

**MINUTE BOOK 25, PAGE 153  
CITY OF STATESVILLE PRE-AGENDA MEETING – January 30, 2014  
CITY HALL – 227 S. CENTER STREET, STATESVILLE, NC – 4:30 P.M.  
STATESVILLE, NORTH CAROLINA**

**Mayor Costi Kutteh presiding:**

**Council Present:** J. Johnson, M. Johnson, Huggins, Watt, Schlesinger

**Council Absent:** Phifer, West, Morgan

**Staff Present:** Pressley, Fugett, Gaines, Salmon, Currier, Collins, Harrell, Cornelison, Houpe, Barone, Souther, Billings, Smyth, Hudson, Hodges

**Others:** Donald Hicks, 11 citizens

**Media Present:** Dave Veiser-Charlotte Observer, John Hamlin-Statesville Record & Landmark

Mayor Kutteh called the meeting to order and advised that an Executive Session will be held following the meeting to discuss pending litigation and to preserve the attorney-client privilege.

**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 January 09, 2014 Pre-agenda meeting and the January 13, 2014 City Council meeting.**
- B. Consider adopting a resolution renewing the City's membership in the Cabarrus, Iredell, and Rowan HOME Consortium.**

Donald Hicks distributed background information to new Council members and explained that the City of Statesville and its member bodies do not individually have the population base to qualify as entitlement governments for HOME funding. By creating a "consortium" of governments we mass the necessary population to constitute such a governmental unit. The HOME consortium has provided over \$80,000 per year for Statesville to provide a program for constructing affordable housing for low to moderate income citizens. The City Council contracts with the Statesville Housing Authority to administer the program. The HOME funds are used to develop the Allison Summit Community and for construction, closing costs, and other programs within the community.
- C. Consider granting an exemption in accordance with G.S. 143-64.32 (Qualification Based Selection) in order to receive proposals for Professional Services related to due diligence at the 134 acre tract on Old Mocksville Road**

Scott Harrell said that as part of the site assessment process for the purchase of the 134 acre tract on Old Mocksville Road, a general subsurface investigation is desired. Staff has prepared an exemption request allowing the City to procure professional services in a timely and efficient manner in order to facilitate the subsurface investigation by a geotechnical firm. The Qualification Based Selection (QBS) process requires units of local government to select firms for architectural, engineering, surveying, construction management and related services on the basis of qualifications without regard to fee. Recent changes to states statutes (G.S. 143-64.32) allow units of local government to grant exemptions in writing from the QBS process for "proposed projects where an estimated professional fee is in an amount less than \$50,000." The QBS exemption is not available for services when the estimated fee is \$50,000 or more. The subsurface exploration will take place as part of the site assessment activities approved by Council on January 13, 2014; the total budget for these activities, which also include a boundary survey and an environmental site assessment, is \$25,000. The best interest of the City of Statesville is served by engaging services for the subsurface exploration in a timely manner, such that results from the exploration will be available during the due diligence period for the purchase of this property. Staff recommends approval of the requested QBS exemption.

Mayor Kutteh noted that this will also include environmental and archeological assessments.

**Regular Agenda**

Mayor Kutteh asked staff to present item IV due to the large number of citizens in attendance for the item.

**IV Receive an update on the Woods Drive Dam and consider authorizing additional investigative activities and engineering services by Jewell Engineering Consultants, PC, and approval of Budget Amendment #30.**

Scott Harrell stated that in accordance with Council's approval on December 16, 2013, the Woods Drive dam was inspected by Mr. Doug Jewell, PE on January 3, 2014. His observations led him to conclude that the most likely source of the seepage flow is an old and/or abandoned pipe within the dam embankment. On January 8, City personnel performed two excavations near where the seepage was observed and were unable to locate a pipe or other evidence of a seepage path. In spite of this failure to locate a pipe near where the seepage emerged, the presence of an old or abandoned pipe through the dam remains the primary theory regarding the seepage. Mr. Jewell has provided recommendations for moving forward with the investigative effort to determine the seepage route through the dam, along with cost estimates for each option. Identifying the seepage route is necessary prior to developing repair alternatives and cost estimates. Jewell Engineering is recommending the use of ground-penetrating radar (GPR) to search for the seepage path. The estimated cost of this approach is \$1,200, which will cover one day of site time and allow for several passes across the dam. If this approach is unsuccessful in identifying a seepage path, Jewell has provided information on two other technologies that could be employed, at a cost of either \$3,000 or \$5,200. All three methods would be performed by third-party contractors. Staff recommends continuing the investigation into the seepage issue, since the seepage path is through the dam embankment on which Woods Drive, a city-maintained street, is located. Jewell Engineering has expended 85% of the \$2,200 approved by Council on December 16. They have recommended an additional budget of \$5,000 to allow their further involvement in the investigative activities described above. Depending on how quickly the seepage path is found and the nature of the problem, these additional funds may or may not be adequate to fully develop engineering recommendations for a solution to the problem. Staff recommends pursuing the GPR survey and, if necessary, one of the higher-level investigative methods. Staff recommends a budget of \$6,500 for these investigative activities, and \$5,000 for additional engineering services by Jewell Engineering related to coordinating and interpreting the investigative work. Staff recommends approval of Budget Amendment #30 to fund these services.

Mayor Kutteh noted that the City's obligation is the continued integrity of the road.

Council member Schlesinger asked if there are any risks to the road at this point. Mr. Harrell replied there does not appear to be yet.

**Council members agreed by consensus to move this item to the Consent Agenda.**

**III Conduct a public hearing and consider approving first reading of text amendment TA13-06 filed by Mrs. Stacey and Dr. Michael Schlesinger revised by Planning Staff to Amend Article 2 - Development Review Process, Section 2.10 - Special Use Permit, Article 3 - Zoning, Table 3-1: Use Matrix, Article 5 - Supplemental Regulations/Performance Standards for Specific Uses, Section 5.04 - Primary Uses and Structures and Article 9 - Definitions, Section 9.02 - Definitions**

David Currier stated that this amendment was submitted by Mrs. Stacey and Dr. Michael Schlesinger. This amendment is to explicitly designate the B-5, LI and HI zoning districts only for Truck Stop/Travel Plazas and to include a definition of such use. At the November 26, 2013 Planning Board meeting, the courtesy hearing was held. At the Planning Board's request for staff's opinion of the amendment, staff advised they supported the proposed definition with the exception of adding the word "overnight" but were not supportive of the use by right in the B-5, LI and HI districts. The Planning Board voted to table the request and directed staff to refine the amendment and bring it back for further consideration. Staff's revisions to the ordinance are as follows:

- Allows Truck Stop/Travel Plazas in the B-4 District as a Special Use Permit (This would allow City Council to conduct a quasi-judicial hearing and find facts to support their decision).

- Establishes standards for the Special Use Permit
  - Delete Section 2.10 - Special Use Permits, D. - Review Criteria 1, 2, and 3 in their entirety and replace as follows:
    - D. Review Criteria**

The activities requiring special use permits shall not endanger, damage or have undesirable effects upon adjoining properties whether residential or nonresidential.

      1. The proposed use is configured in a manner which minimizes any possible adverse effects on surrounding lands.
      2. The proposed use should maintain traffic flow to, from, within and adjacent to the proposed development at an acceptable and safe level of service based upon acceptable and recognized traffic flow standards.
      3. The proposed use will be in full compliance with all other relevant City, State, and Federal laws and regulations.
      4. Be located outside a water supply area.
      5. Additional requirements, including but not limited to, increased setbacks, additional screening and buffering, security fencing, performance standards (Section 5.05) may be required to help ensure compatibility with the surrounding area.
- Allows Truck Stop/Travels in the B-5, LI and HI as a use by right with Supplemental Regulations
- Establishes Supplemental Regulations
  - The Driveway access to the site must be within 700 feet of a full access interstate interchange right-of-way (There are many B-5, LI, and HI that are not anywhere close to an interstate or a good distance away. This type of high capacity transit use needs to be kept on major thoroughfares, i.e. interstates)
- Adds the word "overnight" to the definition of Truck Stop/Travel Plaza
- Adds an applicability clause

The Planning Board's recommendation at the January 09, 2014 meeting was favorable regarding the revised draft provided by the Planning staff with a unanimous vote as presented.

Mayor Kutteh asked what options are available to Council regarding this item. Mr. Currier advised that Council could approve first reading of the original ordinance, approve the revised ordinance, deny both or send the ordinance back to staff for further revisions.

Council member Schlesinger thanked staff for their hard work on this item. He said there is not a definition of "truck stop" in the City's current Unified Development Code (UDO) and there is nothing in the UDO with the same intensity that matches up to a truck stop. A truck stop does not belong in the current B-4 standards because it is a different level of intensity. The intention of the different B-4 zoning districts is based on intensity of use. The fact that a truck terminal, which involves much more truck based traffic, is in B-5, seems more consistent with a truck stop. The current system of "by right zoning" in the UDO means that once a decision has been made that a use belongs in B-4 then Council has no way to make any adjustments. Even though B-3 and B-4 site plans come to City Council for site approval, Council has no ability to make any changes in that site, it is purely a rubber stamp. Truck stops generate more truck traffic than any other entity within B-4 but there are no regulations regarding noise, light or pollution within the business zoning districts; however those issues are addressed in the HI and LI districts. Council member Schlesinger said he thinks it is important that Council have some kind of ability to control the location of a truck stop if it is not in harmony with existing practices or will jeopardize the value of surrounding properties. He said he originally felt that a truck stop did not belong in B-4 but after further review, he saw that the vast majority of B-4 districts are along the highway, whereas there are only one or two B-5 districts within the highway locations. His concern is

that currently Council has no control over noise, light or pollution but may be able to address these concerns through the use of Supplemental Regulations or by Special Use Permits.

Council member Schlesinger distributed copies of the ordinance with his additional revisions. He stated that this revision redefined and tweaked a couple areas within definitions and added in specific clauses #5 and #6. He said that by removing the other clauses in the Supplemental Use Permit it does not define these. He asked Mr. Currier if there is a definition for the checklist for the Supplemental Use Permit. Mr. Currier advised that Council member Schlesinger is actually referring to a Special Use Permit which is a quasi-judicial proceeding and gives Council more authority to gauge each development on a case by case basis.

Council member Schlesinger said he is still concerned that unless the Special Use Permit criteria contains a harmony clause then Council still does not have the ability to protect the value of adjoining or abutting properties. He pointed out that there is another piece of B-4 property across from Davis Hospital where another truck stop could be built if the truck stop use is a "by-right use" in the B-4 district. With the City planning a Business Park in this area it will become so congested with traffic that nobody will be able to get through Old Mocksville Road.

Mayor Kutteh asked Council member Schlesinger if he is participating as a member of City Council in this discussion or as the petitioner that presented the text amendment and if he would be speaking at the podium as an advocate for the modified text amendment that he has presented. Council member Schlesinger asked if there is a reason for differentiation. Mayor Kutteh replied that he would defer to the City Attorney, but it seemed to him that Council member Schlesinger had specifically made the request to staff. Council member Schlesinger said that any member of Council could have made this request. Mr. Gaines said he will discuss this with Council member Schlesinger following the meeting. Mayor Kutteh said he did not know of another case where a Council member has been the petitioner. Schlesinger said the question is whether he is a petitioner or a City Council member that has concerns regarding an issue with the City. He said it is no different than anyone else on this board making a petition for a text amendment. Mayor Kutteh pointed out that the request was made before he became a Council member though. Mayor Kutteh said he is not trying to cut off debate but he wants to make sure Council follows the correct procedures.

Council member M. Johnson said Council has previously discussed what it was going to do with respect to B-4 and B-5 site plans coming to City Council for approval and had asked staff to research how this is handled in other municipalities. He asked Council if they want this to be quasi-judicial or legislative. Mayor Kutteh said that quasi-judicial can be carried to extreme and some things must be by-right or nothing will ever be done; however this is an obvious concern to look at B-3, B-4 and B-5 zoning in general and the whole classification of truck stops in specific. Council member M. Johnson asked what the difference would be if the text that Council member Schlesinger has presented is used. Why wouldn't those qualify as Supplemental Regulations rather than a Special Use Permit because an SR is legislative not quasi-judicial. Council member Schlesinger said this would be purely for B-4 Supplemental Use, but it could be extended to B-5, LI and HI and make it a quasi-judicial hearing for each of those. He said the concern was that those sites are typically designed more for heavy use and would not require this extensive of a hearing. It is his understanding that Council has ultimate control in this type of hearing and can set time limits and not let it be a drawn out hearing. Council member M. Johnson said that is not correct because during the asphalt plant hearing, every person around that property had standing and was allowed to speak, so a time limit cannot be imposed. Mayor Kutteh said the conditions imposed for the asphalt plant were so harsh that it ended up not being built.

Council member M. Johnson asked Mr. Currier to clarify what is meant by criteria #4 that states "The proposed use must be located outside a water supply area" listed under the Review Criteria in the ordinance. Mr. Currier replied this includes any type of water shed areas or water sources that are protected by the current code and flood zones. Council member M. Johnson said he thinks this needs to be tightened up. Mr. Currier advised staff will review this.

Council member J. Johnson said he has major concerns with this. He recalled that Council hired an outside firm approximately ten years ago and paid them \$181,460 to write the Unified Development Ordinance so there would be no personal or political involvements

during the evaluation of the City's zoning. He stated he felt politics is being put back in this decision and an outside firm should be hired to evaluate this type of amendment. He said Council should table this ordinance until the Love's Truck Stop decision has been made because considering a text amendment regarding truck stops in the B-4 district at this time lends the appearance that Council was dissatisfied with Mr. Currier's determination that a truck stop is a use by right in the B-4 zoning district.

Council member M. Johnson said there is nothing wrong with the UDO but Council does not have the latitude the way it is structured to use it. Council member J. Johnson asked if Council is going to change it every time somebody does not like something. Council member M. Johnson said Love's Truck Stop could have done their site ten different ways but the way our code reads we are bound to treat it a certain way. If we had the latitude to treat it differently then we could. Council member J. Johnson reiterated that Council should wait until after the Love's Truck Stop case is finished to do anything regarding truck stops in the B-4 district. Council member M. Johnson said the issue is not the written word in the document; the issue is the ability to interpret that.

Mayor Kutteh said an argument could be made that by saying a truck stop in B-4 requires a Special Use Permit through a quasi-judicial proceeding that it is an allowed use in B-4, but just with conditions that Council would have the right to impose. Council member J. Johnson reminded Council members that so many conditions were imposed on the asphalt plant that it was impossible to build which was a loss of 100 jobs for the community. Council member Schlesinger said Statesville does not need any more service jobs; it needs real jobs with benefits. Council member J. Johnson said those low paying jobs are important to some people that are not as educated. Council member Schlesinger said the problem right now is that the trend in work is that everything is moving to service related jobs and those jobs do not provide benefits so these people end up showing up at the hospital with no insurance, must apply for welfare because they cannot afford to feed their family and are working two or three jobs just to try to make ends meet.

Council member Huggins asked how staff determined that a truck stop driveway access to the site must be within 700 feet of a full access interstate interchange right-of-way. Mr. Currier explained that staff did comparisons of other properties and that Council can change this number. Council member Schlesinger stated his revised ordinance further defines this because it is not fully understood in the staff revised ordinance.

Council member M. Johnson spoke of a future rezoning that he knows of that has a B-4 parcel nearby that could be used as a truck stop site and Council needs conditions available to insure harmony between the two sites. Council member J. Johnson reiterated that he felt politics were involved in this and that B-4 zoning should not be amended until after the Love's Truck Stop issue is settled.

**V Consider granting permission to the Public Works Department – Sanitation Division to apply for two grants from the NC Department of Environment and Natural Resources associated with the recycling program and authorize Sanitation Superintendent Fredrick Morrison to manage the project on behalf of the City of Statesville.**

Scott Harrell stated the NC DENR Division of Environmental Assistance and Customer Service (DEACS) administers various grants to assist local governments in expanding, improving and implementing waste reduction and recycling programs. The general intent of the program is to promote projects that divert materials from the waste stream and/or increase public awareness of waste reduction and recycling. The Sanitation Division is requesting permission to apply for two grants offered by DEACS: the Community Waste Reduction and Recycling Grant, and the Curbside Recycling Roll-Out Cart Grant. The City's recycling program currently requires Sanitation personnel to sort recyclables into a compartmentalized truck for delivery to multiple locations. Single stream recycling allows collection of a greater variety of materials without curbside sorting; this comingled material stream is delivered to a single facility for sorting. If awarded, grant funds will be used for costs associated with converting the City's current recycling program to a single stream (comingled) program. The maximum value of the Community Waste Reduction and Recycling Grant is \$30,000, with a 20% cash match (\$6,000) required by the City. The application deadline is February 21, 2014. Notification of grant awards is expected in April 2014. If awarded, funds will be available on a reimbursement basis beginning July 1, 2014. The maximum value of the Curbside Recycling Roll-Out Cart Grant is \$75,000 and must be used for the direct purchase of roll-out carts for single stream recycling. Applications are funded in the order they are received; DEACS has informed City staff that this is the last

year for this grant program, and that enough applications have already been received to account for the available funds. Staff was still encouraged to submit an application, in the event that other applications are withdrawn or not approved.

**VI Consider approving a Resolution of Intent to permanently close a 9 ft. alley from North Center Street to Landmark Alley.**

David Currier said this is 9 ft. x 205 ft. alley that is adjacent to the Carolina Landmark building. Years ago a boardwalk was installed but this is a publicly dedicated alley, there is no maintenance responsibility by the City and it has been a constant problem as far as the City being expected to clean it up and repair the boardwalk. Carolina Landmark petitioned for the closure and this is the first step in the process. If Council approves the Resolution of Intent, the alley will be posted for closure, a public hearing will be held, and Council will consider approval of a Resolution to Close/Withdrawal instrument. No nearby property owners will be deprived of egress as a result of the proposed alley closure. Property owners on each side of the alley will get 50% if it is closed. Carolina Landmark has said they will be filing quit claim deeds to take control of the and improving it with street lights and planters with an improvement grant that they have secured from the Downtown Statesville Development Corporation.

Mayor Kutteh stated that he will be recusing himself from this item at the appropriate time due to a conflict of interest. The City Attorney has advised him that at this point in the process there is no financial gain to anyone so it is not necessary for him to recuse himself at this point.

**VII Consider approving a boundary amendment to the Statesville Flying Service lease dated October 4, 2006.**

Phil Collins stated the Statesville Flying Service executed three leases with the City in 2006 in order to construct additional hangar space, parking and apron to the east of the existing terminal area. The hangars that were built were estimated to be 15,000 square feet at the time of approval. However, the actual hangars were constructed at 18,000 square feet in size. Mr. Collins reviewed the boundary amendments to each lease stating that an ingress/egress will be added to each agreement.

Mayor Kutteh clarified that their leasehold was expanded by 317,000 square feet in 2006. That lease said that SFS must pay \$.05 per square foot until it is developed then when it is developed it goes to \$.20 per square foot and that every three years there is a CPI increase. There is a 9,240 square foot encroachment that has been there for eight years that should be charged at \$.20 per square foot plus CPI instead of at \$.05 per square foot. The differential should be what the \$.05 is up to till now and what the \$.20 is up to till now and is what we would begin charging immediately.

Council member Schlesinger asked if this was an oversight by staff. Mayor Kutteh explained that Statesville Flying Service was refinancing their loan with the same lender and this was discovered. The survey and the lender did not catch it the first time, but caught it this time. Mayor Kutteh said legally the City could ask for the previous three years of back rent however he is not recommending Council do this.

Mayor Kutteh asked staff that the presentation at the Council meeting on Monday include the difference in the rent amount.

Council member J. Johnson advised that the extension Council granted to SFS for the building of the terminal will be expire in April 2014.

**VIII Consider approval of the low bid from JBL Communications, Inc. for the labor and material for the construction of Phase II A&B of the Fiber Project in the amount of \$232,143.30.**

Kent Houpe stated that Phase II A&B of the Fiber Project will connect Substation 1 to Delivery 4 and on to Delivery 2, approximately 5.7 miles. Staff received "No Bids" from both Thayer P&C and Pike Electric. JBL Communications submitted the bid of \$232,143.30. Staff originally budgeted \$244,000 for this project. Staff recommends acceptance of JBL's bid. Funds are available in the Capital Outlay Other Improvements account.

Mayor Kutteh asked Mr. Houpe to explain what this project will do. Mr. Houpe explained that this project will tie all of the City's delivery stations together and improve our

bandwidth. The City will eventually be able to lease dark fiber to customers and staff has already been contacted by customers interested in purchasing.

**IX Consider approving a resolution declaring equipment at Substations 5 & 7 as surplus and authorize the disposal of said equipment by resolution.**

Mr. Houpe said Substation 5 is a 4kV step-down transformer rated 7500 kVA/10500 kVA and substation 7 is a 4kV step-down transformer rated 3750 kVA/4687 kVA. Both substations include associated metal clad switchgear. The equipment listed above is no longer needed in the normal routine business for the Electric Utility Department. It is the staff's recommendation that these items be declared surplus and disposed of through the internet auction GovDeals. Staff is trying to sell Substation 5 as a working station and Substation 7 will be sold as scrap.

**Council members agreed by consensus to move this item to the Consent Agenda.**

**Council member J. Johnson made a motion to move to Executive Session in accordance with N.C.G.S 143-318.11(a)(3) to discuss pending litigation and to preserve the attorney-client privilege. The motion was seconded by Council member Morgan and carried unanimously.**

**Upon return to open session Mayor Kutteh stated that while in Executive Session Council discussed pending litigation, preserved the attorney-client privilege and no action was taken.**

**Council member J. Johnson made a motion to adjourn the meeting, seconded by Council member Schlesinger. The motion carried unanimously.**



  
Constantine H. Kutteh, Mayor

Attest:

  
Brenda Fugett, City Clerk