MINUTE BOOK 25, PAGE 282
CITY OF STATESVILLE COUNCIL MEETING – August 18, 2014
CITY HALL COUNCIL CHAMBERS– 7:00 P.M.
STATESVILLE, NORTH CAROLINA

Mayor Costi Kutteh presiding:

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

Council Absent: Phifer

Staff Present: Pressley, Fugett, Davis, Gaines, Salmon, Smyth, Cornelison, Anderson, Currier, Hutchens

Visitors: 18

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 to sign up for the single stream recycling program.

IV **Public Comment** - During the second meeting of each month citizens are invited to speak about matters **not** on the current agenda.

There were no speakers.

V **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. **Consider approving the minutes of the July 31, 2014 Pre-Agenda meeting and the August 04, 2014 City Council meeting.**

B. **Consider approving City co-sponsorship of the 2014 Carolina Balloon Festival to be held October 17-19.**

C. **Consider approval of a non-capital purchase of six bullet proof vests by the Police Department.**

D. **Consider approving a non-capital purchase of 10 picnic tables from Diversified Metal Fabricators by the Recreation & Parks Department.**

E. **Consider authorizing the purchase of a projection system for City Hall 3rd floor conference room.**

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

VI **Receive Council direction on CARTPO directed issues.**
Council member M. Johnson stated he had sent Council members copies of House Bill 817 which is Session Law 2013-183 of the North Carolina General Assembly. This is

pursuant to our discussion about Strategic Transportation Investments (STI) that the State has adopted and we now operate under. He explained Section 136-189.11(d) Item 1(b) Project Cap which states that no more than 10% of funds projected to be allocated to the Statewide Strategic Mobility Category over any five year period may be assigned to any contiguous project or group of projects in the same corridor within a highway division or within adjoining highway divisions. This is the Carter Cap and what essentially precludes this project in Phase II.

Council member M. Johnson recommended that City officials continue to meet with NCDOT and try to get this changed back to a statewide project and vote for the prioritization but express objections for the record in that vote to the reclassification of this project into the regional category and the appropriation of zero points.

After a brief discussion of the matter as to how City Council and citizens could get involved in getting this project changed a motion was made.

Council member J. Johnson made a motion to accept Council member M. Johnson's recommendation that City officials continue to meet with NCDOT and try to get this changed back to a statewide project and vote for the prioritization but express objections for the record in that vote to the reclassification of this project into the regional category and the appropriation of zero points. Council member Watt seconded the motion. The motion carried unanimously.

VII **Receive a report on graffiti/street art and the appeal.**

Mayor Kutteh advised that this ordinance was approved in 2007 and this is the first opportunity that City Council has had to interpret it. As with many other ordinances such as tree cutting, signage, sidewalk encroachments and the like, it is about promoting a positive community appearance. In the abstract, this ordinance was well thought out and it is consistent with ordinances in other communities. It likely did not contemplate situations such as the one before us tonight where the work of art did not have previous approval and is believed to be an act of spontaneity. Interestingly of the three or four such works of art that have recently appeared in Statesville, the only one that is before us tonight is the one we will hear about, none of the others have been appealed at this point. City Council is looking at this because it is the only body that can do more and grant or deny the appeal. It has discretion and can do something other than simply a denial or an approval. Council will first hear from Chief Anderson and perhaps Mr. Currier, then a representative of the appellants, Mr. Calvo. Council members will ask questions, deliberate and make a reason decision and all will benefit from this process.

Chief Tom Anderson stated that when it came to the department's attention that the painting on the wall of the building located at 224 N. Center Street was not authorized signage it triggered staff to look at it and determine if the graffiti ordinance applied. Upon learning that the property owner did not give the painter permission or authorization to paint the image prior to it being painted, the department made a determination that the image of a mouse painted on the side of the building was considered graffiti, not Street Art, per the definition of graffiti contained in the City Code. At that point, staff followed the remaining articles of the ordinance and sent a certified letter to the property owner indicating that graffiti was present on the building and what steps to take to abate the problem. Staff also advised that the Downtown Statesville Development Corporation (DSDC) has a provision to assist the business if necessary and what that process is. The letter also outlined the appeal process and that is where we are now.

Mr. Calvo stated that graffiti and art are not exclusive of each other. Graffiti can be art, it is not an either or. He said he is not asking for Statesville to be filled with graffiti, he is only asking that this one painting be allowed as it adds to the diversity of the tapestry that is our community and shows that to the people coming here. He said when he noticed the painting he took the initiative to ask the City for permission to keep it before it went to the Police Department. Mr. Calvo said he received permission from the property owner and followed the other steps he was advised he needed to follow by City staff. He added that this image is not a random gang tagging, violent, or something that will dismantle society.

Mayor Kutteh stated that part of the issue is that the ordinance requires prior approval. He asked Mr. Calvo to explain the difficulties, if there are any, which would have arisen with the artist acquiring prior approval for the same work of art. Mr. Calvo said he

understands the position everybody has here, but he would like to see the ordinance amended so that if something like this is done and has some sort of artistic merit or a positive aspect to it that it would be allowed without prior approval. He said he rents the location and likes the painting and the building owner, Mr. Gordon, also likes it. It is a freedom of something they like and expresses some of their tastes and beliefs in a sense.

Mayor Kutteh asked if the freedom of expression would have been impeded if the artist had sought permission prior to painting it. Mr. Calvo replied that Committees do not make art, they make decorations. He said they are not asking for the painting to stay there forever but the image is whimsical and sort of represents the underdog. Mayor Kutteh said Council is not arbitrating the work itself, it is arbitrating the process and Council is trying to understand why it would be difficult to get a permit prior to painting something. Mr. Calvo said he could not answer that. He suggested that maybe there could be a place that is sanctioned for this type of art as long as it is not offensive, gang related or hate related and is a positive image.

Council member West said that the Board of Adjustment grants variances every month to people that has violated the law so this is not unprecedented to do this. He said regardless of what this Council does, it is a positive thing to discuss because the City does need a venue for this type of art and asking an artist to submit an application for a permit will not work because most artists do not work like that. He said he would like to see the ordinance refined and allow the image to stay while that is being done.

Council member Watt stated he was on DSDC when the graffiti ordinance was written and was a part of that decision. He said that in our development process of Statesville we want to become an arts and culture community so keeping that in mind there is nothing wrong with looking and having discretion and taking a harder look at what we are doing. There is an ordinance in place and a process that must be followed so therefore the painting is out of compliance, but the community and City officials can come together and discuss this and look at what impact this may have moving forward. He stated that this has garnered a lot of attention and is a unique situation, in that it is located on the side of an art gallery so Council must consider other things and what the true value is.

Council member Watt made a motion to approve the appeal, seconded by Council member Schlesinger.

Council member M. Johnson stated that variances are not granted on the basis of the petitioner having created the problem. Variances are granted on the basis of whatever the situation is it is experienced by the property and not of the actions of the petitioner. He said that four of the current Council members voted on this at the Master Planning Committee where it was approved and then it was brought to City Council and approved. Council member M. Johnson said that what is most disturbing to him in this process is that the person who drew the image should be here asking for the appeal. Mr. Calvo said artwork is independent of the creator; he makes it and moves on. Council member M. Johnson said that is correct but it is not independent when it breaks the law. Mr. Calvo said he agrees with that but he thinks the artist is gone and does not care if the painting is removed or not. Council member M. Johnson said that as the Mayor said previously, Council is not here to judge the merits of the art, but the merits of the ordinance. He said he is not suggesting that the ordinance should not be reviewed but under the terms of the ordinance as it exists and when the act was done, it was wrong.

Council member Morgan asked what would have happened if the artist had been caught in the middle of the process. Chief Anderson replied that if the artist did not have a permit or something authorizing him to do the work he could be charged with applying the graffiti which is a $500 fine and is a misdemeanor and also possession of graffiti implements which is another charge. Council member Morgan asked if in fact it is a criminal charge. Chief Anderson replied it is.

Mayor Kutteh called for a vote on the motion. The vote was as follows:

Ayes: Watt, West, Schlesinger
Nays: Morgan, J. Johnson, M. Johnson, Huggins
Appeal Denied – 4 - 3

VIII Consider approving an ordinance establishing the I-77 Rest Area Capital Project Fund and appropriate funds for the project.

Lisa Salmon stated the sewer service to the NC DOT I-77 Rest Area project will be constructed by the City and reimbursed by the DOT. The estimated cost of the reimbursable portion of this project is $2,671,114. The City has the option to upsize the sewer service at its expense; the cost of upsizing will be determined during the engineering design process. Establishing the project fund at this time is necessary to provide an appropriation for the estimated project costs included in the agreement between the City and NC DOT. Staff recommends approval of the budget ordinance to establish the I-77 Rest Area Capital Project Fund and appropriation of funds for the project.

Mayor Kutteh asked Mrs. Salmon to review this process. Mrs. Salmon explained that only the budget will be set up, no money will actually be put into the account. The revenue for the account will be set as a reimbursement from NCDOT and as we spend the money we will have to front that money then request reimbursement from NCDOT.

Council member M. Johnson made a motion to approve an ordinance establishing the I-77 Rest Area Capital Project Fund and appropriate funds for the project, seconded by Council member J. Johnson. The motion carried unanimously.

IX Consider awarding a bid for 2 shuttle vans for the Recreation & Parks Department in the amount of $90,320 to Carolina Thomas.

Brent Cornelison stated that the 2014-15 capital budget included $110,000 for the purchase of 2 shuttle vans. Formal bids were received and opened on Wednesday, July 30th and Carolina Thomas was the lowest bidder at $90,320.

At the request of Council member Schlesinger, Mr. Cornelison explained what the new vans will be used for.

Council member J. Johnson made a motion to award a bid for 2 shuttle vans for the Recreation & Parks Department in the amount of $90,320 to Carolina Thomas, seconded by Council member Huggins. The motion carried unanimously.

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

Constantine H. Kutteh, Mayor

Attest:

Brenda Fugett, City Clerk