

**Minutes  
Kinston City Council  
Monday, April 17, 2017 at 7:00 pm  
Regular Meeting at 7:00 pm**

REGULAR MEETING

Mayor BJ Murphy called the regular City Council meeting to order at 7:08 pm.

Mayor Pro Tem Swinson led the prayer followed by the Pledge of Allegiance.

Those present: Councilmembers Sammy Aiken, Wynn Whittington, Joseph Tyson, Mayor Pro Tem Robert Swinson and Mayor BJ Murphy

Those not present: Councilmember Felicia Solomon

Also present: Tony Sear, City Manager and James Cauley, City Attorney

**ADOPTION OF THE AGENDA**

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

CITIZEN COMMENT

ACTION AGENDA

- 1. Continue the public hearing from Monday, April 3, 2017 and consider approval or denial of the Conditional Use Permit application from Pendergraph Development for multifamily apartment units on Doctors Drive.....Adam Short**

Mayor Murphy stated he was not aware that Malone Realty was involved with this project and disclosed that he has a business relationship with an associate of Malone Realty.

Adam Short, Planning Director, stated this is a continuation of the public hearing held on Monday, April 3, 2017. There is one item from the UDO that references dead end street and this does not meet the ingress egress requirement.

James Cauley, City Attorney, stated if the applicant has not received the reports from the experts, then staff should be sworn in to give a review of the content of the reports.

Don Crawford, Fire Chief, stated that the fire department had completed the review of the initial site plan and found a couple of items. The project is served by a dead end waterline with several sprinkler systems already connected. We would have to have a Registered Engineer confirm that the line will provide adequate flow and pressure. We are concerned about the one access into the property from a fire protection standpoint. Services are better with two access points. With Hurricane Matthew's flash flooding, Doctors Drive was impassable. We would have a problem accessing the back if we have similar flash flooding. This is not a complete review, only an initial plan review.

Councilmember Tyson asked what the Registered Engineer will show. Chief Crawford stated that the Registered Engineer does the State Fire Code calculations. Staff looked at the building code and fire hydrants and the area is serviced by dead end water supply.

Alonzo Jaynes, Police Chief, stated having the one access would have a low impact on our service. We looked at response and calls for service. If there was a flood, it could be an issue. Any time there is an increase in population in an area, there is an increase in calls for service, however with this being new, residents are most likely relocating from other areas within the city. If any, it would be low impact from a police response standpoint.

Mayor Murphy asked during flash flooding, did we have any emergency evacuations on Doctors Drive. Chief Crawford stated we had an estimated 65, and 25-30 self-evacuated to the hospital.

Mayor Murphy asked how did we evacuate. Chief Crawford stated we did walking evacuations from the front apartments on Doctors Drive, not from the new ones.

Steve Miller, Assistant Public Services Director, stated from a traffic engineering perspective, the traffic count is lower due to the low occupancy of the apartments that are being repaired and the second apartment complex [Greenbriar] has not been occupied yet. From a transportation side, even with new development, you will not be above the capacity and will not overwhelm the intersection. Extending the road 2,800 feet would cost about \$400,000, not including the land, which is about \$75,000.

Mr. Sears confirmed that the property owner would consider donating the land for the road.

Mr. Miller stated he had spoken to NCDOT, and they may have requirements for the access to Airport Road, but we don't know. Water service availability is questionable. We cannot do an accurate flow test because of the vacancies and the continued work in the area, so we don't know if we will meet the State's minimum pressure requirement. We hope to have the line certified, and we are waiting on the state. If needed, the estimated cost to extend the water line is around \$200,000.

Councilmember Tyson stated his concern is the dead end road, and asked if the additional 60 units would be in violation of our current Unified Development Ordinance (UDO). Mr. Short stated the current UDO is based on the number of apartments of Herritage Courts. It was already in violation of the UDO and is an issue that has grown over the year. Mr. Sears stated the UDO is a local ordinance and is part of the Code of Ordinance and can be amended.

Councilmember Tyson asked if the ordinance can be amended to accommodate this request. Mr. Sears stated the land use ordinance is not specific, and it is a guiding document to help City Council make long term decision for the zoning.

Councilmember Aiken asked if there are any plans to expand Airport Road. Mr. Miller stated that he has not seen that in any NCDOT plans.

Mr. Short read the portion of the Unified Development Ordinance (UDO) that was referenced.

Mayor Murphy confirmed that the ordinance has been violated twice with the two new existing projects. Mr. Short stated according to the calculations, yes. Allowing the existence of a dead end road is a violation.

Tameka Fields, 2205 Stanton Road and Site Manager for Cambridge Farms, stated she has able to access the property every day including before and after Hurricane Matthew.

Greg Rhodes, Caliber Builders and Pendergraph, stated he has read the literature on the traffic count. The dead end street came up a few years back in the permitting process, and no one had any concerns. That is all of his knowledge for dead end streets, and there was not a material requirement. He referenced the letter from the Police Department and stated that he was glad to see they had vehicles to help in the event of flash flooding. The people who had to be rescued were in the flood plain, not at Cambridge Farms. The letter from the Fire Department had one issue and that was the pressure of the water line; and it would be handled through the permitting process. The letter from the engineer stated that projected pressure was almost 21,000 gallons permit at the hydrant. It sounds like we have a lot of water pressure. He hopes City Council will consider the Conditional Use Permit (CUP).

Councilmember Aiken asked if there will be any sharing in cost for a road to extend out to Airport Road. Mr. Rhodes stated he has seen where the cost of the road is taken and a frontage fee is charged based on linear feet, and yes, they would be interested.

Mayor Pro Tem Swinson asked Mrs. Field how many residents have more than one vehicle. Ms. Fields stated only 3 residents have 2 vehicles.

Mr. Rhodes stated the next development is a senior development, so the traffic demand will be less than the family development.

Councilmember Whittington asked if Greenbriar is assisted living. Mr. Rhodes stated no it is independent living.

John Nix, 3003 Hillman Road and Surveyor, displayed the map of the area.

After no one else speaking in favor of or in opposition, the public hearing was closed at 7:48 pm.

Councilmember Tyson stated according to our existing ordinance, he is not sure how City Council can approve this request without granting a waiver, due to the violation.

Mayor Pro Tem Swinson stated if we extend the road that could eliminate the problem.

Councilmember Tyson stated that City Council should make the approval based on conditions that exist today, but City Council could do a waiver.

Mr. Sears stated if City Council decides to extend the road, the cost would come from Fund Balance. Even the assessments are not enough money to build the road, and I'm not sure this is the best model. It would have to be a partnership. City Council could spend \$400,000 from Fund Balance or negotiate a percentage with the developer.

Councilmember Aiken asked about the waiver.

Councilmember Tyson stated City Council needs to either change the ordinance or give them a waiver. Not having the opportunity to see the budget, he would be hesitant to vote on building the road without knowing the source of the money, and he does not want to take it out of the general fund [Fund Balance].

Councilmember Whittington stated if we approve this request and supersede the UDO and a catastrophic event happens and we can't respond, are we opening ourselves up for a lawsuit.

Mr. Cauley stated that not following the ordinance is a legitimate concern.

Mayor Pro Tem Swinson asked if the developer would be interested in cost sharing.

Mr. Cauley stated the negotiations may be better discussed at a separate meeting.

Wayne Malone, Malone Realty, stated another alternative for the road is to extend Lynn Drive. It is a short distance and would only require approval from the Corps of Engineers. Pendergraph is willing to work with the city and the two property owners are willing to give the land. If approved, it is contingent upon a lot of things, including the water pressure. We went to Pendergraph years ago and convinced them to come to Kinston, and they have come and built nice homes for our citizens. We are only asking for the approval of the CUP. The Planning Board has approved it, and these items did not come up. Lynn Drive would be a lesser cost. Pendergraph gets calls from other communities asking them to build. The apartments in Kinston are the best apartments here and they give the middle class and lower middle class citizens a place to live. This issue could be worked out across the table.

Mayor Murphy asked Mr. Rhodes if he wanted to add anything about cost sharing for the road.

Mr. Rhodes suggested that instead of an assessment, the requirement would be to extend it all the way to the property line. Instead of the fee, require the developer to bore the cost of doing all of their property frontage. That way it is built and you don't have to have a bank account. There are different ways to get there. I have seen assessments and also being asked to put it all the way to the property line, and we will be willing to do that and pay all the costs.

Mayor Murphy confirmed the requirements for the public hearing have been satisfied.

Mr. Sears added that City Council has the right to table the item.

Mayor Murphy asked the city attorney for guidance from this point.

Mr. Cauley stated it is as much an applicant decision as it is a Board decision. City Council can decide based on the information provided. If the applicant wants to have further conversation, then City Council should allow for that. You don't put it off unless the applicant wants it put off.

Mayor Murphy asked if there is a favorable motion that would be contingent upon working out a deal to extend the road out to Airport Road.

Mayor Pro Tem Swinson stated he was open for more discussion.

Councilmember Whittington stated that options have been presented that do warrant more discussion. I'm not keen on tabling it again, but Lynn Drive is an option, but I have some concerns about it from a flooding standpoint. If the drainage pipes that run under Herritage Street are not adequate now, then putting a road over the Adkin Branch on Lynn Drive [could cause a problem]. There needs to be plans on how to build the road without increasing the flooding. That is a more viable option because it would require less road, but then you are also

increasing traffic in those neighborhood. He asked if City Council denies the Conditional Use Permit, would the applicant be able to reapply once conversations have taken place.

Mr. Cauley stated they can reapply, yet it is a cumbersome process. If that is where you want to end up, then it should be tabled. City Council needs to know if the applicant wants to have those conversations or not.

Mr. Malone stated the Army Corps of Engineers is going to require at least the same flow or greater than. So they will not allow them to just go in to cause a problem. A road across the ditch is not going to cause a problem. David Brody and I worked trying to get NCDOT to do it right. The culvert under Herritage Street is what is causing the problem. It is 50% too small and it backs up to the lowest point. We know where the low parts are and that is where it backs up. That is something the City Council should contact them about and make them change it. There are three areas that will grow in Kinston, near Walmart, downtown and Northwest Kinston.

Mr. Cauley asked Mr. Rhodes if he wants a decision or if he wants to wait two weeks to talk to staff.

Mr. Rhodes stated he really would like to get the vote this evening. We tabled it one time to talk about these issues and we got a lot of good information from the staff, especially for the road and traffic, and it was concluded that there is not a traffic problem on Doctors Drive. He asked if the concern is the traffic on the street.

Mayor Murphy stated it is not about the traffic, it is about the concern for emergency vehicle access to your residents during flash flooding.

Mr. Rhodes stated we do not have to worry about that because we are not in a flooding area.

Mayor Murphy stated the property may not be, but the city would not be able to get to you.

Mr. Rhodes stated the police department stated they could get to them without any problem.

Mayor Murphy stated the fire department did not say the same, and also unless there is the removal of the temporary or permanent dead end street, then we are in violation of our own ordinance. We are trying to work through how to make it work by getting to Airport Road.

Mr. Rhodes stated it sounds like they need to leave it for the next meeting, and he would be in favor of that to see if something can be worked out.

Mayor Pro Tem Swinson made the motion, seconded by Councilmember Aiken and upon a unanimous vote (Councilmember Solomon was absent.) the action was tabled until the May 1, 2017 City Council meeting.

**2. Conduct a public hearing and consider approval or denial of a request from Pendergraph Companies for the voluntary annexation of Andover Park Apartments .....Adam Short**

Adam Short, Planning Director, stated this is a voluntary annexation request. The development is Andover Park located on Daly Waldrop Road, west of Highway 258 North. They have assumed responsibility of the extension of water and sewer to the property and it meets the requirements for voluntary annexation.

Mayor Murphy asked how many units. Mr. Short stated it is 60 units

Mayor Murphy declared the public hearing open, and after no one speaking in favor of or in opposition, the public hearing was closed.

Mayor Pro Tem Swinson introduced the following Ordinance:

**AN ORDINANCE TO AMEND  
CORPORATE LIMIT BOUNDARY FOR VOLUNTARY ANNEXATION**

**WHEREAS**, the City of Kinston received a request from the Pendergraph Companies, LLC to voluntarily annex the Andover Park Apartment Development into the City Limits of the City of Kinston; and

**WHEREAS**, the Andover Park Development was approved by Conditional Use Permit by the City Council of the City of Kinston in April of 2015; and

**WHEREAS**, the developer has agreed to pay for all water and sewer extensions to service the annexation area in a manner that meets the requirements of the City of Kinston standards for water and sewer infrastructure installation; and

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

**THEREFORE**, the City of Kinston Corporate Limit Boundary is hereby extended to include the Andover Park Apartment Development (NC PIN 450603231535), retaining the underlying RA-6 zoning.

Councilmember Tyson made the motion, seconded by Councilmember Whittington and upon a unanimous roll call vote (Councilmember Solomon was absent.) the Ordinance was adopted.

**3. Conduct a public hearing and consider approval or denial of a request from Woodhaven Enterprises, LLC to rezone 612 North Queen Street from B-2 (Central Business District) to B-1(General Business) .....Adam Short**

Adam Short, Planning Director, stated Woodhaven Enterprises has applied to rezone 612 North Queen Street from B-2 to B-1. I have included a partial list of uses that could go in this location. The uses that stand out are schools, trade and vocational schools, ambulance service, church or

other religious facilities, crematorium, bingo parlor, rooming and boarding housing, adult business with a CUP, auto repair, sales and towing, building supply and sales, car wash, adult daycare, engine repair, pest control, flea market by CUP, funeral home, manufacture home sales, nursing home by CUP, sale of goods with outside storage. All are permitted and allowed in B-1 but are not allowed in B-2.

Mayor Murphy stated years ago the central business district placed emphasis on ensuring more retail activity and fewer churches in downtown. His only concern is the future road diet of Queen Street and how it will be impacted.

Mr. Short stated this will be outside of the Queen Street project scope at this time. We will know more once we have a stripping plan from NCDOT.

Councilmember Whittington asked if we know the intended use.

Mr. Cauley stated City Council should make the recommendation based on all of the allowed uses, not just what is going there now.

Mayor Murphy declared the public hearing open and after no comments in favor of or in opposition, the public hearing was closed.

Mayor Murphy confirmed the location as the former BB&T building on the corner of Queen Street and Lenoir Avenue.

Councilmember Whittington made the introduction to deny this request, Councilmember Tyson made the motion, seconded by Mayor Pro Tem Swinson and upon a unanimous roll call vote (Councilmember Solomon was absent.) the rezoning request was denied.

CITY MANAGER'S REPORT
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**1. Health Insurance for Employees and Retirees.....Gloria Blake**

Tony Sears, City Manager, stated we have met with several different broker agents to find out how we create value of our healthcare coverage. You will find out the good and bad and how we will need City Council to help us make a decision.

Gloria Blake, Human Resources Director, stated our insurance rates came in a couple of weeks ago, and they have an increase of 14.8%, which is approximately \$100 more per employee. We have asked our representative from BlueCross BlueShield to look at some alternates. At this point, our only option would be to change our deductibles. Our PPO is a 70/30 plan and the deductible per employee is \$1,750, with an out of pocket maximum of \$3,750. We have around 50 employees who met their deductibles. In the past five years, we have gone from an 18.9% increase, to a 0% increase, to a give back and now we are trending up again.

Mr. Sears stated the reason that happens is the number of severe claims. Claims history determines how they look at our risk pool. Your future risk is based off of past performance [claims]. It is important to understand because of what City Council is going to be asked to do.

Mayor Murphy asked if our current healthcare plan strategy prohibit us from recruiting and retention. Mrs. Blake stated yes. Mr. Sears stated it has an effect, but it is not the sole determining factor. If we paid more salary, they would stay. It is one of several factors in the decision making process.

Mrs. Blake stated we have had employees with cases that have terminated, but we also have some long term, high cost claims that will be on our insurance as long as the employees are on our insurance, and they are relatively young, so it is not always the older population. We have talked to three brokers, and they all feel that they can negotiate for us. Prices are not going to go down. We are on the lower end in size that says we may need to look at becoming a self-insured program. We need to plan and look at how much money we can put aside to cover large claims which means purchasing re-insurance. A broker would set it up for us, we would manage them, they would manage the program and would be similar to having a fully insured program.

Mr. Sears stated he cannot make the situation better by reducing the healthcare insurance cost without reducing coverage. The next issue is controlling the cost and the one person that can do that is the employee. We tried to go to State plan, but there were hurdles. Going to self-funded will allow us to bank on ourselves. Self-insured has a stop loss, so once we get to a certain dollar amount, BlueCross BlueShield covers us. We have a PPO and an HSA plans. It would be beneficial if we had certain people who are on PPO on HSA and vice versa. If we have more control, going to self-funded is the way to do it. BlueCross BlueShield has the strongest network in Eastern North Carolina. All three brokers have recommended going self-funded. We will select the one we think is best and have them make a presentation to City Council. Once we sign to go with an agent, we can't talk to BlueCross BlueShield anymore so we give up some leverage.

Councilmember Tyson stated he is totally in agreement, but the letter says partially self-insured. Why is partially self-insured more advantageous than fully self-insured. Mr. Sears stated that fully self-insured means that the city carries everything and if you have a number of major medical occurrences, it comes from the general fund. When you go to a loss, you are hedging a bet that you don't have a bad year. If the staff is at a lower age, your risk factor is better.

Mrs. Blake stated insurance companies generally look at the high numbers, and that would be \$135,000, so \$135,000 would be the risk per employee and we would purchase reinsurance to cover the remaining values. Mr. Sears stated the reinsurance business is large, and it will not be

BlueCross BlueShield. We will pay BCBS for their network coverage, but we can go on the open market to find other reinsurers. We would like to take the next two weeks, and select the broker and let them make the pitch so that City Council can make a decision. After the presentation all we will need is authorization to enter into the contract.

**2. Upcoming Fireworks.....Tony Sears**

Tony Sears, City Manager, asked City Council for their authorization to approve fireworks for upcoming events in 2017.

Mayor Murphy stated this is similar to taxi cabs, we have never denied a permit, so why does it have to come to City Council.

James Cauley, City Attorney, stated there is a statutory requirement for City Council approval on pyrotechnics. It is probably something that can be changed legislatively.

Councilmember Tyson made the motion to give the City Manager authorization to approve all upcoming firework permits for 2017, seconded by Mayor Pro Tem Swinson and upon a unanimous vote (Councilmember Solomon was absent.) the request was approved.

**3. Wood Ducks Baseball Update.....Bill Ellis**

Bill Ellis, Parks and Recreation Director, stated we had a successful opening weeks with approximately 17,000 fans in the stadium which puts us on course for 200,000 for the year if they keep up at that pace. Parking has been managed well. The souvenir shop has been packed.

CITY ATTORNEY'S REPORT
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COUNCILMEMBER REPORTS
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Mayor Pro Tem Swinson asked that the Code Enforcement office check two vacant homes.

Mayor Murphy reminded City Council to be mindful of 3 or more members of the board being together, even socializing, discussing city business because it could constitute a public meeting.

Councilmember Aiken announced that the BBQ Festival is on the first Saturday in May.

CLOSED SESSION

Councilmember Whittington made the motion, seconded by Councilmember Aiken and upon a unanimous vote (Councilmember Solomon was absent.) the City Council entered into closed session pursuant to North Carolina General Statute 143-318.11(a)(3) and (5); Consultation with Attorney & Property Acquisition at 8:50 pm.

After no further discussion, Mayor Pro Tem Swinson made the motion, seconded by Councilmember Whittington and upon a unanimous vote (Councilmember Solomon was absent.) the City Council returned to open session at 9:30 pm.

ADJOURNMENT

Mayor Pro Tem Swinson made the motion, seconded by Councilmember Aiken and upon a unanimous vote (Councilmember Solomon was absent.) the City Council meeting adjourned at 9:30 pm.

Respectfully submitted,

Monique Hicks, City Clerk