

**MINUTE BOOK 23, PAGE 114
CITY COUNCIL MEETING – APRIL 6, 2009
CITY HALL COUNCIL CHAMBERS – 7:00 P.M.
STATESVILLE, NORTH CAROLINA**

Mayor Kutteh presiding:

Council Present: Eisele, Gregory, Huggins, J. Johnson, M. Johnson,
Matthews, Stallard and Steele

Media Present: J McNally – Record & Landmark
D Vieser – Charlotte Observer

Staff Present: Hites, Gaines, Currier, Smyth, Davis, Blevins, Salmon,
Anderson, Bullins, Weatherman, Stephens, Pressley and
Miller

Visitors: 23

Invocation

The invocation was given by the Deputy City Clerk.

Pledge of Allegiance led by Tip Nicholson

Tip Nicholson led the Pledge of Allegiance.

Prior to official agenda items, Mayor Kutteh complimented Downtown Statesville Development Corporation, Statesville Community Theater and the City for an excellent twilight cemetery tour. Approximately 150 participants enjoyed the tour and it was an exceptional program that the Mayor hopes will become an annual event.

Mayor Kutteh congratulated David Bradley and All America City team for their success in being named one of the 32 finalists for this designation. The process will finalize in June at a meeting in Florida where successful cities will be announced.

Mayor Kutteh also reminded Council that tomorrow (Tuesday, April 7, 2009) is the Special Use Permit Hearing at the Troutman Town Hall beginning at 6:30 p.m. Councilmembers planning to attend should contact Sherry Ashley in the Planning Department.

CONSENT AGENDA

- A. Approve minutes of the pre-agenda meeting of March 12, 2009 and Council meeting of March 16, 2009.**
- B. Second reading of TA09-01 filed by the City of Statesville to amend Section 30.2 Sign Regulations for the CB, CBP, Municipal Service and H-115 Districts. (Ord. #15-09)**
- C. Consider passing a motion to close the 500 block of South Center Street, between West Bell Street and Garfield Street on Saturday, June 13, 2009, between 12:00 noon and 8:00 p.m. This closure is being requested by Impact, Inc., which is sponsoring the annual “Juneteenth” event celebrating the end of slavery in the United States.**
- D. Consider passing a motion to close a portion of Woods Drive between Carolina Avenue North and Carolina Avenue South for Northview Elementary School’s “Trike-A-Thon” for St. Jude**

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Children Research Hospital on Friday, April 24, 2009. Appropriate barricades will be placed well before the event, with minimal inconvenience to the motoring public.

- E. Request permission to apply for Federal grant funding, via 2009 COPS Hiring Recovery Program grant, for four (4) new police officer positions (a total value of \$188,876 per year for the first 3 years of the grant), and to allow Captain Daniel Miglin to represent the City in the management of the grant.**
- F. Consider passing a motion closing a portion of North Center Street, between Feimster and Bingham Streets, on Thursday, June 11, 2009 from 7:30 a.m. until 11:00 a.m. The closure is needed to accommodate the Statesville High School graduation ceremony taking place at “Greyhound Hollow”, which starts at 8:30 a.m. that morning.**
- G. Consider approval of the audit contract for fiscal year ending June 30, 2009.**
- H. Approve BA#27 to appropriate grant proceeds from a SAFER (Staffing for Adequate Fire and Emergency Response) Grant in the Fire Department’s budget.**
- I. Request resolution to establish and offer Commercial and Industrial Request for Proposal (RFP) for energy efficiency projects by retail, commercial, and industrial customers (Reso. #09-09)**

Upon a motion by Councilmember M. Johnson, seconded by Councilmember Eisele, the Council unanimously approved the Consent Agenda.

Regular Agenda

Second reading of ZC09-05 filed by Free Nancy Partnership for the property located on the North side of Davie Avenue; Tax Map 4745-40-9653 from R-10 to O-I CU. (Ord. #16-09)

Currier explained that the developer has agreed to the eight conditions set out by Council. Mayor Kutteh explained the item is on regular agenda because at first reading, the vote was not unanimous. He added that the zoning is not effective if the developer fails to meet the conditions they have agreed upon.

Upon a motion by Councilmember M. Johnson, seconded by Councilmember Stallard, Council approved second reading of ZC09-05 as follows:

Ayes: Eisele, M. Johnson, Matthews, Stallard and Steele

Nays: Gregory, Huggins and J. Johnson

Consider approving application COA09-07 filed by Mr. Max Davis for the property located at 444 Armfield Street; Tax Map 4734-83—8148.

The property is located at 444 Armfield Street and Council is required to approve permit by motion for demolition and replacement. The house was originally a one story Victorian that had a second story added at a later date. Applicant is asking to demolish a small area in the back and replace with a larger facility. Replacement materials will be consistent with the current structure and style. The Historic Preservation Commission has reviewed the application and recommends approval to Council.

Councilmember Steele moved for approval of the permit, seconded by Councilmember Gregory, and Council unanimously approved the motion.

Consider approving application COA09-05 filed by Mr. Rhyne Scott for the property located at 444 West End Avenue; Tax Map 4734-75-8878.

Currier explained that this item requires Council approval of the permit for demolition and replacement, as did the previous item. Further, Currier explained the applicant would like to demolish a 1970's deck and addition to the home and replace it with a larger addition. The addition is approximately 575 square feet and will be on piers to stay outside the drip line of a large tree in the yard. The Historic Preservation Commission has reviewed the application and recommends its approval to the City Council.

Upon a motion by Councilmember Steele, seconded by Councilmember Matthews, the permit was unanimously approved by Council.

Presentation of Best of Statesville

Paul Holtburg presented the Best of Statesville award to Tip Nicholson for his dedicated service to the community. Holtburg outlined Nicholson's career with the YMCA and his dedication to the growth and success of that organization. Mayor Kutteh added that Nicholson not only serves his community in a public way, but he is very dedicated and does a tremendous amount of work behind the scenes and without recognition. Kutteh applauded Nicholson's community service and quiet commitment.

Nicholson expressed his appreciation to the Human Relation Commission and City Council for his selection as a Best of Statesville.

Consider an appointment to the Statesville Convention and Visitors Bureau.

Council discussed the criteria for the current appointment to the Bureau and it was noted this appointee must be currently active in the promotion of travel and tourism in Statesville. Of the three applicants, Councilmember Matthews clarified that David Bradley is the only one who meets this criteria and Council agreed.

Councilmember J. Johnson nominated David Bradley for the appointment and was seconded by Councilmember Stallard. Council unanimously approved the appointment of Mr. David Bradley.

Consider sidewalk encroachment at Broad Street Gallery at 107 E. Broad Street.

Jay White is seeking approval for the placement of two tables with two chairs each on the sidewalk area in front of his coffee shop. Pressley explained this request is very similar to the one granted Maestro's but Mr. White will not be putting any enclosure or railing around the tables. The encroachment must be renewed annually and a new certificate of insurance is required. Councilmember Steele asked if an enclosure is required and Pressley said it was not. In further discussion regarding liability in the event of an injury as a result of the encroachment, Pressley explained that is the purpose of the certificate of insurance requirement and that insurance should protect the City in the event of a liability.

Upon a motion by Councilmember Eisele, seconded by Councilmember Stallard, Council unanimously approved the encroachment.

Reclassify two positions in the Fire Department

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Smyth explained the Fire Department is seeking to reclassify two positions in the Fire Department – Fire Prevention Division, now called Fire and Life Safety Division. This division of the Fire Department does investigations, inspections, prevention and education. The Fire Marshall position would be retitled to Assistant Chief and go from pay grade 19 to 21 and non-exempt status to exempt status. One of the Fire Prevention Specialists would become a Fire Captain-Fire and Life Safety Division and go from pay grade 14 to 17. This position would not receive a pay increase due to the current economic conditions. Smyth discussed some the duties of each position and a change in the focus of the positions in the department.

Upon a motion by Councilmember J. Johnson, seconded by Councilmember Stallard, the reclassifications were approved unanimously.

Approve BA#28 for contract amendment with McGill Engineering set at an hourly rate not to exceed \$20,000 for additional work associated with the Third Creek Expansion project and receive a project update from Larry Pressley.

Pressley explained the approval of this budget amendment will allow staff to accept the proposal of McGill Engineering for additional services relating to some design work caused by changing regulations from the North Carolina Division of Water Quality. The work will be done on an hourly basis but not to exceed the \$20,000 amount. Due to some concerns about the quality of water in the High Rock Lake and Yadkin river areas, the NC Division of Water Quality is tightening up the requirements of certain nutrient levels in the water and is requiring the City to assure the new expansion project will be able to meet those levels. Staff has met to discuss these impacts internally and along with Councilmember M. Johnson, met with the Division of Water Quality to figure out the most economical way for the City to move forward with the project but also prepare to meet any new limits established by NC Division of Water Quality

Councilmember M. Johnson moved for approval of the budget amendment, was seconded by Councilmember Stallard and Council unanimously approved the amendment.

Authorize CBSA of Hickory to begin construction drawings on Fire Station #4 in accordance with the City's Construction Administration and Errors and Omissions policy.

Manager Hites explained that Attorney Gaines, Attorney David Hamilton and attorney for Ernie Sills have worked diligently to improve the City's Errors and Omissions Policy. The definition of errors and omissions was changed to include the "...design plan requested by the owner or required by code and the architect failed..."

In addition to this change, Gaines recommend the combination of paragraphs relating to substantial and non-substantial increases" and using the same language for substantial increase in project cost.

In addition, Hites noted that the list of owner related owner and contractor items have been removed from this request as staff is not far enough along in the process to have this list fully refined. The list Council has seen was a "wish" list for the station that had not been fully researched and properly priced but was intended to demonstrate the types of items that would fall into each category. Councilmember M. Johnson asked if Council would see these categories again and Hites explained they certainly will as the project progresses. Once the list is refined, a final list will go into the budget on the owner's side and Council will see the specific items and their cost. Councilmember J. Johnson clarified that tonight's action does not include approval for the list previously submitted as a

part of this item in preagenda meeting. Hites confirmed this for Councilmember J. Johnson. After some additional discussion of the list, Hites reiterated that the list is not being considered for approval at this time.

Councilmember Steele inquired if Hites thought the changes in the Errors and Omissions Policy recommended would help the City avoid some the issues that occurred at the Fitness and Activity Center. Hites responded that he honestly thinks the Administration Policy will address those particular concerns more effectively as the entire process is preplanned very methodically with a step by step action plan. In addition, the permits will be obtained before the contract is bid and that will also be a tremendous help in preventing a recurrence of the types of issues encountered at the Fitness and Activity Center.

Upon a motion by Councilmember M. Johnson, seconded by Councilmember Steele, Council unanimously approved amendments to the Errors and Omissions Policy and authorized CBSA to begin construction drawings on Fire Station #4.

Downtown Statesville Development Corporation requests permission to temporarily close the sidewalks on Saturdays in 2009, with the exception of a seven (7) foot walking area, for the downtown merchants to host "Sidewalk Sales Events"

Marin Tomlin told Council that merchants in the downtown area would like to conduct sidewalk sales on Saturdays and on behalf of them through Downtown Statesville Development Corporation, she is requesting permission to close sidewalks on Saturdays in 2009, with the exception of a seven (7) feet walking area. Merchants will display their wares in the closed areas in front of their respective businesses on Saturdays.

Hites expressed some concern about starting the program with an entire year and suggested approving the closure on Saturdays between April 11 and September 5th, 2009 to see how the endeavor works. There are a number of potential problems that could result, including the display of objectionable wares, extension into unallowable areas, and failure to timely remove displayed items. Councilmember Steele expressed some concern regarding the closure of sidewalks for such an extended period of time. Tomlin clarified that the entire sidewalk will not be closed as there will always be at least a seven (7) feet walk way. Councilmember Steele further expressed some concerns about what could be displayed and Tomlin said it would be wares from the vendor. Restaurants could put tables out for their wares. Mayor Kutteh noted that should the materials put out be objectionable, it is his understanding that the City Manager can revoke the permit for that particular location. Manager Hites confirmed this and noted that a number of City departments could take enforcement action relative to improper usage and/or display.

Tomlin clarified that the sidewalks to be closed are:

On both sides of Broad Street from its intersection with Kelly Street to its intersection with Tradd Street excepting the sidewalk in front of First ARP Church which shall remain open.

On both sides of Center Street from its intersection with Water Street to its intersection with Front Street excepting the sidewalks in front of the County Courthouse and City Hall which shall remain open.

Upon a motion by Councilmember Stallard, seconded by Councilmember M. Johnson, a motion to close the above mentioned sidewalks on Saturdays between April 1, 2009 and September 5, 2009 from 8:00 a.m. until 5:00 p.m. was unanimously approved by Council.

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Consider approval of \$3644.62 for installation and wiring of telephone system for the pool house.

Approval of this change order will allow for the cabling, wiring and installation of the phone system at the pool house. This item was inadvertently left out of the original contract. The City did purchase the telephones. Funds are available in the project budget and the item does not require a budget amendment.

Councilmember Huggins moved for approval of \$3,644.62 to purchase wiring for pool house phone system. The motion was seconded by Councilmember Steele and unanimously approved by Council.

Consider adoption of resolution in opposition to pending legislation requiring that each County operate only one ABC Board (Reso. 10-09)

Manager Hites explained that House Bill 768 and Senate Bill 839 propose to give authority to the State ABC Commission to require the merger of ABC Boards in counties if more than one Board exists in a County. The State hopes to eliminate some situations where numerous Boards exist in a County and some of those Boards are not profitable. Hites said that this situation does not exist in Iredell County and both Statesville and Mooresville operate two separate yet profitable Boards and each of those Boards allocate the proceeds from their activities very differently. The Statesville ABC Board has requested that the City adopt a resolution in opposition to these bills thereby keeping the authority for allocation at the local level.

Upon a motion by Councilmember Steele, seconded by Councilmember J. Johnson, Council unanimously approved a resolution in opposition to empowering the State ABC Commission to mandate the merger of municipal ABC Boards into single county entities.

Consider first reading of an ordinance to amend Chapter 2, Article II, Section 2-31 of the Statesville City Code-Order of Business for City Council.

Councilmember M. Johnson relayed his research in the manner by which other Councils set meetings and establish agendas. Councilmember M. Johnson noted that State law allows the Mayor, Mayor Pro Tempore or any two members of Council to call a meeting of the Council. Several other cities use these same criteria for getting items placed on the meeting agendas and it seems a logical process. He stated this option seems to facilitate most readily a Councilmember's ability to represent the specific interests of his or her constituency by providing an avenue for getting specific concerns on the agenda. Councilmember M. Johnson said he and Mayor Kutteh have looked at the option of a policy with similar requirements but the code amendment is more permanent and serves the future better in Councilmember M. Johnson's opinion. Attorney Gaines assisted in the preparation of the ordinance to amend the code and Councilmember M. Johnson urges adoption of the code amendment.

Mayor Kutteh noted that Council does have a copy of the proposed policy he and Councilmember M. Johnson have been discussing. By preparing the policy, Mayor Kutteh does not necessarily oppose the ordinance to amend the code, but rather thought there might be some confusion about the current process and procedure. Mayor Kutteh observed that our current process seems to be working generally well and he wants to assure that everyone, including citizens, understands how the current process has been working. The code change deals with most of the issues in the policy with the exception of the role of Committees

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in the process. Mayor Kutteh encouraged Council to retain the value Committees bring to the process and assure the integrity of their continued use.

Councilmember Steele expressed concern that items be added to the agenda in a timely manner. She acknowledged that a significant amount of work occurs prior to items reaching the agenda so Council can be assured they are making informed decisions and she would not want that to change. Mayor Kutteh said he did not think this code change was meant to have that type of impact but that Council always has the option to table an item they are not prepared to discuss.

Upon a motion by Councilmember Stallard, seconded by Councilmember Eisele, Council unanimously approved first reading on ordinance amend Chapter 2, Article II, Section 2-31 of the Statesville City Code-Order of Business for City Council.

There being no further business to come before Council, upon a motion by Councilmember Steele, seconded by Councilmember Matthews, the meeting was adjourned.

Mayor

ATTEST:

City Clerk