

Minutes  
Kinston City Council  
Tuesday, January 2, 2018  
5:30 pm

REGULAR MEETING

Mayor Don Hardy called the Kinston City Council regular meeting to order at 5:31 pm.

Khayyam Shepherd led the prayer followed by the Pledge of Allegiance.

Those present: Councilmembers Robert Swinson, Sammy Aiken, Joseph Tyson, Kristal Suggs, Mayor Pro Tem Felicia Solomon and Mayor Don Hardy

Also present: Tony Sears, City Manager and David Rief, Acting City Attorney

**Adoption of the Agenda**

Councilmember Swinson made the motion, seconded by Mayor Pro Tem Solomon and upon a unanimous vote the agenda was adopted.

CITIZEN COMMENT

**Geraldnye Barbour**, 2749 Forrest Drive and with the African American Heritage Commission of Kinston and Lenoir County (AAHC), congratulated Mayor Hardy, Councilmember Suggs and Councilmember Swinson on their recent elections and reelection. She also congratulated Councilmember Solomon for her appointment as Mayor Pro Tem. In 2018 the AAHC will continue to strive to increase the awareness of the contributions of African Americans, and will work with other groups who have similar goals. AAHC is sponsoring a bus trip to Raleigh to the NC History Museum on January 27, 2018 to attend the 17<sup>th</sup> Annual African American Cultural Celebration. The third annual AAHC celebration will be held Memorial Day weekend and will pay tribute to an African American musician who has made a major contribution to the development of funk.

PRESENTATIONS AND RECOGNITIONS

**1. Retirement of Levi Simmons.....Mayor Hardy and Chief Jaynes**

Alonzo Jaynes, Police Chief, stated today is historical on a number of levels. We get to see the conclusion of a successful career in law enforcement by someone who was one of the first African American police officers in Jacksonville, North Carolina. He was the longest serving School Resources Officer (SRO) in Lenoir County and he has worked over 50 years in law enforcement. In addition to being a trailblazer, Corporal Simmons is a loyal and dedicated employee. He retired December 31<sup>st</sup> and as of today he has volunteered as a Sentinel. He thanked Mr. Simmons for enhancing the relationship with the community and being the type of

employee a manager appreciates and the type of police officer that is respected by his peers. He presented a retirement plaque and Officer Simmons' duty weapon.

Mayor Hardy stated that Levi Simmons is a legacy with 50 years of service in the State of North Carolina. That is a lot of time dedicated to service to our communities. He thanked him for his service and added that he plans to bring him back in the future to present him with the Order of the Long Leaf Pine.

MINUTES

**Consider approval of the minutes of the Kinston City Council meeting held on Monday, December 4, 2017.....Monique Hicks**

Mayor Pro Tem Solomon made the motion, seconded by Councilmember Tyson and upon a unanimous vote the minutes were approved.

ACTION AGENDA

**1. Conduct a Public Hearing AND consider approval of a request for a Conditional Use Permit for a nightclub at 317 East Gordon Street.....Adam Short**

David Rief, Acting City Attorney, stated this is a quasi-judicial hearing which means it is more like a court hearing instead of the traditional rezoning request hearing. State law sets specific procedures and rules on how the board must make its decision. This board's discretion is limited. The board must base its decision upon competent, relevant and substantial evidence in the record. The quasi-judicial decision is not a popularity contest. It is a decision constrained by the standards and the ordinances and based on the facts presented. Those who speak as a witness should speak on the facts and standards, not personal preference or opinion. Participation in this hearing is limited. This meeting is open to the public and everyone is welcomed to watch. The parties withstanding have rights to participate fully. They may present evidence, call witnesses and make legal arguments. Parties are limited to the applicant, the City of Kinston and individuals who can show that they will suffer special damages. Other individuals may serve as witnesses when called by the Board. General witness testimony is limited to facts, not opinions. For certain topics the Board needs to hear opinion testimony from expert witnesses. These topics include projections about impacts on property values and projections about impacts on increased traffic. Individuals providing expert opinion must be qualified as experts and provide the factual evidence upon which they base their expert opinion. Witnesses must be sworn in or affirm their testimony. At this time the City Clerk will administer the oath to all individuals who intend to provide witness testimony. Parties to this case are entitled to an impartial Board. A Board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter or a close relationship with an affected person.

The City Councilmembers confirmed that they did not have any partiality to disclose or recusal to offer.

Mr. Rief stated that the parties to this case also have rights for any ex parte communication to be disclosed. Ex parte communication is any communication about the case outside of the hearing that may include site visits as well as any communication with the parties, staff or the general public.

Councilmembers Tyson and Aiken disclosed that they have visited the site. No one objected to any Board members participation in the hearing.

Adam Short, Planning Director, stated we have a request for a conditional use permit to operate a night club at 317 East Gordon Street. The application was submitted by Donnis Whitfield on behalf of Whitfield Brothers Entertainment Group. The property is within the city limits of the City of Kinston and within our zoning jurisdiction. The property is zoned B-1 (General Business) which allows for bars with an approved conditional use permit. Based on the recent update of the Unified Development Ordinance (UDO), the requirements for a bar shall not be within 100 feet of a church and shall not be within 300 feet of any other presently licensed bar, bingo or arcade. The zoning in the areas north, south and east is B-1 and RA-6 (Residential) to the west. The Planning Board made the recommendation for approval by a unanimous vote at their special meeting on November 29, 2017. The requirements to be evaluated as part of the conditional use permit consideration for the quasi-judicial process is Section 4.5.4.5 of the UDO. The City Council shall issue a conditional use permit if it is evaluated and an application through a quasi-judicial process and determine that the establishment, maintenance and operation of the conditional use will not be detrimental or endanger the public health, safety or general welfare. The conditional use will not be injurious to the use and enjoyment of other properties in the immediate vicinity for purposes already permitted, nor diminish or impair property values within the neighborhood. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the district. The exterior, architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed, in the course of construction or in the immediate neighborhood; or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood. Adequate utilities, access roads, drainage, parking or necessary facilities have been or are being provided. Adequate measures have been or will be taken to provide egress and ingress so designed to minimize traffic congestion in public streets. The conditional use shall in all other respects conform to all the applicable regulations of the district in which it is located. Public access will be provided in accordance with the recommendations of the City's Land Use Plan and Access Plan for the present amount of public access and public parking as it exists within the city now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern. The

proposed use shall be consistent with the recommendation and policy statements as described in the adopted Land Use Plan. The four general conditions of the development will not endanger the public health or safety; will not injury the value of adjoining or abutting properties; will be in harmony with existing development and uses in the area in which it is located, and its general conformity with the Land Use Plan and other plans as adopted.

**Donnis Whitfield, Applicant,** stated they want to open this club at 317 East Gordon Street. The club has previously been open over the years, and they are bringing it back to get it on the tax base and get some jobs going. They are going to be employing about ten people on an average night, on a busy night. It is going to be upward of about fifteen people that will have employment. A security system is in place and we have a standing contract with the City of Kinston's Police Department. It has been in place for a while because we have events in the City, and we have never had any incidents. We are going to employ police officers and will have two officers any night that we are open. It is a night club and we are going to have lots of fun and give some people somewhere to go and blow off some steam. Hopefully, it will be a great venue and we will be around for many years to come.

Councilmember Tyson asked Mr. Whitfield to address parking for the facility. When he visited the facility, to him there was no on-site parking, and the only parking for that facility is on the street which dead ends at 311. Mr. Whitfield stated the parking has always been in the parking lot that belongs to the church which is the old Grocery Fair. The pastor gave the previous owners permission to use it as parking, and he thinks that will be the case with them as well.

Councilmember Tyson confirmed that Mr. Whitfield is stating that his parking will be in the parking lot of Saint Augustus AME Zion Church. He asked if Mr. Whitfield has permission from the church as of now. Mr. Whitfield stated he does not have anything written, but the previous owner, who is going to speak, will speak about her conversation with the pastor. He let every business over there park in the parking lot, even the churches.

Councilmember Tyson stated once you lose a license for a club over a period of 90 days, it starts all over, so the past history of the clubs have nothing to do on the decision now because since the other club the road is now blocked off and the church did not own the parking lot. We have to base the decision on the conditions as of tonight. Mr. Whitfield stated the previous club, Club Foxy, the road was blocked off and they definitely had permission to park there.

Councilmember Aiken stated that a club has been there for the last 40 years. Mr. Whitfield stated that is correct and they have all used that same parking lot. Councilmember Aiken stated in the past security has been out in the parking lot.

Councilmember Aiken asked the hours of operation. Mr. Whitfield stated from 10:00 pm on back. The club will not be open when the church is open. There will not be any overlap.

Councilmember Aiken stated in the past it used to be call the Cellar and other different clubs and he noticed that the security after the club was closed walked the parking lot and policed the area to see if there were any liquor bottles. That's part of the police jobs to make sure no one is in the parking lot drinking.

Mr. Whitfield stated absolutely. We have hired two police officers because you have to hire two because they have to be on the buddy system, so at the end of the night the police will be out there making sure that there are no incidents. When you are turning out a nightclub a lot of times that is when you have conflicts and things go on. The police will be there just to make sure to usher everybody to their vehicles and get them away from the building and to get them home safe and sound. Our security will be out there walking the parking lot and picking up any trash. You have to do that because that is normal operating procedures, to clean up behind yourself.

**Latisha Thomas, 4022 Copperfield Drive, New Bern, NC previously of 2310 Stallings Drive,** stated she and her partner were previous owners, and they still own the building and are leasing it. We had an agreement with the church to park there. It was our obligation to cut the front grass and to make sure all the beer bottles and cans, if any were out there [were picked up]. Being that it is an avenue for people without transportation; people walk through on a daily basis. There were times we would go there and bottles and cans would be there during our non-operational hours, and we did clean them up. We made sure that the parking lot was clean Saturday night before services Sunday. We went out every Sunday around 5:00 to make sure nothing else was left out there when we opened Sunday afternoon. We never opened during church hours out of respect. We did visit the churches to let them know that we were there and about the security system that we had which you could see what goes on at the churches and it recorded, so the violence and criminal activity over there was limited. The years that we had it, we never had to call the police but once, and that was on a Sunday that a psychotic lady came in with a psychotic episode. We never had any issues over there at all, no violence, no fights, none of that. We did give back to the community. We did book drives, Back to School backpacks to give back to the communities. We talked to the kids about their grades, so not only was it an avenue for a nightclub and to give some people a job, it was also letting the kids know that you have to stay in school, do well on your grades and give back. We hired about five people, so we gave five people a job, but when I closed those five people lost their job, so I think with Mr. Whitfield and his team it will bring more revenue to the City of Kinston. Not only that, it will help the churches with the security and the violence and the criminal activity that may be over there.

Mayor Pro Tem Solomon asked how long the business was there. Ms. Thomas stated about a year to a year and a half, and the reason she left was because of the flood. It is a long commute from New Bern to Kinston, and then she opened another one in Havelock. As stated earlier, that building has been a club for years. When we inherited it, bought it, it had a bad name because it was called the Cellar. We changed everything in there and we did some renovations ourselves, so if you were to walk in there it wouldn't be the same way like it was in the past.

Mayor Pro Tem Solomon asked how long the building had been empty before Club Foxy. Ms. Thomas stated it was empty maybe 8 months when they [applicant] inquired about it. She was still checking on it daily, so it is a move in and ready operational place.

Mayor Hardy confirmed that Ms. Thomas stated it would bring money to the city. Ms. Thomas stated yes, it would bring money to City because you are getting people from the outside coming in and the taxes that club owners pay, local taxes and state taxes, the City would get money.

Councilmember Suggs confirmed that Ms. Thomas stated that the club operating there would be beneficial to the churches and community. Ms. Thomas stated during non-operational hours, there is a security system. Churches are not there at 10:00 at night. Most crimes are committed late at night, so it would cut back on the criminal activities and the crimes in that area because there is a security system, plus there is outside security and police officers and there are people out there during that time. No one is going to do any criminal activity during that time or any other time knowing that there is a security system there and knowing there are people in the building. We had limited people walking and limited people just browsing, looking for stuff to do because we were there and we had a security system and they know that and the hours that we were there. We had a few occasions when some of the church members came to view the place and to see it and to thank us for that.

Councilmember Aiken asked the age for admission. Ms. Thomas stated Mr. Whitfield can answer that, but for her it was 25 for ladies and 30 for men. When Jackie Spade came into town and wanted to do an event for the children of Kinston, to give back, it was 21 and up. She had no problems and did not have to call the police. They were searched and it went over smooth with no problems.

Mr. Rief stated just as a reminder to the witnesses and the Board, what happened in the past is not relevant to the decision that this Board has to make tonight. The standards that Adam Short set forth for this Board are the factors that this Board should be considering. Issues such as tax revenue and what happened in the past and who was admitted, and agreements in the past are not relevant. If we could, let's try to focus on these factors and determine whether or not they are being met with the proposed used, not the former use.

Councilmember Tyson stated he is totally focused and looking closely at what Adam Short talked about with 4.5.4.5.5, and 4.5.4.5.6 and 4.5.4.5.8, but he is really looking at 8.

Mr. Rief stated the provisions referenced are referring to issues regarding utilities, access roads, drainage, parking and necessary facilities, ingress and egress, design to minimize traffic congestion and public access.

Councilmember Swinson stated he sees Reverend Pridgen and Mr. Brown with Saint Augustus AME Zion Church, and he did not know if they wanted to address the parking issue. He asked if they have been contacted by the new owner about using their parking lot for parking since it is a one way street and there is a dead end on that street.

Mayor Hardy reminded witnesses to provide factual testimony as how this project does or does not meet the applicable standards. The Board must base its decision on evidence in the record, not personal preference or opinion.

**Robert L. Brown, 803 Arrow Drive and Chairman of the Trustee Board of Saint Augustus AME Zion Church located at 316-318 East North Street**, congratulated the Mayor and City Council on their historical achievement. He stated their Pastor, Reverend Julian C. Pridgen is an outstanding and dynamic leader and as a result of his leadership, dedication, loyalty, compassion and knowledge, the church is ranked very highly in the North Carolina Episcopal District. Each year an annual state conference is held, and next year it will be held at the church. Consequently, all the available parking spaces on Gordon Street will be needed. All of the property on the north side of Gordon Street from East Street to Independence Street belongs to the church and the block is a dead end at the railroad crossing at Gordon and Independence Street; therefore, a nightclub on Gordon Street will pose a safety problem for emergency vehicles. On behalf of the 215 members of the church, we oppose allowing a nightclub to operate on Gordon Street because there are seven churches within a radius of 2.5 blocks of the proposed club. Elderly men, women, young adults, teenagers and children attend various church programs in the evenings. Clubs usually serve alcohol and attract unsavory characters. These individuals could increase the crime rate and be a bad influence on churches and the Gate which is only two blocks from the proposed club. The proposed nightclub will only have four parking spaces on the south side of Gordon Street and on the north side of the street is the Saint Augustus Complex. He has been by the location twice and at night the area has poor lighting. The Saint Augustus church family objects to the opening of the night club at 317 East Gordon Street. We request that the Mayor, City Council and the Planning Board disapprove the Conditional Use Permit to operate a nightclub at 317 East Gordon Street. He described the churches and businesses in the block. He has been Co-Chair or Chairman since 1999 and he has not seen any document or agreement to permit a club to use the parking lot. We asked that you do not approve this particular request because it is a bad influence on the churches, inadequate parking spaces and would cause emergency vehicle problems and could cause some incidents.

Councilmember Tyson stated the City Council has to focus on 4.5.4.5.8 and that is parking. He confirmed that the owners of this facility do not have the church's permission to use the parking lot. Mr. Brown stated not to his knowledge. He is the Chairperson of the Trustee Board and they handle all contracts, agreements and he has attended meetings since 1999, and nothing has been submitted to the Trustee Board authorizing the clubs to use the parking spaces. The only agreement that he knows is the Heaven's Delight Church and Mount Zion Church, but not the

club, and they will not be permitted to park on the Saint Augustus Complex parking lot, formerly Grocery Fair.

Mayor Hardy stated that the applicant and any other party have certain rights to object to witnesses' testimony and to cross examine witnesses. The Board will determine the evidence to consider how much weight to assign it.

Mr. Rief clarified that the applicant can cross examine a witness, but a witness cannot cross examine.

Mr. Whitfield asked Mr. Brown if there have been any written documents or agreements file with the previous clubs that have been at the location. Mr. Brown stated he is not aware of any written document and he has been with the church since 1978.

Councilmember Tyson stated according to the attorney and the statutes, the City Council cannot base their decision on any previous agreement. We have to base this [decision] on present agreements.

Mr. Whitfield stated he was only trying to see if Mr. Brown was aware of any agreements on file because the club has been open and they have been using the parking lot.

Mr. Brown stated he was asked to be present to speak on behalf of the church. We do not want this club to be approved, and the club would not be able to utilize the parking facilities that belong to Saint Augustus.

Mr. Whitfield stated we really need to talk to the pastor.

Tony Sears, City Manager, asked Reverend Pridgen to come forth.

Pastor Julian Pridgen was sworn-in.

Mr. Sears asked if the club owner has permission to use the parking lot.

**Julian Pridgen, 2711 Westbrooke Drive as Pastor of Saint Augustus AME Zion Church,** stated the reason Mr. Brown is speaking is because Saint Augustus is an itinerant church and Mr. Brown is the representative of the Board of Trustees for Saint Augustus AME Zion Church. The Board of Trustees attend to all of the churches property to include paying insurance, cutting the grass and everything that has to do with the church, and he is the proper person to speak on behalf of the church. And, to answer the question if the club owner has permission to use the parking lot, no. We are hoping to get out of the club business.

Mr. Whitfield stated that they are also negotiating with property owners to purchase other land in the area for parking.

Mayor Hardy stated parties withstanding have an opportunity to offer rebuttal or closing argument. As a reminder please focus remarks on legal arguments or new clarifying evidence. Please avoid mere repetition of the evidence.

Councilmember Aiken stated he is in favor of the club being open. If it becomes a nuisance then Police and ALE will do their jobs. He has spoken to people in the community and they have said that they need an outlet to let off steam or to party. People need an avenue to go and everybody is not church people. They are trying to attract people and get people to come to town.

Councilmember Tyson stated that City Council's decision has to be based on state statutes, and emotions and politics cannot take place in this decision. It has to be according to the statutes.

Councilmember Aiken stated the Planning Board voted unanimously to approve it.

Councilmember Swinson asked the minimum parking spaces required for the applicant to have adequate parking. He also confirmed that this is a new Conditional Use Permit. Mr. Short stated the Conditional Use Permit pertains to the non-conforming situations language which by the rule, 90 days without use of the property, it is relinquished. The parking requirement would be roughly 4 parking spaces per 1,000 square feet. Strictly speaking in B-1 it would be off street parking, unless the City Council waives that requirement in lieu of on street parking. The building is a little over 1,000 square feet, so it would require 4-5 spaces.

Councilmember Swinson asked if there is on street parking, would that hinder or enable response from Police and Fire to respond to a dead end.

Mr. Rief stated if the Police and Fire Chief want to provide factual testimony, they need to be sworn in. Police Chief Alonzo Jaynes and Fire Chief Don Crawford were sworn in.

Chief Jaynes stated from a Police perspective, it could delay our response, but not prevent us from responding in a law enforcement capacity.

Chief Crawford stated from a Fire perspective, it does impede our ability to perform our job any time we have a dead end street, and then if you have cars double stacked with us trying to get hoses laid and pulling lines off the truck, it does impede us quite a bit.

Councilmember Swinson asked if the trucks and emergency response would have to back in or back out. Chief Crawford stated if we had a fire we would take the hydrant at the intersection and lay into the area. The problem comes with getting our other trucks in because once you lay

the supply in, and with a dead end, you can't come in from the other direction. The other trucks would have to stage out on East Street and come in by foot. The other problem it causes is pulling the attack lines of the other trucks if you have cars on each side of the street.

Councilmember Swinson asked if the Planning Board was aware of the parking situation where the church may not be willing to allow the club to use the church's parking lot. Mr. Short stated he does not believe that it was a point of discussion, but it was brought forth with the understanding that the property was in its current state.

Councilmember Swinson stated if they [Planning Board] knew this information, they probably would not have voted on this unanimously. Mr. Short stated he cannot say one way or the other.

Mr. Rief stated what the Planning Board recommends should have absolutely no bearing on this Board's decision. The decision by this Board should be completely independent of what the Planning Board thought or the reasons behind their recommendation.

Councilmember Aiken asked if the other businesses in the area be forbidden to park in the church's parking lot.

Councilmember Tyson stated that has nothing to do with this case. Legally, whatever decision we make, to be approved and sanctioned, we have to stick with the case because whoever loses can take us to court. We have to stick to the statutes.

Mayor Hardy asked Mr. Rief to advise the NC General Statutes for the case. Mr. Rief stated it is the City of Kinston Unified Development Code (UDO), and it fall under section 4.5.4.5. The ones that were raised by Councilmember Tyson included subsections 5, 6 and 8.

Councilmember Tyson stated he sees two options. Option one the applicant indicated that he may purchase some additional property to have a parking lot, and it if that is the case then he recommends tabling this item. The second option is according to 4.5.4.5.8, parking is a major problem, then his recommendation would be to deny the application.

Councilmember Aiken stated there may also be an opportunity to have parking on the space on the corner where it is currently just a shell if it is torn down.

Councilmember Swinson stated that building has already been torn down.

Councilmember Tyson made the motion to deny because of the code in section 4.5.4.5.8, seconded by Councilmember Swinson and upon a MAJORITY vote, (Councilmember Aiken voted no), the request was denied.

**2. Conduct a Public Hearing AND consider approval of a request to rezone 202 Plaza Boulevard from RA-6 (Residential) to B-1 (General Business).....Adam Short**

Adam Short, Planning Director, stated we have a request from Bobby Davis, Jr. to rezone property located at 202 Plaza Boulevard from RA-6 (Residential) to B-1 (General Business) This property is located within the city limits and the City's zoning jurisdiction. When considering a rezoning, it's important to consider groups of uses that could or could not be in the new zoning district. Potential uses in a B-1 district includes automotive repair, retail, bingo, bar and nightclub by Conditional Use Permit, church, barbershop, battery changing station, car wash, child care center, restaurant, bank, office, movie theatre, dance hall by Conditional Use Permit, distillery, dog grooming, florist and funeral home. To the north there is B-1 and the use is commercial. To the south there is RA-6 where there is a City-owned communications tower, to the east B-1 which is used car sales and to the west RA-6 residential.

Councilmember Tyson asked David Rief to explain the difference in a rezoning Public Hearing and a Conditional Use public hearing.

David Rief, Acting City Attorney, stated the public hearing for a rezoning is different than a quasi-judicial hearing. The quasi-judicial hearing has very strict statutory guidelines and with a rezoning request it is more a policy decision and the public is more invited to speak on the proposed rezoning, so it is not as limited and the Board has more flexibility in how it responds and the considerations that it looks at in determining the rezoning. In approving a rezoning the City Council should not look at just the use that is being proposed by the applicant, but all of the allowable uses under the Unified Development Ordinance (UDO) because once a rezoning takes place, the property owner could change the use to anything that would be allowed in the zoning.

Mayor Hardy declared the public hearing open and after no one spoke in favor of or in opposition of the request the public hearing was closed.

Councilmember Tyson stated at the last meeting, the City Council postponed this. At that time Earl Heath who lives next to the property and another resident requested that the area remain a residential area.

Councilmember Swinson introduced the Order, Councilmember Tyson made the motion, seconded by Mayor Pro Tem Solomon.

Mayor Pro Tem Solomon asked Mr. Davis if he wanted to speak.

Mr. Rief stated the public hearing would have to be reopened to allow him to speak.

The introduction was withdrawn.

Mayor Hardy reopened the public hearing.

**Bobby Davis Jr., 1400 East Washington Avenue and Applicant**, stated his intention for the property is to go into automotive services. He is buying the property. He has not spoken to Mr. Heath, but this is his first becoming aware of these concerns. He could speak to him and bring

any concerns at ease. He is not sure why he would have any concerns or be opposed, especially considering the general location of the building and all of the other commercial entities in the vicinity. Every business around it is commercial or business other than Mr. Heath who is on the adjacent corner of Darby. Versus proceeding with a motion that could potentially be denied, he would prefer it be put on hold to give him a chance to speak to Mr. Heath or anybody that may have an issue with his request.

Councilmember Tyson stated he would be happy to put this on hold until Mr. Davis can speak to the other property owners. He asked if Mr. Davis was in a rush to open his business.

Mr. Davis stated he is in a rush because business is important and this is his livelihood. It is his understanding that he is well within all of the guidelines to open whatever he choose to open.

Councilmember Tyson stated when it comes to this particular type of rezoning, it is strictly up to the City Council. The City Council does not have to have a statute, as in the previous hearing, to deny this request. City Council could always say that they want the property to remain residential. No one wants to deny you the right to have a business, but you are converting a residential area into a business. People move to the County because you can build a building next door to whomever. The reason people stay in the City is because they want their property protected and they don't want something next to their home that may bring down the value of their property, so it is really up to City Council to make the decision.

Mr. Davis asked if it is Mr. Heath's opinion that he wants it to stay residential. Did he explicitly say that he didn't want it.

Councilmember Tyson stated no.

Mr. Davis stated he intends to do automotive repair and retail. The property itself was commercial and previously used by the City for industrial type work as a fire house.

Councilmember Tyson clarified that the property is currently zoned as RA-6.

Tony Sears, City Manager, stated it was a fire station, but the zoning was still RA-6.

Mr. Davis stated that is what he was told, and he hopes that City Council will consider approval.

After no one else spoke in favor or against, the public hearing was closed.

Mayor Pro Tem Solomon made the motion to approve, seconded by Councilmember Aiken and upon a MAJORITY vote (Councilmembers Swinson and Tyson voted no), the following rezoning request was approved:

**2018-01**

**AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP  
BY THE CITY COUNCIL OF THE CITY OF KINSTON**

**WHEREAS**, the City of Kinston received a request Bobby Davis Jr. to rezone 202 Plaza Boulevard from RA-6 (Residential) to B-1 (General Business); and

**WHEREAS**, the Planning Board reviewed this request and voted at a special meeting on November 28, 2017 to recommend approval of the rezoning request by unanimous vote; and

**WHEREAS**, this ordinance has been reviewed and adopted in a manner consistent with NCGS 160A-383; and

**WHEREAS**, the City Council heard all evidence and arguments presented and reports from the City officials pertaining to said application; and approved the rezoning.

**THEREFORE**, the City of Kinston Official Zoning Map is hereby amended to rezone 202 Plaza Boulevard (NC PIN 452618219019) from RA-6 (Residential) to B-1 (General Business).

**3. Conduct a Public Hearing AND consider approval of a request for the voluntary satellite annexation of 1225 West New Bern Road.....Adam Short**

Adam Short, Planning Director, stated staff has received a request from Thomas Humphrey on behalf of HMH Properties, LLC to voluntarily annex a .78 acre parcel into the City of Kinston. This location was approved to be operated as a bar, but due to the County’s laws prohibiting the sale of liquor by the drink, the request was to come into the City of Kinston. The use is allowed in the location, but we typically don’t get involved in what is sold at the location. We are here to review this for a voluntary annexation. Based on the State of North Carolina statutes for a satellite annexation, some part of the annexation must be within three miles of the City’s corporate limits. No point of the annexation can be closer to the primary limits of another city, the annexing city must be able to provide the same services to the annexed area that is provided to its primary corporate limits. If the area is a subdivision, then the entire subdivision must be annexed and the total area collectively may not exceed ten percent.

David Rief, Acting City Attorney, stated of the statutory requirements, in conducting our legal review of this application, it was determined that the property at issue is actually part of a subdivision. In order to meet 160A-58.1(b)(4), which states if the area proposed for annexation or any portion thereof is a subdivision, all of the subdivision must be included. The request only pertains to one property and does not pertain to the entire subdivision, so at this point City Council does not have the legal authority to annex this particular parcel. If the applicant would get together with the adjoining property that is part of the subdivision to the left which is a bingo parlor, those two properties would have to be annexed together at the same time. It does not meet the statutory requirements for annexation.

Councilmember Tyson made the motion to DENY the request based on the fact that the property does not follow the State’s guidelines, seconded by Mayor Pro Tem Solomon and upon a unanimous vote the request was denied.

**4. Consider approval of a bid award to V&S Schuler Engineering in the amount of \$115,518 for the purchase of structures and equipment needed for the breaker station for the second Point of Delivery (POD) project.....Rhonda Barwick**

Rhonda Barwick, Public Services Director, stated the City Council set aside funds to establish a second POD. This bid was for the structures to build the breaker station. We solicited ten bids, and we had five that met all the criteria. The lowest bid was \$113,900, but the delivery date did not work with our schedule.

Councilmember Aiken made the motion, seconded by Councilmember Tyson and upon a unanimous vote the bid award was approved.

**5. Consider adoption of a Resolution to sell 922 Herbert Drive for \$1,100 to Clyde Noble .....James Cauley**

David Rief, Acting City Attorney, stated this request is for the purchase of 922 Herbert Drive for \$1,100. From a procedural standpoint, the bid had to be published in the newspaper for at least ten days to allow for upset bids before City Council could take action. There were no upset bids, so if the City Council is inclined to sell the property for the \$1,100, the resolution could be adopted as proposed.

Councilmember Tyson made the motion, seconded by Councilmember Suggs and upon a unanimous roll call vote the following resolution was adopted.

1-2018

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KINSTON  
AUTHORIZING SALE OF REAL PROPERTY**

**WHEREAS**, the City of Kinston is the owner of the hereinafter described real property in the City of Kinston, Lenoir County, North Carolina, bearing Lenoir County Tax Parcel no. 453510470641, and being the same property located 922 Herbert Drive, Kinston, North Carolina; and

**WHEREAS**, the City Council of the City of Kinston has no further need or use for said property, and it would be in the best interests of the citizens of the City of Kinston for said real property to be sold by the negotiated offer, advertisement and upset bid method; and

**WHEREAS**, a notice was published in the Kinston Free Press, setting forth the offer to purchase said real property for a purchase price of One Thousand One Hundred Dollars, (\$1,100.00); and

**WHEREAS**, the public notice invited other individuals and entities to increase the bid, and more than ten (10) days have lapsed since the notice was published in the Kinston Free Press and no one has increased the bid, and the City Council desires to confirm and approve the sale.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KINSTON THAT:**

1. The sale of the hereinbefore real property to Clyde Noble is hereby ratified and affirmed with the selling price being One Thousand One Hundred Dollars, (\$1,100.00).
2. The City Attorney shall cause a deed to be prepared from the City of Kinston to Clyde Noble, and shall be authorized to tender the deed upon payment of the purchase price by the buyer.
3. That the Mayor and City Clerk shall execute said deed and such other documents as may be necessary on behalf of the City of Kinston to accomplish this transaction.

**6. Consider adoption of a Resolution to sell 308 Short Street, 310 Short Street, 1011 Macon Street and 1013 Macon Street for \$2,000 to Williamson Realty Company .....James Cauley**

David Rief, Acting City Attorney, stated this is similar situation. The offer was presented, it was published and there were no upset bids.

Councilmember Tyson stated he had a citizen asked about selling this type of property, and she did not know we had property for sale. The City has about 1,200 properties throughout the City, and we have property that we would like to not own. If there is property that may be owned by

the City and citizens wish to purchase it, Adam Short, Planning Director, and he will share what properties are available.

Councilmember Aiken mentioned the lots that are listed with Kinston Teens are also city-owned lots that can be acquired through a different process.

Councilmember Suggs stated that in lieu of purchasing the lots, there is a program with Kinston Teens for revitalization projects. Kinston Teens has grants available to help anyone interested in getting started on a project to help beautify the neighborhood on the designated lots. She encouraged citizens who are interested to reach out to Kinston Teens. There is a way that citizens can eventually become the owner of the lots through the program.

Councilmember Tyson introduced the following Resolution:

2-2018

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KINSTON  
AUTHORIZING SALE OF REAL PROPERTY**

**WHEREAS**, the City of Kinston is the owner of the hereinafter described real properties in the City of Kinston, Lenoir County, North Carolina, bearing Lenoir County Tax Parcel no. 452516736845, 452516736879, 452516736967 and 452516747021, and being the properties located 308 Short Street, 310 Short Street, 1011 Macon Street and 1013 Macon Street, Kinston, North Carolina; and

**WHEREAS**, the City Council of the City of Kinston has no further need or use for said properties, and it would be in the best interests of the citizens of the City of Kinston for said real properties to be sold by the negotiated offer, advertisement and upset bid method; and

**WHEREAS**, a notice was published in the Kinston Free Press, setting forth the offer to purchase said real properties for a purchase price of Two Thousand Dollars, (\$2,000.00); and

**WHEREAS**, the public notice invited other individuals and entities to increase the bid, and more than ten (10) days have lapsed since the notice was published in the Kinston Free Press and no one has increased the bid, and the City Council desires to confirm and approve the sale.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KINSTON THAT:**

1. The sale of the hereinbefore real property to Williamson Realty Services is hereby ratified and affirmed with the selling price being Two Thousand Dollars, (\$2,000.00).
2. The City Attorney shall cause a deed to be prepared from the City of Kinston to Williamson Realty Services, and shall be authorized to tender the deed upon payment of the purchase price by the buyer.
3. That the Mayor and City Clerk shall execute said deed and such other documents as may be necessary on behalf of the City of Kinston to accomplish this transaction.

Councilmember Aiken made the motion, seconded by Councilmember Suggs and upon a unanimous vote the resolution was adopted.

**INFORMATION AND UPDATES**

**1. Dirt Street Paving.....Steve Miller**

Steve Miller, Assistant Public Services Director, stated in November questions came up about dirt streets in Kinston. Our engineering staff put together a complete list of all the existing dirt streets. We have 20 streets that are unpaved. Some of them only serve one or two lots and some are a little more significant. The list in the agenda package includes the street, the length of the

street, the number of properties along the street, and the estimated cost to do a paving project. The total cost to pave all of the streets will be over \$1 million, based on recent projects that we have had. There are some streets that in the past the property owners have recommended not paving, some of the other streets may be in commercial areas and we will work with the commercial industries if they want to have the street paved. To move forward, we would need to design the street for drainage, make sure pavement sections are adequate, identify the types of soil, etc. and that process would take around seven months. Our staff time and cost would be around \$60,000. We have a lot of significant projects going on around the City, and we would like to know if City Council wants to move forward with this project and to know if this is one of the priorities.

Mayor Hardy asked if someone requested the project. Mr. Miller stated this has been presented for information just to get City Council's feedback on whether or not the staff needs to move forward with design.

Tony Sears, City Manager, stated in November the City Council asked staff to look at the City's dirt streets and what it would cost to pave them. Councilmember Tyson had asked for more information. If City Council wants to move forward, it would have to be budgeted in next year's [FY 2018-19] budget.

Councilmember Aiken asked if there has been a traffic count. Mr. Miller stated no.

Councilmember Swinson asked if City Council moves forward, will it be paid in thirds and asked if there were any grants available.

Mr. Miller stated that is entirely up to City Council. The NCGS gives the City Council the authority to assess property owners, provided the property owners petitioned to have the streets paved. Typically we would wait for a petition from the property owners to have the street paved, and we would split the costs. It could be split 50/50 for the property owners on each side of the street and the City would not have a cost, but here in the City we have typically shared the cost. Mr. Sears added unfortunately there are not any grants available.

CITY MANAGER'S REPORT
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There was no report from the City Manager.

CITY ATTORNEY'S REPORT
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There was no report from the Acting City Attorney.

MAYOR AND COUNCILMEMBER REPORTS
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Mayor Hardy stated on December 16<sup>th</sup> he presented a proclamation to Levi Simmons for his 50 years of law enforcement and his dedication. On December 17<sup>th</sup> we presented a proclamation to

Issac Pope, World World II Veteran for his 100<sup>th</sup> birthday. In December he and Adam Short attended the Global TransPark workshop in Raleigh to discuss vision of the Eastern region.

Tony Sears, City Manager, stated he had an opportunity to attend Metro Mayors in Wilmington. We met with other municipalities and discussed topics across the State.

Mayor Hardy stated that the Joint meeting with the Lenoir County Commissioners at the Woodmen Community Center was a great meeting where we discussed the potential of combining some services. We will have research done by the UNC School of Government to provide a study to see if it will benefit us as a whole.

Councilmember Swinson stated it was a great fresh start. We met around six years ago and it fizzled out, but it was great to have the two governing boards come together and have great dialogue. We are looking forward to getting information to hopefully consider consolidating some services and saving taxpayers money. These are baby steps and we are looking at ways we can streamline our operations as well as be beneficial to all our City and County residents.

ADJOURNMENT
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Mayor Pro Tem Solomon made the motion, seconded by Councilmember Aiken and upon a unanimous vote the meeting was adjourned at 7:17 pm.

Respectfully submitted,

Monique Hicks, City Clerk