

**MINUTE BOOK 25, PAGE 327
CITY OF STATESVILLE COUNCIL MEETING – December 01, 2014
CITY HALL COUNCIL CHAMBERS– 7:00 P.M.
STATESVILLE, NORTH CAROLINA**

Mayor Costi Kutteh presiding:

Council Present: J. Johnson, Morgan, Schlesinger, West, Phifer, Watt, M. Johnson, Williams
Council Absent: 0
Staff Present: Pressley, Fugett, Gaines, Harrell, Davis, Smyth, Salmon, Currier, Hutchens, Anderson, Houpe
Visitors: 21
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.
- IV Swearing in of newly appointed Council member Keith Williams by the Honorable Judge Joseph N. Crosswhite.**
Senior Resident Superior Court Judge Joseph N. Crosswhite swore in Keith Williams with Mr. William's mother standing by his side. Mayor Kutteh asked Mrs. Williams to put Council member Williams name plate in the slot, explaining that the name plate was used by Mr. Williams's father's when he served on the Statesville City Council thirty years ago.
- V Consent Agenda**
Mayor Kutteh stated 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. 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.**
- C. Consider granting approval to the Fire Department to apply for a Firehouse Subs grant to replace aging Thermal Imaging Cameras.**

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 Schlesinger. The motion carried unanimously.

REGULAR AGENDA

- VI Conduct a public hearing and consider approving first reading of an ordinance to annex the Koester property located at 2184 Salisbury Highway.**
David Currier stated that Council had approved the prerequisites for this annexation at their November 17, 2014 meeting. He 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).

Mayor Kutteh declared the public hearing open and asked if there was anyone present who wished to speak for or against this annexation. There being no speakers Mayor Kutteh declared the public hearing closed and asked Council for a motion.

Council member J. Johnson made a motion to approve first reading of an ordinance to annex the Koester property located at 2184 Salisbury Highway, seconded by Council member Morgan. The motion carried unanimously.

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

Mr. Prosser reported on what has been accomplished to date stating that Centralina has contacted potential developers and other cities about their efforts in revitalizing their downtowns. Mr. Prosser distributed a draft Request for Qualifications to Developers for Council to review and consider at some time in the future. Mr. Prosser reviewed his recommendations for moving forward and advised Council to be very careful in their choice of development of the Vance Hotel.

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

Lynn Smyth stated that currently, 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 of Senior Planner and to add one additional position of Airport Manager. The currently vacant position of Senior Planner has historically served as Senior Planner with the airport operations being a primary duty of the position. With the resignation of the incumbent Senior Planner, City staff began an in depth look at the responsibilities and needs of the department. Upon completion of this analysis, it is the recommendation of staff that the Planning Department be authorized to fill two positions, one currently authorized and budgeted and one additional position requiring a budget amendment.

With the unanimous recommendation of the Airport Commission and support of Iredell County, it is recommended the City hire an Airport Manager. Establishing an Airport Manager position will assure the City's ability to meet the following key goals at the airport:

- Adequate dedication to the increasing complexity of operations and maintenance issues;
- Improved capacity to market airport as an economic driver for the region;
- Enhanced relationships with current on-field customers;
- Greater attention to grant acquisition and oversight, and;
- Availability of more specialized knowledge relative to airport activities, operations and navigational aids.

The second position will be that of a Senior Planner. Although this position is not new to the City, its role moving forward would be focused exclusively on high level planning functions. During the past several years, with the dual role of Senior Planner and Airport Planner, airport responsibilities became a larger and larger part of the position's responsibilities thereby reducing the ability of the position to be more involved in complicated, extensive planning projects. In that the economy slowed significantly during this time, the department was able to shift around workloads and projects to keep the department functioning at an acceptable level. With the addition of a full time Airport Manager, the Senior Planner position will be freed up to work on special projects relative to Planning and to spend time reviewing, revising and otherwise addressing the more complicated projects that come to the Planning Department as a result of new development and Council directive.

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. Optimally, the department would like to assure full and very active participation in Charlotte Regional Transportation Planning Organization and other transportation related activities and in order to accomplish this goal, there is a need for additional staff time. Several of the current duties of the Assistant Director, such as the management of certain Boards and Commissions, will be transferred to the Senior Planner position.

Additionally, the position will provide for some layered succession planning within the department. The current director has thirty plus years of service with the City and is eligible to retire at his discretion. In addition to the Assistant Director, having a Senior Planner position in place that works with policy development, improvement and revision will help with continuity of operation should the director retire.

Council member M. Johnson asked what the salary range is for the Senior Planner position. Mrs. Smyth replied it is \$48,058 - \$79,295. Council member M. Johnson said as he understands the discussion with the County, we are asking them to pay 1/3 of the total salary and benefits of the Airport Manager position. We are looking for a person that can do the technical and the marketing side. He asked if typically we look for a person in their existing pay grade and level and then we typically try and translate that into a level that equates within our system but then we limit ourselves in terms of our capacity to increase that salary based on the range to about 5%. Mrs. Smyth said historically that is true. In key positions in recent years we have stretched that a little more that we would have 5 years ago. Council member M. Johnson said what we are looking for may stretch that a little more than 5% and he wants to make sure that management has a clear directive from City Council members that what we are looking for should not be limited to a 5% range on pay. Mrs. Smyth stated the Airport Manager pay range is higher than the Senior Planner position. Mrs. Smyth said she feels that Mr. Pressley understands he has the discretion to go above the 5% when the market demands it, particularly when the skills we are looking for are very specialized.

Mayor Kutteh asked how the Airport Manager pay range was determined. Mrs. Smyth explained the process she used to determine the pay range.

Council member Schlesinger stated he agreed with Council member M. Johnson. He questioned why this position is in the Planning Department and not its own separate department that reports to the City Manager.

Mr. Pressley stated staff proposes a transition period, realizing that it is hard to have a department of just one person. For the marketing aspect of the position, the Airport Manager would report to management and for the technical part it would be a time of transition that could be handled a number of different ways. Staff would like to take its time and plan to do what functions well in the transitional period and how that takes shape is what our ultimate goal turns out to be after we spend some time studying it further.

Council member Schlesinger suggested putting some kind of performance bonus structure in place so that we can get a person in, but based on their performance and the new business they generate, be able to give them a bonus to reach for so we can get somebody that really wants to work that can develop the business aspect for the City. Mr. Pressley stated that again, staff could take some time and determine what works well, and then bring some suggestions back to Council. Staff would like to go ahead and begin the interviewing process so that we are able to get somebody into that position relatively quickly. Council member Schlesinger asked if we would be locking ourselves into this fee structure. Mr. Pressley said he feels that some sort of incentive could be added later without any issues.

Council member M. Johnson stated that the hiring process should not begin until Council receives the marketing report from Parrish & Partners.

Council member J. Johnson stated that at the Airport Commission meeting the County agreed they would pay 50% of the Airport Manager's salary and benefits. Now, since the position is going to be full-time and totally devoted to the airport they should still pay 50%. Council member J. Johnson said he disagrees with the position that the City request Iredell County to fund only 1/3 of the total salary and benefits. The County receives more money than the City does from the tax base at the airport and should participate in funding this position as they have in matching grant funds.

Mayor Kutteh asked staff to address the question of whether or not we should wait to begin the hiring process until we receive the study from Parrish & Partners.

Mr. Pressley stated that staff knows the general approach they would like to take which is to find somebody heavily involved in Marketing so the type of individual we are looking for we know, and I would rather hire an airport manager rather than rushing a study so

we can hire somebody. Also, they could help with the study and help with the transition. Staff would prefer to go ahead and get somebody on board quicker.

Council member Watt asked who is currently handling the responsibilities at the airport. Mr. Pressley replied that Mr. Currier is. Council member Watt said as long as staff keeps the focus on the fact that the position requires someone with high marketing skills he does not have a problem with going ahead and filling the position before the study is received.

Mayor Kutteh asked what information the study will provide that will be helpful in the recruitment of the position.

Mr. Pressley said the study may provide certain ideas, involvements, and structures but at this point staff has not even received the proposal from Parrish & Partners yet so it is hard to say what the study will entail. Staff anticipates getting it within two weeks.

Council member M. Johnson said he saw no reason not to approve the position but he does not think it needs to be filled before the study is received. He said he would like to hear what the consultant says because essentially what he is going to do he is going to tell us what our viability is over some term compared to Union County Aviation, Charlotte and Concord. The study will show where the holes and the gaps are and where we can grow which will help us become more strategic in the way that we move at the airport. In other words we would tailor our requests for grants and construction activity based on where the market is, rather than just strictly from a tactical point of view. The position needs a person who can transcend both sides of that.

Council member West stated Council should approve the hiring of the Airport Manager and allow them to be a part of the marketing survey to get a better understanding of the operations.

Council member J. Johnson made a motion to authorize the hiring of the Airport Manager contingent upon Iredell County funding 50% of salary, benefits and the marketing study and authorize Budget Amendment #23. Council member West seconded the motion.

Mr. Pressley said he was not at the meeting but it was explained to him that basically the City funds half a position presently at the airport. If we make that a full-time position, then we would split the cost of converting that to a full time position with the County. Their intention was to fund 25% of a full-time position. After further discussion the County agreed to fund 1/3.

Council member J. Johnson recalled that Iredell County did not pay any of the matching grant funds in the beginning, until the Airport Commission approached them and asked them for it.

After further discussion the vote was as follows:

**Ayes: J. Johnson, West, Phifer
Nays: Morgan, M. Johnson, Watt, Williams, Schlesinger
Motion Failed: 5-3**

Council member M. Johnson made a motion to approve the position subject to the following conditions:

- 1. The historical limitation in terms of salary be removed at the discretion of the City Manager and HR Director**
- 2. Request to Iredell County to pay 1/3 of this persons total salary, including benefits**
- 3. One year is not adequate in terms of review. Iredell County could opt out at the end of one year and the City would be left with the entire salary and benefits burden. We need a minimum of a five year contract with Iredell County for this, with an annual review of the contract that we start with.**
- 4. The City staff be allowed to go ahead and recruit potential candidates, recruit resumes, and by the way we are already advertising this position, it is on television. Lynn Smyth stated that was correct.**

5. The final decision on hiring will not be made until we have received the complete market report from Parrish & Partners. At that time City Council should at least get to read the report before somebody is hired.
6. The same application would apply for the Senior Planner position relative to pay scale. This is a critically important position as well. We should not necessarily be limited to the facts. If this would actually become the number two person in the process at some point in time, that we should not be limited by our historical perspective on trying to find a commiserate pay grade and only move plus or minus 5%. We need to find the person and I want to communicate; Council wants to communicate to Lynn and Larry that they have the support of Council to do that.
7. Request to Iredell County to pay 1/3 of the Marketing Study
8. Approve Budget Amendment #23

Schlesinger pointed out that Council has not approved the Marketing Study yet.

Larry said the proposal should be received in two weeks.

Mayor Kutteh said it could be included that if Council does not approve the Marketing Study we can just continue the process without the study and any request to the County regarding the study will be forgiven.

Council member Schlesinger seconded the motion. The motion carried unanimously.

IX Receive an update from City Attorney Eddie Gaines regarding the Love's Truck Stop appeal.

Mr. Gaines stated that on November 16, 2014 the Superior Court Judge upheld the Board of Adjustment determination that a Truck Stop/Travel Center is an allowed use in the B4 zoning district. The neighborhood group has 30 days from that date to appeal the decision; however, thus far an appeal has not been filed. The attorneys who represent Love's Truck Stop have requested to appear before Council at the December 15, 2014 Council meeting for their Site Plan Review pursuant to City Code Section 2.15. 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 City 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. Mr. Gaines explained that the focus of the hearing will be on the site plan itself regarding the compatibility of the site plan itself, not the compatibility or incompatibility of the fact that a Truck Stop is a permitted use in the B4 zone. The hearing will be held as though it is a permitted use based on the rulings of the Superior Court, Board of Adjustment and the Planning Director. The quasi-judicial hearing will be based on receiving sworn testimony and adjoining property owners will be officially notified of the hearing and may present witnesses through sworn testimony. The opponent group has indicated through their attorney that they very well may appeal. If they do appeal they have the right to file with the court a Motion to Stay, seeking to stay further action until the North Carolina Court of Appeals rules. So far there has been no such motion or notice of appeal filed. If an Order of Stay is entered then Council will not be able to hold the hearing at the December 15, 2014 Council meeting. Council would have the option and discretion to continue the hearing if a Motion to Stay is filed by December 15th but not yet ruled on by the North Carolina Court of Appeals.

Council member Schlesinger asked how much time prior to the hearing is notification to adjoining property owners required. Mr. Currier stated the notifications must be sent no more than 25 days prior and no fewer than 10 days prior to the hearing.

Council member West stated he is opposed to City Council hearing this until the case has gone through due process. He pointed out that Love's Truck Stop could actually start construction if Council approves the site plan even if the appeal has not been determined. He asked why Council has been reviewing site plans without going through the quasi-judicial process. Mr. Gaines replied that technically Council should have been reviewing site plans by quasi-judicial hearing based upon his reading of the City ordinance and State law. Council member West asked Mr. Gaines to furnish him with a copy of that information.

Council member West asked if the City changes its ordinance requiring a quasi-judicial hearing does that override State Code. Mr. Gaines said in his opinion, the decision is based upon what the State law says in conjunction with what our ordinance says. The State law says that if there is a general discretionary type standard in the ordinance it must be by quasi-judicial hearing. The City ordinance has a very subjective standard, which is that 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. Because the ordinance has that review criteria in it, when you take that and then look at the state statute, the state statute requires a quasi-judicial hearing. If the ordinance was changed and based on very objective standards a quasi-judicial hearing would not be required for site plan reviews which is something that Council may want to consider at some point. Council member West pointed out that a quasi-judicial hearing determination can be appealed. Mr. Gaines agreed and reviewed other options that could be available for Council to consider.

Council member West asked Mr. Gaines if some members of Council are asked to recuse themselves from the hearing for a predetermined opinion will he help them fight that or support it. Mr. Gaines explained that the law states that if an objection is raised to a member's participation and that member does not recuse himself/herself, then the remaining members shall by majority vote rule on the objection, so it is not a matter of him helping or not helping a Council member with it. It is the remaining members of the board that decide.

Council member Schlesinger asked if this is coming from the State statute regarding a Board of Adjustment. Mr. Gaines said it applies to any quasi-judicial hearings. The statute states that any member of any board exercising quasi-judicial functions shall not participate in or vote in any quasi-judicial matter that would violate an affected person's constitutional rights to an impartial decision maker. The statute further states that impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. Mr. Gaines said in his opinion that would apply to this board hearing this matter as a quasi-judicial matter.

Council member Schlesinger asked Mr. Gaines what is the burden of proof required by the people contesting the site plan. What do they need, what kind of information do they need to provide in order for Council to hear that and be able to judge it. Mr. Gaines replied there would need to be evidence presented in the hearing from which the board could make a finding that, based upon that evidence, this particular site plan is not compatible with or adversely impacts adjoining properties, not the fact that it is a Truck Stop. Council member Schlesinger asked if this can include traffic pattern issues. Mr. Gaines replied it could.

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

Attest:


Brenda Fugett, City Clerk




Constantine H. Kutteh, Mayor