

**MINUTE BOOK 25, PAGE 516  
CITY OF STATESVILLE COUNCIL MEETING – December 07, 2015  
CITY HALL – 227 S. CENTER STREET, STATESVILLE, NC – 7:00 P.M.  
STATESVILLE, NORTH CAROLINA**

**Mayor Costi Kutteh presiding:**

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

**Council Absent:** 0

**Staff Present:** Pressley, Gaines, Fugett, Davis, Smyth, currier, Gaines, Houpe, Navey, Barone, Ashley, Martin, Ventresca, Triplett, Gregory

**Others:** 14

**Media Present:** 0

**I Call to Order**

Mayor Kutteh called the meeting to order.

**II Invocation**

The City Clerk gave the invocation.

**III Pledge of Allegiance**

Mayor Kutteh led the Pledge of Allegiance.

Mayor Kutteh reported that Item VII has been removed from the agenda because the applicants withdrew their application for annexation. Mayor Kutteh explained that there is no restrictive period from the re-filing of an annexation request.

Mayor Kutteh stated that one item will be added to the agenda under Other Business; To consider a request by the Historic Preservation Commission to appeal the decision made by the Board of Adjustment granting a variance to Sinclair Professional Properties, LLC.

**IV 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 16, 2015 Pre-Agenda meeting, and November 16, 2015 Council meeting.**

**B. Receive the Statesville Convention & Visitors Bureau's (SCVB) audited Annual Financial Report for the fiscal year ended June 30, 2015.**

**C. Consider approving the semi-annual write-off of approximately \$125,307.91 in utility accounts.**

**D. Consider approving 2<sup>nd</sup> reading of TA15-06 filed by the City of Statesville to amend Article 3 - Zoning, Section 3.04 - Zoning District Regulation, Table 3-1: Use Matrix, Article 5 - Supplemental Regulation/Performance Standards for Specific Uses, Section 5.04 - Primary Uses and Structures, UU. Professional Residential Facilities, and Article 9 - Definitions, Section 9.02 - Definitions, Professional Residential Facility.**

Mayor Kutteh stated that Mr. Kevin Ross, who is the parent of two special needs children, attended the first reading of this item to inquire about whether this was something more than trying to make the City Code consistent with State law. Several members of Council received an e-mail from Mr. Ross this afternoon and he has also been in communication with Mr. Currier, the City Planning Director, and they have been in touch with various folks involved in the process at the state level and everyone agrees that all this text amendment purports to do is to

put the City of Statesville ordinances and code in compliance with the State law that governs how we behave in these kind of actions anyway.

- E. **Consider approving 2<sup>nd</sup> reading of ZC15-13 filed by Jerald Yang for the property located at 215 Eastside Drive; Tax Map 4744-97-1260; from B-4 (Highway Business) to R-10 (Urban Low Density Residential) District.**
- F. **Consider approving 2<sup>nd</sup> reading of TA15-04 filed by the City of Statesville to amend the following sections in the Statesville City Code: Article 3 – Zoning, Table 3-1; Article 5 - Supplemental Regulations/Performance Standards for Specific Uses/Section 5.04 - Primary Uses and Structures/P. - Churches, Storefront in CB and CBP; Article 9 – Definitions/Section 9.02.**

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 West. The motion carried unanimously.**

### Regular Agenda

- V **Swearing in of re-elected Council members Roy West and Michael Johnson and newly elected Council member Keith Williams by the Honorable Deborah P. Brown.**  
The Honorable Deborah P. Brown swore in Roy West, Michael Johnson and Keith Williams.
- VI **Election of Mayor Pro Tempore**  
**Council member West nominated Council member Michael Johnson, seconded by Council member Schlesinger.**  
**Council member J. Johnson made a motion to close the nominations.**  
**Upon a vote, the motion to elect Council member Michael Johnson as Mayor Pro Tempore was unanimously approved.**
- VII **Consider approving 2<sup>nd</sup> reading of an ordinance to annex the properties owned by Tsumas Family LTDP & Wheeler Investments, LLC located at and around 1068 Elmwood Road.**  
The applicants withdrew their application for annexation. This item has been removed from the agenda.
- VIII **Conduct a public hearing and consider approving site plan P15-12 for Black Chrysler/Dodge/Jeep located at 851 Salisbury Road; Tax Map 4744-52-1771.**  
Mayor Kutteh explained this will be a quasi-judicial hearing. He swore in all who planned to testify.

David Currier gave the following staff report and reviewed maps and aerial photos of the property:

The site is located off Salisbury Road at its intersection with Club Drive and Dorset Place runs along the rear of the property. The property contains approximately 5.81 acres and is zoned B-4 (CU). The plan is for a 4,742 sq. ft. service shop addition to the existing dealership. The building fronts and has access on Salisbury Road. The new addition meets the setbacks. The exterior walls will be constructed of an EFIS wall system (synthetic stucco). The structure meets the architectural requirements. Landscaping has been provided along the perimeter of the site and a retaining wall will be constructed on the Dorset Place Side of the site. City Council approved the second reading of a conditional zoning request on October 19, 2015 to allow for the addition. The conditions placed on the rezoning request limits area for an automobile service shop and parking for new and used vehicles only, excluding junk vehicles, wrecked and/non-operable vehicles; and no access to the site from Dorset Place. The Technical Review Committee approved the revised site plan on November 04, 2015; therefore staff recommends approval of the site plan. The Planning Board's recommendation was favorable with a unanimous vote as presented.

At the request of Council member Schlesinger, Mr. Currier reviewed a drawing of what neighbors on the north side of Dorset would be able to see.

Mayor Kutteh declared the public hearing open and asked if there is anyone present who wished to speak in favor or in opposition of this item. There being no speakers, Mayor Kutteh declared the public hearing closed.

Council member M. Johnson asked if all the discussion points that Council had relative to this site plan have been addressed and are incorporated into the plan. Mr. Currier replied that all have been addressed and incorporated into the plan.

**Council member M. Johnson made a motion to approve site plan P15-12 for Black Chrysler/Dodge/Jeep located at 851 Salisbury Road; Tax Map 4744-52-1771, seconded by Council member J. Johnson. The motion carried unanimously.**

**IX Receive a report from Richard Angino regarding the Vance Hotel.**

Richard Angino, with Third Wave Housing, stated that when working on an historic development, there are many questions that need to be answered about the property first. He said since Historic Tax Credits are being used as part of the financing the property must be verified to be historic. Paul Fomberg with the NC State Historic Preservation Office has verified that the Vance Hotel is indeed an historic structure. He is certain that the two storefronts that are in the front is the original uses and that is what they would like us to continue to use those two spaces as, whether inside it is used for a different product, but basically the façade that is on the front side of it is all historic. The main place they would like to concentrate on are the public areas, that is the main ballrooms, basically what you think of as a hotel when you walk into it, that is really what they want to make sure that we preserve related to it. The second thing is the hallways. Over time with the addition of HVAC and fire systems, ceilings and hallways kept dropping lower and lower so the ceilings are now about 8 ft., but above that we actually have some beautiful windows above the doors, so one of the big principles that we have been working on is how to get back to the original hallways and the original public space in the building itself.

Mr. Angino said there has been discussion as to whether or not the back ballroom was actually a ballroom or an exterior open space originally. Mr. Fomberg has said that the parking deck and the lower shops are of no historic value, and has indicated it could be made to look like it matches up with the Vance Hotel but he said there is no reason why we should really concentrate on that very much and he sees no reason why we cannot do what we want with that.

The shell building is not historic and in reality is not even in the downtown historic area. The only way to get historic credits for it would be to annex it into the district or apply for it as an individual historic building by itself, but Mr. Fomberg felt that it had no fabric to warrant that. The building has some water damage but is in good condition for a vacant building. There are no usable systems (electrical, HVAC, fire) and all will basically need to be gutted.

Mr. Angino said he looked at was how to configure the existing building. We are looking at two paths. One would be the "For Rent" option which most likely would be thirty-six, one bedroom apartments. The other option would be a "For Sale" product which would be approximately eighteen, larger two bedroom apartments.

The next piece of the puzzle to work out is the parking for the building. Generally 1 to 1.5 spaces are needed per unit. There have been discussions between multiple parties about adding a new parking deck where the shell building and the actual deck is located now.

Regarding the first floor and the basement, we have been working on the assumption that the City will utilize the first floor and the basement of the building but we have also been working on other options related to it just to see what other things would fit into downtown Statesville and in that space. Clearly it would need to be some type of public meeting space. We have a meeting later this month with a retail broker to discuss different options.

Historic Tax Credits will be used to finance about \$.5 million of the product. Federal Tax Credits are generally placed with local corporations or higher net worth individuals so we

will continue to work on the options related to that. Lenders are financing residential "For Lease" properties so that is a very good positive. The "For Sale" product (condos/lofts) is still moving slowly after the recession.

Mr. Angino stated he is meeting with a market group and several focus groups to determine who is going to live in the building and what type of market place needs to be addressed for Statesville. He said he has also been meeting with the Downtown Statesville group to take inventory of what is existing downtown, what type of rents, square footage and qualities to put a portfolio together of what is working in Statesville right now and what is being proposed to present to the lenders.

The next steps are to finalize the Development Agreement, determine the market both locally and through third parties and then model out the different options as to what type of rents we can get, what type of sales prices we can get and how that works out as a transaction itself. Work will also begin on a preliminary design with the architect.

The first of three steps to get the historic credits is to present a package to the Park Service.

Council member M. Johnson asked if the parking deck will be integral to the building in terms of exterior elevation and design. Mr. Angino replied that is still in question as to whether or not it is historic or not. Mr. Pressley added that there are a few challenges related to the ramp and the awning that is over the back. The awning is historical and staff has looked at a few different alternatives on the parking deck. This will be presented to Council as soon as it is ready. Mr. Angino stated that it also depends on what historical period of time is chosen to go back to.

- X Receive a report from Kimley-Horn regarding the US Route 21 Traffic Study.**  
This report was received at the Pre-Agenda meeting and was removed from the City Council meeting agenda.

- XI Consider accepting a grant from the US Department of Justice/COPS Hiring Program and approve Budget Amendment #9.**  
Pam Navey stated the Statesville Police Department received official notification from the US Department of Justice (US DOJ) that its application for a grant via 2015 COPS Hiring Program was awarded. This grant is effective from October 1, 2015 – August 31, 2018. The grant supports the hiring of three COPS Officers in partnership with Statesville Housing Authority (SHA) at 75% of the sworn, entry-level new hire salaries & benefits of three awarded officer positions, effective October 1, 2015 - August 31, 2018. The total Federal award is \$347,289.93. The City of Statesville will contribute the 25% cash match required by the grant (\$38,587.77 per year x 3 years = \$115,763.31 Total match for 3 years). The City of Statesville is required to retain the position for at least 12 months past the grant end date (i.e. September 1, 2018-August 31, 2019). All other expenses (i.e. uniforms, vehicle, training, overtime, etc.) will be provided by the City and the City's Finance Department will serve as fiscal agent.

**Council member J. Johnson made a motion to accept the grant from the US Department of Justice/COPS Hiring Program and approve Budget Amendment #9, seconded by Council member Morgan. The motion carried unanimously.**

- XII Consider approving a forgiveness of \$21,524.95 in loan receivables for the property located at 825 Opal Street.**  
Sherry Ashley stated that ASU Capital, LLC would like to purchase 825 Opal Street from Ms. Margie James for \$15,000 minus \$1,238.95 PSNC lien for HVAC unit and minus \$1.00 real estate commission. However, a rehabilitation loan for \$35,285 in the form on a Deed of Trust is attached to the property. Therefore, Council could approve a forgiveness of \$21,824.95 contingent upon receiving a copy of the new Deed of Trust after the sale and payment of \$13,460.05.

**Council member J. Johnson made a motion to approve a forgiveness of \$21,524.95 in loan receivables for the property located at 825 Opal Street, seconded by Council member Williams. The motion carried unanimously.**

- XIII Consider approving an ordinance amending Electric Rate Schedules as presented in the Cost of Service/Rate Study.**

Kent Houpe stated that these rates changes are being proposed as part of the Cost of Service/Rate Study presented by GDS Associates, Inc. The rate changes shall be implemented over a two-year period. Staff recommends adoption of the rates as presented in Attachment A to be effective for bills rendered after March 1, 2016 and Attachment B to be effective for bills rendered after March 1, 2017.

**Council member M. Johnson made a motion to approve an ordinance amending Electric Rate Schedules as presented in the Cost of Service/Rate Study, seconded by Council member Schlesinger. The motion carried unanimously.**

**XIV Receive a report regarding Special Appropriations.**

Lynn Smyth stated Staff surveyed all agencies currently listed in the Special Appropriations budget asking them to answer two questions: How is funding provided by the City of Statesville being used and what effect will it have on your organization if this funding is eliminated? All thirteen funded agencies responded to the request for information.

Council member Schlesinger asked why Lifespan is receiving such a large amount when it is located in Troutman. Mrs. Smyth replied that Lifespan was previously located in Statesville and still serves the citizens of Statesville. Mayor Kutteh further explained the amount.

Mayor Kutteh stated that this topic will be included in the Retreat agenda and staff will provide background information as to how these amounts were decided upon.

**XV Receive a report on public input for the selection of Police Chief.**

Mrs. Smyth stated the City began its official search to replace the Chief of Police upon the resignation of Chief Tom Anderson. As a part of this process the City Manager chose to reach out to the community for input into the selection criteria for the new chief. To date the City has conducted two public input sessions, one on November 23 and the other on November 24. We have also received comments via an online survey. Mrs. Smyth distributed a compilation of the comments to City Council. She explained that staff tried not to edit the comments and some are repetitive. Staff plans to conduct one more input session on December 14<sup>th</sup> at 6:30 at the Unity Hall at Unity Center.

Mrs. Smyth reported that some citizens believe that the City Manager should hire from within the department, others feel that he should hire outside the department. Some think the department needs to take a tougher stance and others feel we should soften our approach. The common thread in the comments was that citizens want to see a new chief who communicates well with all elements of the community, a chief that is willing to work collaboratively with citizens, other law enforcement agencies and other groups that can help him improve the quality of life in Statesville by reducing the crime rate and enhancing the image of the department. They want to see a chief who is out in the community that he serves and is involved in community activities.

Mrs. Smyth stated the next step is to make sure that each Council member has the opportunity to provide input and invited any that have not already done so to take the opportunity to speak with the City Manager about traits, characteristics, goals and opportunities that they would like to see in the new Police Chief.

Mayor Kutteh stated current Fire Chief Dennis Hutchens is retiring December 31, 2015. Assistant Fire Chief Gary Styers will be acting as the Interim Fire Chief as of January 01, 2016.

**ADD Consider a request by the Historic Preservation Commission (HPC) to appeal the decision made by the Board of Adjustment granting a variance to Sinclair Professional Properties, LLC.**

Kalen Martin stated that on June 24, 2015, the Historic Preservation Commission met to review the following changes to 318 Davie Avenue requested by Sinclair Professional Properties, LLC: 1) after-the-fact approval for the installation of vinyl siding on the east elevation of the rear wing of the building, 2) replacement of wooden siding with vinyl siding on the east wing of the building, 3) construction of handicap parking spaces and a handicap ramp on the front of the building, 4) grade off front bank to create a sloping front lawn, 5) approval of new signage for the front lawn. The HPC denied the applicant's request for after-the-fact approval of vinyl siding on the east elevation of the rear wing of the building, replacement of wooden siding with vinyl siding on the east wing of the

building, replacement of wooden siding with vinyl siding on the east wing of the building, and approval of new signage for the front lawn. The two remaining issues were tabled. Sinclair Professional Properties, LLC appealed the decision by the HPC and submitted an application for a variance on July 22, 2015. The applicant appealed the following requests: 1) after-the-fact approval of vinyl siding on the east elevation of the rear wind of the building, 2) replacement of wooden siding with vinyl siding on the east wind of the building, and 3) approval of new signage for the front lawn. On November 3, 2015, the Board of Adjustment (BOA) met to consider the appeal made by Sinclair Professional Properties, LLC. In its decision, the BOA determined that the HPC 1) did not follow its' own rules of procedure and did not know all code sections that applied when it considered the applicant's request, 2) the HPC was not aware of some controlling circumstances and did not wait to get additional information before making its' decision, 3) the HPC did not consider surrounding properties in its' decision to deny the applicant's request, 4) the applicant's request should be considered individually, 5) there are unique circumstances to this property including the fact that it is surrounded by businesses, numerous other properties in the area have vinyl siding, and the property is used as a mortuary, 6) the structure is currently in state of disrepair and repairs to the structure are necessary to protect the public safety and welfare, 7) the HPC did not consider the safety of the public in allowing the repairs, 8) adjacent property owners have stated that they are not opposed to the variance request filed by the applicant and spoke in favor of the variance request at the HPC meeting on June 24, 2015. The Board of Adjustment thus decided to grant the variance request on November 3, 2014. The HPC met on November 11, 2015 and voted to request Council to appeal the BOA's decision to grant a variance to Sinclair Professional Properties, LLC. The HPC felt that the BOA did not follow its own rules of procedure when rendering a decision, nor fully comprehend the function of the HPC. The BOA's Finding of Fact went into effect on November 20, 2015. The respondent has 30 days after the Findings of Fact become active to submit an appeal.

Jonathan Dearman, Chairman of the HPC, stated he is here representing the HPC and its members. He said this decision by the BOA sets a precedent in the community that the HPC guidelines are empty and if the Commission denies your request, you simply appeal it. A decision to appeal this, to have the district court look at it, will validate the HPC and its' guidelines. A lot of the issues that the Commission members had were with the process. Mr. Dearman stated he spoke on the phone with the NC School of Government and was told that and was told that this happens a lot. When an HPC appeal goes before the BOA it is to be treated as a court of law; pro/con hearings and to review the process. Commission members felt this did not take place. He stated the Commission particularly took exception to the BOA's Findings of Facts #8, 9, 13, and 14. Mr. Dearman stated the HPC guidelines were rewritten a couple years ago and he knows that special actions were taken at that time to make sure there was congruency between the UDC and the HPC Guidelines.

Andrew Ventresca gave further details on requests made by the applicant to the BOA and their decision and Findings of Facts #8, 9, 13, and 14.

Council member M. Johnson stated he does not understand the Conclusions of Law given by the BOA. The rule of law with the Board of Adjustment is that if they find any one of these items false, then the application must be denied. He pointed out Findings of Facts that he disagreed with.

Mayor Kutteh asked if Council had the authority to remand this back to the Board of Adjustment. Mr. Gaines replied it can only be appealed or not appealed.

Council member West stated he somewhat agrees with Council member M. Johnson's view of the Findings of Fact, but he does not feel that the issue before Council is to arbitrate a dispute between the HPC and the BOA. He said the City will have to hire two different attorneys to represent each board and in his experience the Superior Court of Appeals hardly ever reverses a decision by the BOA, if they ever approve an appeal it is usually for procedural issues and would be sent back to the BOA.

City Attorney Eddie Gaines stated the Superior Court of Appeals could affirm the BOA decision, overrule the BOA decision or send it would back before the Board of Adjustment if they found an issue with procedures.

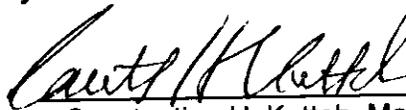
**Council member West made a motion to deny the request, seconded by Council member J. Johnson. The vote was as follows:**

**Ayes: West, J. Johnson, Morgan, Phifer, Williams, Schlesinger  
Nays: M. Johnson, Watt**

There being no further business, Mayor Kutteh asked for a motion to adjourn.

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



  
Constantine H. Kutteh, Mayor

Attest:

  
Brenda Fugett, City Clerk