

Minutes  
Kinston City Council  
Monday, November 20, 2017  
Work Session - CANCELED · Regular Meeting at 7:00 pm

**REGULAR MEETING**

Mayor BJ Murphy called the City Council meeting to order at 7:00 pm.

Councilmember Wynn Whittington led the prayer followed by the Pledge of Allegiance.

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

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

**Adoption of the Agenda**

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

**CITIZEN COMMENT**

There were no citizens who wished to address the Mayor and City Council.

**MINUTES**

Consider approval of the minutes of the City Council meetings held on Monday, November 6, 2017 .....Monique Hicks

Councilmember Whittington made the motion, seconded by Councilmember Aiken and upon a unanimous vote the minutes were approved.

**ACTION AGENDA**

- 1. **Conduct a public hearing AND consider approval of the Comprehensive Unified Development Ordinance (UDO) updates.....Adam Short**

Adam Short, Planning Director, stated we have not had a comprehensive update since the UDO was adopted in 2013. The majority of changes are following changes at the state level and a couple of items on the federal level. The bulk of the language was done on the state level for amendment procedures for appeals, variances and conditional use permits. It is getting our ordinances in alignment with the State. After a discussion with the Planning Board, they wanted to see a separation for the B-2 (Central Business District) and that separation requirements could

put a hindrance on development downtown. We have added a second paragraph specifically about the B-2 business district where there shall be a minimum 100 feet of separation of uses listed. We added the language to include churches and places of worship. We eliminated the separation for any bar or other uses, so there will not be any separation requirements. Language has been included to clarify that if any bar becomes a public health, safety or welfare issue, it gives City Council the authority to reconsider the conditional use permit. The Planning Board was concern that without a separation requirement, we may be incentivizing a proliferation of bars downtown. We can take that on a case by case basis or we could establish a moratorium on bars and revisit the language. If the City Council wants to consider different language, that also can be done.

Mayor Murphy asked if it is a 300 or 100 foot separation from a church. Mr. Short stated there previously was not a separation requirement from churches. There is a 300 foot separation requirement for similar uses. Based on requests, we have increased the standard free standing sign height from 15 feet to 25 feet in our primary commercial corridors which would include General Commercial, Shopping Center Districts and some of the Industrial Districts. Most of the existing signs are over 25 feet. We forgot to include the language regarding outdoor dining and alcohol permits.

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

Mayor Pro Tem Swinson introduced the UDO Updates, Councilmember Tyson made the motion, seconded by Councilmember Solomon and upon a unanimous roll call vote the UDO updates were approved.

**2. Consider acceptance or denial of an offer to purchase two parcels on South Queen Street for \$3,000 and authorize the City Attorney to advertise to start the upset bid process .....Adam Short**

Adam Short, Planning Director, stated we received a bid for two city-owned parcels from Danny Webb Jr. The bid amount is \$3,000, and it has been secured by a 5% deposit. There are existing access easements that are used to access the rear parking lot for some of the offices that front on King Street. They would have to be maintained and the bidder has been made aware.

Rhonda Barwick, Public Services Director, stated the property is the City’s public parking lot and the City has a lease agreement with the property owners on King Street. The lease agreement states that we would pave the parking lot in exchange they would allow public parking. If we sell it, we need to inform the new owner that people will have to pass through the parking lot to access the parking lot in the back because currently both are public parking lots. There was also a nitrogen consideration when we paved the area that was previously gravel, so the new owner will not have to pay the setoff charge as long as he maintains the buffer area.

Mayor Murphy asked if the lease has to be renegotiated. Mr. Short stated the lease portion is on private property for the buildings on King Street.

James Cauley, City Attorney, stated it can be sold by reserving any encumbrances, any leases or existing easements. He asked if the existing uses are consistent with the buyers intended use. Mr. Short stated based on the letter the property would be used as a parking lot. Mr. Webb recently acquired two buildings adjacent to the property and is trying to get parking for the offices.

Councilmember Solomon asked if the property would have to be used for parking. Mr. Cauley stated not unless it was sold with that restriction in the deed.

Mr. Sears stated the gentleman is trying to develop a portion of South Queen Street. In the upset bid process anyone can bid on it and it does not commit the City Council to sell.

Councilmember Aiken stated he has concerns. He would like to hold on to the property for a year or two and see if we have any major developers to develop all of South Queen Street.

Councilmember Tyson stated he disagrees. We have had this property for some time. As long as the city owns the property, we are not receiving tax revenue. The purchaser is looking to improve the area.

Mayor Murphy stated we have not had anyone to say they want to purchase property south of King Street. Now is a good time to help an entrepreneur establish a business.

Councilmember Solomon asked what type of business will be there. Mayor Murphy stated Mr. Webb’s wife will eventually open a law office. From receiving no taxes to receiving taxes is enticing. He stated that the upset bid process will start, and it gives others an opportunity to bid on the property. Mr. Cauley stated after the upset bid process the City Council could accept or reject the final bid. Councilmember Solomon confirmed the City will still have access to the parking lot. Mr. Cauley stated that will be part of the disclosure in the advertisement for bids.

Mayor Pro Tem Swinson made the motion, seconded by Councilmember Whittington and upon a MAJORITY vote [Councilmember Aiken voted no], the motion was approved to accept the bid and start the upset bid process.

**3. Consider approval of the 2017-2018 Street Resurfacing Candidates and authorize staff to obtain bids from vendors.....Rhonda Barwick**

Rhonda Barwick, Public Services Director, stated City Council allocated \$552,000 for street resurfacing and in past years, we have averaged around \$200,000. The \$552,000 amount is what it would cost every year to have each street resurfaced on a 25 year cycle. We are presenting three options. We used our Street Condition Survey which is renewed every five years. Our engineering staff goes through each street, measures the street, the volume of traffic that it handles, utility cut repairs, potholes, alligator cracking, etc. and each street is given a score. The lower the score the sooner the street needs to be resurfaced. We also take into consideration streets that may need utility work that may lead to resurfacing, and it will be removed from this list.

Brian Lucas, Water Resources Manager, stated Option One would include Highland, Sussex, Rosanne, Herritage from Mitchell to Capitola, Washington, Spring Hill, Carey south of Vernon Avenue, Crestwood and Peyton. The highest priority on the main streets is 31 and Peyton is 513. We have provided a list of additional streets. We expect to get better pricing because we have more streets on the list this year. We ask that staff be given latitude to add or remove streets as needed so that we get the most bang for our bucks. Option Two is a mix of category one and category two streets and gives the higher priority of the categories. Category One is the thoroughfares, Category Two is the collectors and Category Three is the sub-collectors or minor streets. This list includes Highland, Rosanne, Greenbriar, East, Independence, North, and a portion of Adkin. The highest priority is the other section of Highland, and it is 160.

Councilmember Tyson asked why Fitzgerald and Haskett [intersecting streets] were not done at the same time. Mr. Lucas stated it was due to the priority listing.

Mr. Lucas stated Option Three is done strictly by the priority listing from the Street Condition Survey. A few streets have been removed that had utility and subgrade problems that are reconstruction projects. This list includes Westwood, Cavalier, Pollock, Ivy, Johnson, Greenbriar, East, Darby, Independence, Harvey, Holmond, Howard, Jones, North, Vance and Adkin and additional streets.

Councilmember Aiken asked about Lenoir from Herritage to McLewean. Mr. Lucas stated that portion of Lenoir would be a reconstruction project. It would take \$300,000 plus to do those two blocks. Years ago it was paved in the curb and gutter so to resurface it all the curb and gutter will have to be replaced, the existing brick and concrete underneath has to be cut out and there are subgrade and utility issues.

Councilmember Whittington stated he prefers Option Two.

Councilmember Tyson asked about Marcella. Mr. Lucas stated it is 246 on the priority list.

Mayor Murphy stated when we have averaged \$200,000 a year, and even at \$552,000, we are not going to scratch the surface of our needs. This is a one-time shot and may be our only shot at this many roads at one time. We have been suffering for many years not being able to put enough money in the street resurfacing budget.

Mr. Lucas stated the cost includes more than just the paving. It includes milling, manhole adjustments, ADA requirements, etc. and they all make resurfacing expensive.

Councilmember Aiken asked the impact of salting the roads. Mr. Lucas stated the salt does not have an effect, but the freezing conditions do. As the road freezes and thaws repeatedly, the asphalt expands and contracts which creates cracks and cracks create potholes.

Councilmember Aiken inquired about clustering or grouping streets. Mr. Lucas stated we try to group them so we don't incur remobilization fees.

Councilmember Tyson asked if Option Two could include 26 and 30 and be within the budget. Mr. Lucas stated it depends on the bids, but City Council could remove and replace streets if they wish. Councilmember Tyson stated he would like to do the top portion of Option Two and include 26 and 30. Mr. Sears stated he recommends that we bid the entire list of Option Two, and we will see how much money will be left for 26 and 30.

Councilmember Whittington asked about the difference in price for resurfacing Rosanne from Herritage to Lynn and from Lynn to Carey. Mr. Lucas stated the difference is the milling cost, plus the manhole adjustments.

Mr. Sears stated there are three ways to pave. One you put asphalt on top of asphalt, the second way you tear up the existing asphalt down to the base and the third way is milling that takes off a layer but not down to the base.

Councilmember Tyson asked how many unpaved roads are in the City of Kinston. Mr. Lucas stated we have .77 miles of unpaved road. We address unpaved road as dirt street paving projects. They are paid for through assessments where the city pays one-third, the property owners on each side of the street each would pay one-third. As money became less and less and we were falling behind on resurfacing the existing streets, we didn't add any more to be constructed. Councilmember Tyson stated he would like to look into and discuss paving the unpaved roads in the future so that citizens understand that they have to pay a portion for paving and curb and gutter. Mr. Sears stated that the unpaved streets could be included in the bid to determine the cost. He would not necessarily include curb and gutter if it is not required.

Mayor Murphy confirmed that the motion should also give staff latitude of handling and selecting the additional streets.

Mr. Lucas suggested that the top part of Option Two will be the base bid and the bottom portion will be an alternate bid so we will have unit pricing for each street. When the bid is bought back to City Council for award the City Council can make adjustments at that time. Mr. Sears added we will also bring bids showing the cost to pave the .77 miles of unpaved roads in the city limits.

Councilmember Solomon made the motion to approve bidding Option Two and unpaved streets, seconded by Mayor Pro Tem Swinson and upon a unanimous vote the motion was approved.

Councilmember Aiken asked if NCDOT has given a timeline for the repairs on Vernon between the bypass and the Woodmen. Mr. Lucas stated they have not, but staff can check the status.

**4. Consider approval of a joint use agreement with Mobilitie, LLC to install communication equipment on electric poles.....Rhonda Barwick**

Rhonda Barwick, Public Services Director, stated the agreement has been negotiated by Mr. Cauley's office and the agreement term starts once it has been signed through 2022 and year to year afterwards.

Councilmember Tyson made the motion, seconded by Councilmember Solomon and upon a unanimous vote the agreement was approved.

**5. Consider approval of an economic development agreement for EZ-Flo.....Tony Sears**

Tony Sears, City Manager, stated Mark Pope, Economic Development Director, has submitted an economic development agreement with EZ-Flo. Their investment is \$1.6 million with \$1.3 in real property and \$280,000 personal property. They will have a minimum of 10 new jobs before December 31, 2017 and the City’s portion of the economic development incentive is \$13,312. Lenoir County has already approved their portion.

Councilmember Solomon made the motion, seconded by Councilmember Whittington and upon a unanimous vote the agreement was approved.

**6. Consider approval of an Engineering Contract to Ramey Kemp and Associates for Doctors Drive Extension and authorize the City Manager to execute the documents**

.....Rhonda Barwick

*(This Item was Added to the Agenda.)*

Rhonda Barwick, Public Services Director, stated we have would like for the Engineering contract to be awarded to Ramey Kemp and Associates in the amount of \$100,100. As a reminder, according to the North Carolina General Statutes, engineering services are not awarded solely on cost, but on demonstrated competency and qualifications. RFPs were sent out and we received three responses. We recommend City Council award the contract.

Councilmember Solomon asked the prices of other firms.

Mrs. Barwick stated for engineering services we aren’t supposed to ask about pricing but who is qualified and then you negotiate pricing.

Mr. Sears added that would be the same for any professional services including the audit.

Councilmember Aiken made the motion, seconded by Councilmember Solomon and upon a unanimous vote the contract was approved.

**7. Consider approval for staff to send letters to Legislators in support of continuing Federal Historic Tax Credits.....Adam Short**

*(This Item was Added to the Agenda.)*

Adam Short, Planning Director, stated these are a benefit to the community where it is difficult to grow through the annexation process. We look to our downtown corridor as one of the primary areas for redevelopment. In an area like Kinston, it could be difficult without the market gap such as the tax credit to help those projects move forward. We are looking to expand our downtown historic district because the credits are so beneficial to so much of the work that we have seen in Kinston. We would like to send three original letters of each of our representatives.

Tony Sears, City Manager, stated a significant number of projects have benefitted from this program including the Chef and the Farmer, The O’Neill, Mother Earth Brewery, The Boiler Room and several others.

Councilmember Tyson confirmed that any area in the City could apply for the funding.

Mr. Short stated that is correct and also all of our residential National and Local Historic Districts would qualify.

Councilmember Tyson made the motion to approve the letter to be sent to Senator Tillis, Senator Burr and Representative Jones, seconded by Mayor Pro Tem Swinson and upon a unanimous vote the motion was approved.

**INFORMATION AND UPDATES**

**1. Interim Financial Update as of September 30, 2017.....Donna Goodson**

Donna Goodson, Finance Director, stated this is an interim financial report summary for the first three months of the fiscal year 2018 or 25% of the year complete and covers July 1st through Sept 30<sup>th</sup>. We have received \$23 million and revenues and have expended approximately \$21 million in expenses. We have received \$1.5 or 17% in property taxes which is typical based on collection trends. We have received shared revenue and franchise tax receipts of \$531,000 which represents approximately 22% of the budgeted amount.

**CITY MANAGER’S REPORT**

The City Manager had no report.

**CITY ATTORNEY’S REPORT**

The City Attorney had no report.

**MAYOR AND CITY COUNCILMEMBERS’ REPORT**

Mayor Pro Tem Swinson asked for the process for removing trees around our utilities.

Rhonda Barwick, Public Services Director, stated we budget \$150,000 each year to trim trees from the electric lines. We don’t cut down a lot of trees, we just trim the trees away from the lines. The Streets Division budget does include dollars for dead or dying trees within the city limits. The tree trimming is limited to trees of problems for the city on the electric side. Many citizens call us and mistake communications lines [lower lines] for electric lines, but we do not trim around communications lines. If the contractor finds they can clip extra to clear the entire area, they will do that, but communication lines are not in their contract with the City. It is the responsibility of each utility [cable and telephone] to clear their own lines.

Councilmember Tyson asked how it's decided to put up a metal pole versus a wooden pole. Mrs. Barwick stated in Kinston most of the metal poles are transmission lines, but the distribution lines in our neighborhoods are wooden poles which are less expensive and easier to replace.

Mayor Pro Tem Swinson asked if there could be correspondence with cable and phone companies about the maintenance of trees around their lines. Mr. Sears stated we would be happy to do that, but in the past they have not been very responsive.

Mayor Pro Tem Swinson stated Greenville has adopted a policy to issue citations instead of making arrests.

Alonzo Jaynes, Police Chief, stated Greenville adopted a resolution where officers will issue citations instead of making physical arrests. From a strategic position, our priorities are serious crimes, violent felonies and we have a goal of enhancing community relations. We already cite instead of making physical misdemeanor arrests, and it is a common practice. Many agencies have adopted this practice. We are also mindful not to overwhelm Lenoir County Jail. We make a number of citation and we issue more warnings than the average agency. We are open to putting it in writing, but it is already a common practice in Kinston. We would issue citizens for shoplifting, larcenies, communicating threats if the officer believes the person is less likely to carry out the threat. It is not a physical arrest, but they would still have to appear in court.

Councilmember Solomon confirmed that a student could be issued a citation in lieu of an arrest. Chief Jaynes stated that a physical confrontation in most cases will result in a physical arrest.

Mayor Pro Tem Swinson confirmed the City could not require a complex management to allow residents to use an elevator to move into an apartment. James Cauley, City Attorney, stated that is the operation of a private facility and they are entitled to make their rules for their facility.

Councilmember Whittington thanked Chief Jaynes and the officers for the new shift change procedure. Chief Jaynes stated that it was initiated by supervisors in the fields.

|                       |
|-----------------------|
| <b>CLOSED SESSION</b> |
|-----------------------|

Mayor Pro Tem Swinson made the motion, seconded by Councilmember Tyson and upon a unanimous vote the City Council entered closed session pursuant to NCGS 143-318.11(a)(3) at 8:22 pm.

Mayor Pro Tem Swinson made the motion, seconded by Councilmember Whittington and upon a unanimous vote the City Council returned to open session at 8:38 pm.

|                    |
|--------------------|
| <b>ADJOURNMENT</b> |
|--------------------|

Councilmember Whittington made the motion, seconded by Mayor Pro Tem Swinson and upon a unanimous vote the City Council meeting was adjourned at 8:38 pm.

Respectfully submitted,

Monique Hicks, City Clerk