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CITY OF STATESVILLE COUNCIL MEETING – February 03, 2014
CITY HALL COUNCIL CHAMBERS– 7:00 P.M.
STATESVILLE, NORTH CAROLINA

Mayor Costi Kutteh presiding:

Council Present: J. Johnson, West, M. Johnson, Huggins, Schlesinger, Watt, Phifer, Morgan

Council Absent: 0

Staff Present: Pressley, Fugett, Gaines, Salmon, Smyth, Currier, Harrell, Houpe, Watts, Hutchens, Souther

Others: 14, Anthony Fox, Clark Tew

Media Present: John Hamlin-Statesville Record & Landmark

I Call to Order
Mayor Kutteh called the meeting to order.

II Invocation
The Invocation was given by the City Clerk.

III Pledge of Allegiance
Mayor Kutteh led the Pledge of Allegiance.

Mayor Kutteh advised that he was adding an item to the Consent Agenda: Consideration of approval of the 2014 Council Assignments to Boards/Commissions. He advised that Item VI has been removed from the agenda for further review.

IV Consent Agenda
Mayor Kutteh explained that 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.

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

D. Consider authorizing additional investigative activities and engineering services by Jewell Engineering Consultants, PC, and approval of Budget Amendment #30.

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

(Added) F. Consider approval of the 2014 Council Assignments to Boards/Commissions

Mayor Kutteh asked if there were any items on the Consent Agenda that Council wished to be moved to the Regular Agenda. There being none, he asked for a motion to approve the Consent Agenda.

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

Regular Agenda

V 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

Mayor Kutteh advised that the public hearing for this item will focus on the text amendment that was approved by the Planning Board and any discussion following the public hearing will be restricted to that text amendment.

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.

At the request of Council member M. Johnson to look at the water supply area noted in #4 of the Review Criteria. Staff has revised that and attempted to better define the protection of waters in any special use situation.

Mayor Kutteh explained the public hearing procedures then declared the public hearing open.

Anthony Fox with Parker, Poe, Adams & Bernstein and attorney for opponents of the Love's Truck Stop, stated the revised proposed text amendment is some improvement over what exists in the Unified Development Ordinance (UDO) regarding truck stops and travel centers. Any decision made regarding this text amendment will not affect the outcome of the Love's Truck Stop item. He said his clients simply want to avoid this situation again and wants Council to have the tools available to them to have jurisdiction over this, to have a component that allows Council to take into account a site plan's particular location and its impact on adjoining and surrounding properties. There are B-4 uses interior to the town and Council needs the ability to determine a use depending upon its location, harmony and impact on adjoining and surrounding properties. He asked that Council take some action tonight to avoid this type of problem again and to ask themselves if the proposed ordinance is enough to give them the tools to make a decision in the future. He advised that the courts have upheld denials based on harmony and valuation in a quasi-judicial hearing.

Clark Tew with Homesley and Wingo and attorney for Love's Truck Stop stated he was thankful for the acknowledgement that this ordinance has no bearing on the Love's Truck Stop site plan. He stated his client still agrees with the decision made by staff that a truck stop is a by right use in the B-4 district. He believes that the controls Mr. Fox said he wanted to give Council are already items that are found in the current site plan review process and once the site plan comes before Council if they have concerns the current site plan review process allows Council to address those concerns. Mr. Tew said in his opinion the B-4 district is the best place for a truck stop/travel center because B-4 is a highway business district. The question tonight is not necessarily what types of uses should be in a certain zone, the question is should a zone mean something or should it be a vessel that is filled up with different types of uses at the will of City Council. He said it is his clients' position that B-4 being a highway business district is guaranteed and it's essential that it relates to highway traffic whether it is interstate or U.S. Highway traffic. With the exception of one B-4 district, every other B-4 zone is on or adjacent to an interstate or U.S. highway and every interstate exit in the City has B-4 zoning prevalent. We believe that B-5, LI and HI zoning may be more appropriate for heavy uses, but most are also more distant from the interstate exits. We believe that the Truck Stop/Travel Center use is already listed in B-4 zoning because all the components of a truck stop are listed in B-4. The effect of this amendment will make it harder for other businesses to develop truck stop/travel centers after Love's has developed theirs and will create a monopoly which Love's as a corporate citizen does not feel is the right to do for Statesville. We ask Council to consider making truck stop/travel centers a by right use in the B-4 zoning district rather than a Special Use.

Stacey Schlesinger, 705 Maplewood Lane, Statesville, asked that Council address the issue of no definition for truck stop in the Unified Development Code (UDC). She expressed concern that the UDC allows the Planning Director to make a zoning decision when a use is not listed. Mrs. Schlesinger gave an example of a multi-faceted military style tactical weapons training facility was categorized as a private school when not listed in the Cumberland County UDC. She asked Council to approve this text amendment and define truck stops/travel plazas. She reminded Council that it has been over a year since they first became aware this void in the UDC exists and no action has been taken to address it. Mrs. Schlesinger said City Council needs to be able to use their judgment when making decisions in the best interest of the community.

Linda Howard, 585 Greenway, Statesville, spoke in support of the text amendment. She expressed concern with future development that is not a listed use and feels that Council needs the ability to take into account whether or not the use is in harmony and its impact on the area.

There being no other speakers, Mayor Kutteh declared the Public Hearing closed.

Council member J. Johnson made a motion to table this item stating he did not feel comfortable with pursuing a text amendment regarding truck stops in the B-4 zoning district until the Love's Truck Stop item is settled. The motion was seconded by Council member Phifer.

Mayor Kutteh said the motion to table must be dealt with without discussion. If the motion passes the matter is tabled and no action is taken. At some point in the future the item can be taken from the table.

The vote on the motion was as follows:

Ayes: J. Johnson, Phifer, Morgan, Watt, Huggins
Nays: Schlesinger, West, M. Johnson
Motion carried: 5-3

Council member Schlesinger asked if this item can be tabled since the text amendment had to be dealt with within 45 days and was already tabled once by the Planning Board. City Attorney Eddie Gaines explained the text amendment had to come to City Council within 45 days from the Planning Board but there is no law that says a text amendment cannot be tabled by City Council.

Council member West asked what the process is to un-table the item. Mr. Gaines said a motion must be made to un-table the item but it cannot be un-tabled during the same meeting it was tabled at.

Council member M. Johnson asked if he could ask Mr. Fox and Mr. Tew a question. Mayor Kutteh said the item is tabled and no further discussion can be held at this meeting however if Council member M. Johnson wishes a recess could be called and he could talk to Mr. Fox and Mr. Tew privately at that time. Council member M. Johnson said if he could not ask the questions publicly at this time he would contact Mr. Fox and Mr. Tew later via E-mail.

Mayor Kutteh explained how Council has handled un-tabling items in the past.

Council member Schlesinger said he had concerns that the item was tabled so quickly and there was not an opportunity to discuss this. Mr. Gaines said even though it appeared that three people had spoken at once, Council member J. Johnson was making a motion and the Mayor as the person running the meeting had correctly recognized the motion first.

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

This item was removed from the agenda for further review.

VII 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 recommends acceptance of JBL's bid. Funds are available in Capital Outlay Other Improvements account.

Council member J. Johnson made a motion to approve 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, seconded by Council member Huggins. The motion carried unanimously.

VIII 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) administer 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.

Council member M. Johnson made a motion to grant 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, seconded by Council member Watt. The motion carried unanimously.

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

Mayor Kutteh stated he is a member of Center Street Properties which owns a parking lot that is adjacent to the back part of this alleyway and he will recuse himself from this item when the public hearing and action on the Resolution to Close is held. He explained that Mr. Gaines has advised him that it is not necessary for him to recuse himself from the action considered tonight regarding the Resolution of Intent.

David Currier stated 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 alley and improving it with street lights and planters with an improvement grant that they have secured from the Downtown Statesville Development Corporation.

Council member M. Johnson made a motion to approve a Resolution of Intent to permanently close a 9 ft. alley from North Center Street to Landmark Alley, seconded by Council member J. Johnson. The motion carried unanimously.

Council member West stated he thought Council tabling the text amendment issue without allowing any discussion for the public to hear the opinions of this board is doing a severe disservice to the citizens of this city and that they have a right to hear it. Mayor Kutteh said the citizens will hear the discussion and opinions when the item is taken off the table.

Council member West made a motion to adjourn the meeting, seconded by Council member Watt. The motion carried unanimously.

Constantine H. Kutteh, Mayor

Attest:

Brenda Fugett, City Clerk