MINUTE BOOK 25, PAGE 179
CITY OF STATESVILLE COUNCIL MEETING – March 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, Davis, Smyth, Harrell, Hutchens, Currier, Houpe, Collins, Watts

Others: 3

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

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 reminded citizens that the Connect Our Future Iredell County forum on growth scenarios will be held Thursday at the Civic Center from 10:00 a.m. to 3:00 p.m. There will be special presentations at 10:15, 12:15 and 2:15 but citizens are welcome to come at any time during that period to take an interactive website tour and complete a short survey.

Mayor Kutteh stated that the starting time for the May 1st Pre-Agenda meeting has been changed to 3:30 p.m. due to the Iredell Memorial Hospital 60th Anniversary Celebration at 5:00 p.m.

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 30, 2014 Pre-agenda meeting and the February 03, 2014 City Council meeting.

B. Consider approving a motion to close West Broad Street from Kelly to Mulberry Street (and two alternate locations in case West Broad Street (Option A) would be unsuitable due to Phase II streetscape construction) from 3:00 pm to 10:00 pm on the following dates for the "Friday after Five Summer Concert Series": May 9, May 23, June 13, June 27, July 11, July 25, August 15, September 5, September 19 (rain date).

C. Make a formal request that the City of Statesville be an official co-sponsor of the 2014 Piedmont Healthcare Friday After Five Summer Concert Series, providing in-kind services.

D. Consider approving that the waiver of acceleration period of 60 days begins from the date the City Attorney sends letters to Commerce Boulevard assessment liens that are in default.

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.

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 revised Text Amendment TA13-06 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 on February 17, 2014 City Council instructed staff to investigate using the findings language from the Kenan v. Board of Adjustment, March 29, 1972 Court of Appeals of North Carolina in both a quasi-judicial and legislative format for TA13-06. It has been determined that the Kenan findings can only apply to a quasi-judicial hearing and not a legislative process. The proposed ordinance before you includes the Kenan language to be used for all Special Use Permits within the zoning jurisdiction. The other components of the ordinance have not been changed.

Council member Schlesinger asked Mr. Currier to explain what the Supplemental Regulations are for this. Mr. Currier stated Supplemental Regulations are where you have a use that is a Legislative use by right in a particular district but there are additional specified conditions that would apply to locating that use there. A good example would be a daycare which is defined as caring for five or more children. Some of the Supplemental Regulations for a daycare are that they must have 10 square feet of outdoor aggregate play area per child and a 4 ft. fence around the play areas. Council member Schlesinger asked if the only Supplemental Regulation for this ordinance is that the driveway access to the site must be within 700 ft. of the interstate. Mr. Currier stated that was correct and this would be measured by measuring a 700 ft. arc from where the ramps came off the interstate.

Mayor Kutteh asked if there should be a Special Use Permit/Quasi-Judicial hearing for the B-5, HI and LI zoning also. Mr. Currier said that the B-5, LI and HI zoning districts include industrial uses such as industrial parks and trucking terminals where there is truck use but it is a different type of use; it's not related to a commercial venue like found at the interstates. The B-5, HI and LI districts are not always located at the interchanges because the allowed uses in these districts are typically not a commercial use such as a truck stop. Ideally, these zones should be located close to the interstates so the truck traffic does not have to meander into the community any more than necessary. An example of a B-5, LI or HI district that would fall within the 700 ft. range might be at Garner Bagnal Boulevard, Exits 49-A and 49-B and possibly an LI district at NC-90.

There being no further questions for staff Mayor Kutteh declared the public hearing open. He asked if there is anyone who wished to speak in favor of or against this item. There being no speakers, Mayor Kutteh declared the public hearing closed.

Council member Schlesinger made a motion to approve first reading of revised Text Amendment TA13-06 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, seconded by Council member West.

Council member Phifer questioned whether or not Council member Schlesinger had a conflict of interest regarding this item since he had filed the petition. City Attorney Gaines said he has checked the statute regarding this and determined that Council member Schlesinger did not have a conflict of interest since this ordinance has no bearing on the Love's Truck Stop matter.

Council member Huggins asked what the process would be to rezone property in these districts. Mr. Currier explained the process.

Council member J. Johnson stated that years ago Council spent $200,000 to have an outside company write the UDO in an effort to keep politics out of zoning decisions and he was concerned that if this text amendment is approved there will never be another truck stop allowed in the B-4 zoning district.

The vote on the motion was as follows:
Ayes: Schlesinger, West, Morgan, M. Johnson, Watt, Huggins
Nays: J. Johnson, Phifer
Motion carried 6-2

VI Consider approval of Site Plan P14-04 submitted by Germain Ford located at 1101 Folger Drive; Tax Map 4744-72-8558.

Council member West asked to be recused from this item due to a conflict of interest.

Council member Huggins made a motion to recuse Council member West, seconded by Council member Watt. The motion carried unanimously.

Mr. Currier stated the site located at 1101 Folger Drive is zoned B-4 and the total acreage is approximately 5.195 acres. Germain Ford is proposing to expand the showroom area (1,503 sq. ft.), add a canopy over the vehicle delivery area (1,405 sq. ft.) and expand the service reception area (903 sq. ft.). The primary material for the exterior of the expansions is aluminum. Windows and doors have been provided on all sides of the structure. Therefore the design standards for non-residential development have been met. The expansions do not require additional parking since the site has a surplus (required 61 spaces, provided 371 spaces) or additional landscaping. Access to the site will be provided by the three existing driveways off Folger Drive shown on the site plan. The Technical Review Committee reviewed the site plan on January 22, 2014 and approved the site plan contingent upon engineering's comments. Engineering has since reviewed and approved the site plan. Therefore, staff recommends approval as presented.

Council member M. Johnson made a motion to approve Site Plan P14-04 submitted by Germain Ford, located at 1101 Folger Drive, seconded by Council member Huggins. The motion carried unanimously.

Council member Morgan made a motion to reseat Council member West, seconded by Council member Schlesinger. The motion carried unanimously.

VII Consider appropriating grant funds in the amount of $2,950 from the University Of North Carolina School Of Medicine - Burn Division to the Fire Department, consider approving the purchase of Sparky the Fire Dog costume with accessories and approval of Budget Amendment #32.
Fire Chief Dennis Hutchens stated that on November 18, staff received Council approval to apply for the Learn Not to Burn grant from the UNC School of Medicine – Burn Division. The City was awarded the grant and our Fire and Life Safety staff taught burn prevention lessons to preschool children (ages 4 & 5) and first grade students during the month of December using materials provided by the Burn Center. Initially, the Burn Center advised the maximum incentive that could be received for teaching these classes was $1,750. Staff was able to present the program to 19 first grade classes with 339 students and 12 preschool classes with 136 students. The incentives awarded by the Burn Center total $2,950. Staff is requesting the total funds of $2,950 be transferred to the department's budget and request permission to use the awarded funds to purchase a new Sparky costume to replace the existing 20 year old costume at a cost of $2,514 which includes a carrying case and shipping charges. Staff will use the remaining funds of $436 to purchase items such as: coloring books, crayons, and plastic fire helmets to enhance our fire education program.

Council member M. Johnson made a motion to approve appropriating grant funds in the amount of $2,950 from the University Of North Carolina School Of Medicine - Burn Division to the Fire Department and the purchase of Sparky the Fire Dog costume with accessories and approval of Budget Amendment #32, seconded by Council member Schlesinger. The motion carried unanimously.

VIII Consider approving the low bid from National Transformer Sales (NTS) for the materials, equipment and Siemens engineering services for the installation of five (5) 25 kV vacuum circuit breakers in the amount of $118,622.
Kent Houpe stated these breakers for Delivery 3 were scheduled for replacement due to age and bushing issues. Funds are available in Capital Outlay Other Improvements account.

Council member Watt made a motion to approve the low bid from National Transformer Sales for the materials, equipment and Siemens engineering services for the installation of five (5) 25 kV vacuum circuit breakers in the amount of $118,622, seconded by Council member West. The motion carried unanimously.

IX Consider approving Work Authorizations to be sent to the NC Division of Aviation for review and concurrence.

Phil Collins stated Parrish and Partners has submitted the attached work authorizations for review and concurrence by Staff. Staff is forwarding the work authorizations to the Airport Commission and City Council for concurrence as well. The projects associated with these work authorizations were included within the 2014 – 2020 Transportation Improvement Program (TIP). The Division of Aviation has suggested that work authorizations be reviewed by Staff and the Division of Aviation prior to official submittal. This should eliminate any confusion before proceeding with grant funding requests. The work authorizations have been reviewed by Staff and will be reviewed by the Airport Commission at their February 13 meeting. Staff concurs with work authorization 1-Runway Grooving, 2-PAPI/REIL Upgrade and 3-Environmental Overview, as attached. However, staff is seeking guidance on whether or not to include a public input meeting component(s) in authorization 4-ALP Update. Obviously, the final cost would be impacted by this decision. FAA does not require public input meetings for ALP updates. Staff has suggested that there should be public involvement within this process. From airport stakeholders to the general public; some public involvement would seem necessary as it has not been a part of the process in the past. The next step of this process, subsequent to DOA review and concurrence, will be to submit grant applications and certify local funding for grant matches.

Mayor Kutteh asked Mr. Collins to review the change in the process made by the FAA. Mr. Collins explained the new process.

Council member M. Johnson said he wanted to clarify with staff that wetlands and stream delineation is not part of categorical exclusions and that Parrish and Partners from hereon are the official keepers of that delineation and that they must maintain the delineation as part of their contract.

Council member M. Johnson made a motion to approve Work Authorizations to be sent to the NC Division of Aviation for review and concurrence and to support public input in this process, seconded by Council member J. Johnson. The motion carried unanimously.

X Consider a request from Donnie Pennell to lease the Brittain Lumber property and continue his wood shavings business, fast pitch softball lessons and personal storage.

Mr. Collins stated Mr. Pennell has been operating a wood shaving storage business, offering fast pitch softball lessons and storing equipment at the Brittain Lumber property for some time (since before the Brittain Lumber Company ceased operations). Below is an explanation of the three uses:

- Wood Shaving – wood shavings are brought in on tractor trailers and stored in a shed on the property. They are then loaded onto tractor trailers and distributed to local farmers for use in chicken houses.
- Fast Pitch Softball – Fast Pitch Softball lessons are offered to local soft ball players in the warehouse/office building. Mr. Pennell and his daughter offer private lessons for pitching and hitting.
- Storage – Mr. Pennell stores a dump truck and his boat on the property as well. Another gentleman stores a piece of equipment (skid steer and trailer) there as well.

Mr. Pennell has expressed interest in continuing use of the Brittain Lumber property for as long as the City will allow it. No rent has been collected since the City acquired the property in June and it is unclear what Mr. Pennell was paying at that time. Staff recommends that the following be considered if City Council approves a lease with Mr. Pennell:

- 1 year term with 30 day termination clause
- Property must be mowed at least three times a season

- Rent for January and February 2014 should be paid at market rate, which as estimated by Edwin Hunter is between $450 and $500 per month. Mr. Hunter derived these numbers by using the appraised value with a 6% annual yield and adjusted the rate to consider that only 25% of the property is being used
- Proof of Insurance:
  - Workers' Compensation: If User falls under the State of North Carolina workers' compensation law, coverage shall be provided for all employees. The coverage shall be for the statutory limits in compliance with the applicable state and federal laws. The policy must include employer's liability with a limit of $100,000 each accident, $100,000 bodily injury by disease each employee, and $500,000 bodily injury by disease policy limit.
  - Commercial General Liability: Coverage shall have minimum limits of $1,000,000 general aggregate, personal and advertising injury and each occurrence. This shall include premises and operations, products completed operations and contractual liability.
  - Business Auto Policy: Combined single limit equal to the general aggregate limit under the Commercial General Liability shall apply. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.

Council member J. Johnson reminded Council members that the City has received no rent from Mr. Pennell since acquiring the property in June 2013. He said Mr. Pennell should pay the 6 months back rent and that Council should lease the property for $441 per month which was Mr. Hunter's recommendation.

Council member Schlesinger asked if Mr. Pennell has the necessary Liability Insurance. Mr. Collins replied Mr. Pennell has gotten a quote for $1 million in coverage.

Mayor Kutteh said that staff is recommending only collecting back rent for January and February 2014 but this is up to Council to decide.

Council member J. Johnson made a motion to approve a request from Donnie Pennell to lease the Brittain Lumber property with the following terms:

1. **1 year term beginning January 2014 with 30 day termination clause**
2. **Rental rate of $441 per month**
3. **Only Specified Uses: wood shaving storage business, fast pitch softball lessons and equipment storage**
4. **Property must be mowed at least three times a season**
5. **Proof of the following insurance coverage:**
   - **<u>Workers' Compensation</u>: If User falls under the State of North Carolina workers' compensation law, coverage shall be provided for all employees. The coverage shall be for the statutory limits in compliance with the applicable state and federal laws. The policy must include employer's liability with a limit of $100,000 each accident, $100,000 bodily injury by disease each employee, and $500,000 bodily injury by disease policy limit.**
   - **<u>Commercial General Liability</u>: Coverage shall have minimum limits of $1,000,000 general aggregate, personal and advertising injury and each occurrence. This shall include premises and operations, products completed operations and contractual liability.**
   - **<u>Business Auto Policy</u>: Combined single limit equal to the general aggregate limit under the Commercial General Liability shall apply. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.**

Council member West seconded the motion.

Mayor Kutteh asked Mr. Collins what type of situation he anticipates that the 30 day termination clause might be needed. Mr. Collins said if the grant money is received to begin the work on the South Parallel Taxiway. Mayor Kutteh pointed out that staff would most likely be aware of this ahead of time and Mr. Collins agreed. Mayor Kutteh asked if staff believes that Mr. Hunter's 2nd appraisal of the fair rental value was discounted significantly because of the 30 termination clause. Mr. Collins said it is discounted 30% because of the clause and 25% because he is only using approximately 25% of the

property. Mayor Kutteh asked if Mr. Pennell would be willing to pay more than $441 if the 30 day termination clause was changed to 6 months. Mr. Collins said he had not discussed this with him.

Council member M. Johnson pointed out that the General Liability policy will need a property description that reflects the portion of the property he is leasing.

Council member Huggins asked who will monitor that the insurance is kept. Mr. Collins replied the tenant is required to submit that to staff every year when it is renewed.

Council member West withdrew his 2nd on the motion.

Council member J. Johnson withdrew his motion.

Council member West made a motion to lease the property for $600 per month with the lease to begin January 2014, a 6 month termination clause, allow for a General Access and Stormwater Easement over and through the entire property. Council member Huggins seconded the motion. The motion carried unanimously.

XI **Consider participation with NCDOT on sewer service to proposed I-77 Rest Area.**
Scott Harrell stated NCDOT is planning to build a new rest area north of Statesville to replace rest areas to the north and south. The advantage to the chosen location is that the rest area can be built in the middle and motorists will enter the rest area by exiting left. They will essentially have one rest area to replace four existing ones.

Jennifer Pitts, of DOT has requested assistance from the City to include the following:

1) Participation in cost of construction.
2) Providing engineering easements and construction administration.
3) Pay for upsizing costs if the City desires additional capacity.

This is a very significant addition to our sewer system and staff recommends paying the cost to upsize the system.

Staff recommends the City to provide the following:

1) construction administration
2) Coordinate easement requisition fully reimbursed by DOT.
3) Over sizing the line and system as recommended by the consultant who is anticipated to cost in the $100,000 to $125,000 range.

In an effort to encourage sewer system extensions, the City could modify existing policy to provide for cost participation for projects larger than some set amount such as $250,000. One idea would be for the City to reimburse the developer based on taps within five years of being placed into service, in an amount of 50% of system development fees collected during that five year period.

Mayor Kutteh asked if we need to present NCDOT with a specific financial plan of contribution. Mr. Pressley explained staff recommends providing only the three items that are listed above at this point. NCDOT may come back and ask for more but this is what staff recommends at this time.

Council member M. Johnson said this will give the City a tremendous service opportunity at Tomlin Mill Road. He requested that staff get some shots to the west of I-77 to the low point and see what the advantage would be if the north Statesville pump station moved to the west. He asked what part of this line from north Statesville down to our gravity line does staff think will eventually proliferate as gravity and force mains be abandoned in that process. Mr. Pressley said part of that will be determined by how the parcels in the northeast quadrant develop. Given the price of real estate he estimates that it will remain force main for a number of years. He said the estimated cost to increase the size of the force main can be included in the evaluation.

Council member M. Johnson made a motion authorizing staff to proceed with negotiations based on the outline presented to Council, seconded by Council member J. Johnson. The motion carried unanimously.

Mayor Kutteh asked Council their wishes regarding collecting rent for Item #X back to July 1, 2013 when the City took possession of the property. There was no interest in collecting back rent and no motion made.

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

Constantine H. Kutteh, Mayor

Attest:

Brenda Fugett, City Clerk