

**MINUTE BOOK 25, PAGE 324
CITY OF STATESVILLE PRE-AGENDA MEETING – November 25, 2014
CITY HALL – 227 S. CENTER STREET, STATESVILLE, NC – 4:30 P.M.
STATESVILLE, NORTH CAROLINA**

Mayor Costi Kutteh presiding:

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

Council Absent: Phifer

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

Others: John Marek-SRD, Marin Tomlin-DSDC, Keith Williams

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

I Call to Order

Mayor Kutteh called the meeting to order and advised that an Executive Session would be held following the Pre-Agenda meeting in accordance with N.C.G.S. 143-318.11(a)(4) to discuss an economic development matter and N.C.G.S. 143-318.11(a)(1) to protect the attorney-client privilege.

Mayor Kutteh stated that as an addition to the agenda, City Attorney Eddie Gaines will give an update on the Love's Truck Stop matter.

Mayor Kutteh reviewed the agenda as follows:

II 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 November 13, 2014 Pre-Agenda meeting and the November 17, 2014 City Council meeting.

B. Consider approval of a semi-annual write-off approximately \$87,608.25 in utility accounts.

Mayor Kutteh explained a write-off is performed every six months and this is for the period of January 1, 2013 to June 30, 2013. During that same time period the City recovered \$26,794.53 in utility bad debts. Mayor Kutteh reminded Council members that the City's utility accounts are almost \$50 million per year so this is a very small percentage that is being written off.

C. Consider granting approval to the Fire Department to apply for a Firehouse Subs grant to replace aging Thermal Imaging Cameras.

Mayor Kutteh stated this grant will assist the department in replacing aging and or outdated Thermal Imaging Cameras on two of the front line fire trucks. These cameras are used to speed up the process of searching for victims and fires in a smoky environment. This grant does not require a matching percentage on behalf of the City of Statesville. The amount of the grant request will not exceed \$20,000 and is to purchase two Thermal Imaging Cameras.

REGULAR AGENDA

III Conduct a public hearing and consider approving first reading of an ordinance to annex the Koester property located at 2184 Salisbury Highway.

Mayor Kutteh stated the property is approximately 0.97 acres in size. It is not contiguous to the current primary municipal limits of the City of Statesville. Therefore, this request is being processed as a voluntary satellite annexation. This property is currently zoned RA (Residential Agriculture District) by Iredell County and will have to be rezoned to City of Statesville RA (Residential Agriculture District).

IV Receive an update on the Downtown Restructuring Committee from Jim Prosser.

Mayor Kutteh advised that Mr. Prosser, Executive Director of Centralina Council of Governments, has been assisting the committee that was appointed to look at downtown

redevelopment. He will give Council an update on the process and present Council with a draft Request for Qualification for their consideration at a future date.

V Authorize the hiring of two positions in Planning Department – an Airport Manager and a Senior Planner and approve Budget Amendment #23.

Mayor Kutteh stated the Planning Department is authorized for 7 total positions in the department, down from 10 in 2008. Staff is seeking to fill one currently vacant position, Senior Planner and to add one additional position, Airport Manager. There has been some discussion with Iredell County regarding their participation in funding the Airport Manager. Staff believes this approach will create a more orderly succession plan within the department. The current director has thirty plus years of service with the City and is eligible to retire at his discretion. With the changes that have occurred recently in the area of transportation planning, the Assistant Director is required to dedicate a much larger portion of time to the function of transportation planning thereby reducing her time allocation to other activities.

Council members discussed making the Airport its own department rather than being under the Planning Department. Council member M. Johnson said that if that were to happen there has to be coordination between transportation and the Airport through the Planning Department or the airport is not going to get any more grants. If this becomes a separate department those two are going to have to be very tightly linked. Mayor Kutteh suggested Mr. Pressley, Mr. Currier and Mrs. Smyth discuss this and consider this position report to the City Manager.

Council discussed Iredell County's participation in funding the Airport Manager position. Council member M. Johnson suggested staff draft the criteria and submit it to Iredell County Manager Ron Smith for the Board of Commissioner's consideration.

Mayor Kutteh instructed staff to determine who the Airport Manager will report to prior to the Council meeting on Monday.

Receive an update on the Loves Truck Stop matter from City Attorney Gaines.

Mr. Gaines stated the Superior Court Judge upheld the Board of Adjustment determination on November 16th. The neighborhood group has 30 days from that date to appeal the decision and there has been an indication that they will appeal. The attorneys who represent Love's Truck Stop have asked to appear before Council at the December 15, 2014 Council meeting for their Site Plan Review which is required under City ordinance. The site plan had been approved by the Technical Review Committee and the Planning Board. The neighborhood group could file a motion for a Stay Order with the Court of Appeal which would prohibit Council from hearing the item at the December 15th meeting if the motion is granted.

Mr. Gaines said he has concluded that the hearing will need to be in the form of a quasi-judicial hearing based upon the review criteria that is set forth in the ordinance. The criteria are as follows: the building and site design described in the site development plan will be compatible with and shall not adversely impact adjoining properties whether residential or non-residential. The City Council can approve, conditionally approve or deny applications for site development plan approval. Mr. Gaines stated that Council has approved many site plans in the past without holding a quasi-judicial hearing but it has never denied any and has never had any that involved this degree of litigation. He said the review criteria in the ordinance are very subjective and discretionary type language. North Carolina General Statute 168-393 says that decisions on the approval of site plans are quasi-judicial in nature. If the ordinance authorizes a decision making board to approve or deny the site plan, based not only upon whether or not the application complies with specific requirements as set forth in the ordinance, but also whether the application complies with one or more generally stated standards requiring a discretionary decision on the Findings of Fact made by the decision making board and in his view that this language cannot be ignored and is obviously discretionary language.

Mr. Gaines explained that the review will be of the site plan, not the fact that it is a Truck Stop use. Council will be reviewing it as though it has already been determined that a Truck Stop is an allowed use in the B4 zoning district because that is the determination that the Planning Director and the Board of Adjustment ruled and the Superior Court upheld. Council must look at whether or not the site plan is compatible with and does not adversely affect adjoining properties; not whether or not the use of a Truck Stop is compatible or adversely affects adjoining properties.

Council member Schlesinger asked if Council can question whether or not the traffic patterns or something to that effect is incompatible. Mr. Gaines stated that for example if

the site plan had no turn lanes then that could be a Finding of Fact that the site plan was not compatible.

Council member West stated he did not understand how Council can determine whether the site plan has adverse effects on adjacent property owners if it is not allowed to consider what it is. Mr. Gaines explained that as of right now the use of Truck Stop is a permitted use in the B4 zoning district.

Council member West asked if Council is required to review the site plan before it has finished going through the legal process. Mr. Gaines replied that there is nothing to stop Council from hearing it and under City ordinance the property owner has the right to have their matter heard and their site plan reviewed. Council member West said he sees no reason for Council to hear this until this case is settled in the courts. Mr. Gaines said Council would be denying the property owner due process if it chose not to hear the matter.

At the request of Mayor Kutteh, Mr. Gaines explained the definition of "adjoining property owner".

Council member Schlesinger asked what power Council has to make changes to the site plan if it complies with City requirements. Mr. Gaines explained that any changes would have to be based on evidence brought up in the hearing. Adjoining property owners will have the opportunity to testify under oath at the hearing as well.

Mr. Gaines advised that from now until this matter is heard, there should be no discussion of this amongst Council members or with others. He stated that the final decision from the quasi-judicial hearing can be appealed to Superior Court.

Council member West asked Mr. Gaines to provide him with the information saying that Council cannot consider the use of Truck Stop in their decision. Mr. Gaines again explained that it has already been determined that the use of Truck Stop is an allowed use in the B4 zoning district.

Council member Schlesinger asked if Council has the ability to require changes to the site plan. Mr. Gaines said Council must have strong, credible evidence to back up its Findings of Fact to require any changes.

Council member West said he is opposed to hearing this site review at this time. Mr. Gaines said that unless Council is stayed by the court or there is a motion to stay pending, it cannot deny a property owner due process to have their site plan reviewed.

Council member West asked Mr. Gaines to explain governmental immunity and if Council lets this go through the due process what is the City's liability if it is sued by Love's Truck Stop. Mr. Gaines said it would be more appropriate to discuss this in Executive Session. He stated he is not prepared to talk about this today but would be at the next Pre-Agenda meeting.

Mayor Kutteh asked Mr. Gaines to deliver this report at the Council meeting on Monday and to include in his presentation some of the questions that have been asked at this meeting.

Council member West made a motion to move to Executive Session in accordance with N.C.G.S. 143-318.11(a)(4) to discuss an economic development matter and N.C.G.S. 143-318.11(a)(1) to protect the attorney-client privilege, seconded by Council member J. Johnson. The motion carried unanimously.

There being no further business, Council member West made a motion to adjourn the meeting, seconded by Council member Morgan. The motion carried unanimously.



Constantine H. Kutteh
Constantine H. Kutteh, Mayor

Attest:

Brenda Fugett
Brenda Fugett, City Clerk