mr. Fawcett replied as he understood it, Council could deny the annexation petition and he could tap the water and pay outside water rates.

Mayor Kutteh asked Mr. Fawcett if the site had been 399' ft. from the sewer line would he have been prepared to run sewer to the property. Mr. Fawcett replied he would have that he has been trying to purchase this property for years, with or without City sewer being available. Mayor Kutteh asked what the approximate price is to install a septic system for this property. Mr. Fawcett answered approximately \$2,500 as the size needed is comparable to a residential system. Mayor Kutteh asked Mr. Fawcett if he understood Council's hesitation to have septic tanks into a community where there is generally sewer but is not available to this site. Because of the cost of the septic system being nominal, at such time that the City provided sewer service at his location, would he be prepared to tap onto City sewer at that time and abandon the septic tank system. Mr. Fawcett replied he could run the line now so it would be there to tap into City sewer in the future.

Council member Stallard stated he does not see the benefit to the City of annexing a landfill or even annexing a piece of property that is limited to one building, that there needed to be more to an agreement with Mr. Fawcett than to "wait and see". Mayor Kutteh pointed out that there is significant property that is currently developed in the area that would present itself for a sewer line in this area, but he agreed with Council member Stallard that a City sewer line would never be installed for one building.

Referring to City Council minutes from 1989 and 1991, Council member M. Johnson stated he felt it was the intent of Council at that time for sewer to go up this road to all the parcels on the other side. When Mr. Faw's property was sub-divided again, subsequent to that when Mr. Wooten bought that parcel, that decision was cast out, and now current Council members are dealing with it.

Council member J. Johnson stated the most disturbing part of this to him is the fact that citizens that currently have septic tanks that fail are forced to tap into City sewer. Mayor Kutteh pointed out that sewer lines were already available to those citizens; sewer lines are not yet available to Mr. Fawcett. Council member J. Johnson stated the line would be available if Mr. Fawcett paid for it.

Council member Stallard stated he did not see this as a progressive move for the City to annex this property without requiring the applicant to tap into City sewer.

Council member Matthews suggested denying the annexation and letting the applicant tap into water and pay outside rates.

Council member M. Johnson asked Mr. Fawcett if there is any distance that he would be able to run for off-site sewer. Mr. Fawcett stated there are no funds in the budget for this. Council member M. Johnson asked Mr. Bush if as sub-divider of the property, if he is willing to make a contribution towards the sewer line. Mr. Bush stated the agreement did not call for this and the price had been reduced based on this fact. Council member M. Johnson asked if either party was interested in making any form of contribution towards outside sewer for this parcel or the residual parcels. Mr. Bush said there may be a possibility of a contribution for the residual parcel but he would need to research this. Mayor Kutteh stated that given this possibility, would Mr. Bush and Mr. Fawcett like to discuss this further to see if there is any amount that either or both might contribute to the approximate cost of \$100,000 to run the sewer line. Mr. Fawcett stated he is out of time and out of money and cannot fund any of the sewer line at this time. Mr. Bush said that Mr. Faw is currently going through bankruptcy so is very inhibited with what he could fund.

Council member West stated it is obvious that the City cannot fund this due to the limited return on the investment, but on the other hand he understands Mr. Fawcett's budget constraints. The City's requirements at this time say 400' ft. so the applicant is within his right not to tie in to City sewer lines. One of the initial concerns was that there would be four or five septic tanks on these parcels if this one was approved but now it appears that will not be the case due to the landfill area. He stated he would hate to discourage development of any kind just because it does not fit exactly in the box, even though he

does not want a septic tank there either. He felt this would be disservice to the community if this request is denied. Council member briefly discussed this.

Mayor Kutteh clarified that Council's options were to: approve first reading of the ordinance to annex the property which would allow the applicant to tap into City water and pay inside rates, deny the annexation but allow the petitioner to tap into existing City water and pay outside rates, and the third option could be to completely deny the request, no annexation and no water or electricity.

Mayor Kutteh asked Mr. Fawcett if he is allowed to tap into City water would he agree to a condition that he would tap into City sewer if the line is extended sometime in the future contiguous to his property and petition for annexation at that time. Mr. Fawcett replied that he would. Council member M. Johnson clarified that if the City line was extended to the east corner across the street from the site, if the applicant would be willing to install a grinder pump in his system. Mr. Fawcett stated as long as the line is on his side of the street, he will install the grinder pump if necessary.

Council member Stallard made a motion to deny first reading of an ordinance to annex the JC Faw Property located on the northwest corner of the intersection of Highway 90/64 and Marble Road, seconded by Council member J. Johnson.

Council member Stallard stated he felt the applicant should go back and work this out and come back to Council with what they can and will do, not what if. Mayor Kutteh stated the City can use all the water and electric users it can get. Council member J. Johnson asked Mr. Fawcett if he understood that he must pay System Development Fees.

The vote on the motion was as follows:

Ayes: Stallard, J. Johnson, Gregory, Eisele, Matthews, Huggins, M. Johnson
Nays: West
Motion carried 7-1

Council member M. Johnson made a motion to extend the ability to Mr. Fawcett to tap into City water lines at outside rates and the language that has been discussed tonight by which he will tap onto the City Sanitary Sewer System upon availability to his site and at that time agree to annexation into the City.

City Attorney Gaines suggested wording the motion as follows: to provide water at outside rates upon the condition that they enter into a contract with the City to at such time as the sewer is extended there to the site on Marble Road through a grinder pump and at that time to petition for annexation also, the extending of the water be conditioned upon this contract being entered into. Council member M. Johnson suggested adding "at the current connection rate at that time".

Mr. Currier stated that according to Mr. Fawcett, Primax will control the ownership of the site. Mr. Currier suggested adding to the motion that Primax or any future assignees are responsible, since the owner must petition for annexation. Mr. Gaines stated that this would be conditioned upon a contract with the owner and any sale or assignment of the property would be subject to the contract and this could be added to the contract.

Mayor Kutteh asked Mr. Fawcett if he agreed with all the conditions that have been discussed and contained in the motion. Mr. Fawcett stated he believes so and asked if Mr. Gaines will draft the document. Mr. Gaines agreed he would. Mr. Fawcett stated his attorney would review the documents and that it is not uncommon for Dollar General stores to have septic systems and at some point when the City runs the line, it will be abandoned. This can be included in the agreement.

The motion was seconded by Council member West.

Council member West clarified that the applicant must tap into the City sewer line no matter where it touches his property.

The vote was as follows;

Ayes: M. Johnson, Eisele, Gregory, West, Matthews
Nays: Stallard, Huggins, J. Johnson
Motion carried 5-3

IV Consider approving a site plan for P12-13 Toyota West located at 997 Folger Drive; Tax Map 4744-74-8343.

Mr. Currier stated the site is located at 997 Folger Drive. The property is zoned B-4 and contains approximately 7.849 acres. Toyota West is proposing to construct a 10' x 26' break room on the south side of the primary sales building and enclose the existing 20' x 20' canopy on the north side of the building for storage. The exterior material for both additions will be metal that matches the existing structure. Because this is an addition/renovation to an existing structure per the design standards for non-residential development, metal would be allowed. The setbacks of a 40 ft. front, 20 ft. rear and 10 ft. side yards have been met and no additional parking or landscaping is required. The TRC reviewed and approved the site plan on November 7, 2012 as presented. Therefore staff recommends approval. The Planning Board's recommendation is favorable with a unanimous vote as presented.

Council member West asked to be recused from the vote on this item due to a conflict of interest. Council member Gregory made a motion to recuse Council member West, seconded by Council member Eisele.

Council member Huggins questioned the required landscape buffer at this site. He stated that the deciduous trees do not provide enough of a buffer and he is concerned that future tracts when developed will not have an adequate buffer. Mr. Currier stated that City Code only requires an 8' ft. buffer but staff has checked this buffer and it does need some maintenance. A letter has been sent to the property owners advising of this and staff will follow up.

Council member Huggins made a motion to approve site plan P12-13, seconded by Council member Gregory. The motion carried unanimously.

Council member Stallard made a motion to return Council member West to his seat, seconded by Council member M. Johnson. The motion carried unanimously.

There being no other business, Council member West made a motion to adjourn, seconded by Council member Eisele. The motion carried unanimously.




Constantine H. Kutteh, Mayor

ATTEST:


Brenda Fugett, City Clerk