

Minutes

Kinston City Council
City Hall · 207 East King Street
Tuesday, July 20, 2021

Work Session at 5:30 pm Regular Meeting at 7:00 pm

This meeting can be viewed at <https://www.facebook.com/KinstonCityHall>

Work Session

Mayor Don Hardy called the meeting to order at 5:30 pm.

Roll Call

Present: Councilmembers Sammy Aiken, Antonio Hardy, Kristal Suggs, and Robert Swinson.

Absent: Mayor Pro Tem Felicia Solomon

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

Adoption of the Agenda

If a Councilmember wishes to revise the agenda, the Motion to add or delete an item will be entertained prior to Adoption of the Agenda.

1. Councilmember Hardy requested that staff remain at the beginning of the regular closed session for approximately 10 minutes.

Councilmember Swinson made the motion, seconded by Councilmember Suggs [4-0]; the agenda was adopted with the additions of Item 1 above.

Items for Discussion

1. Kinston 101----- Sarah Arney

Ms. Arney stated that Kinston 101 was back in person. Kinston 101 is a 10-week course for citizens about the city's inner workings to increase their capacity to participate in local government. Sessions are led by the heads of every major department and include site visits to the police department, fire station, and parks and recreation facilities. 15-20 applicants will be selected based on the strength of their application, their potential for future civic leadership, and the diversity of applicants. You sign up online at tinyurl.com/Kinston101apply through the end of the month, July 26th. A paper application can be obtained by contacting 252-939-327. The first session is September 9th, Intro to Local Government

2. Elected Official Manual----- Sarah Arney

At the direction of the City Manager, a Kinston City Council Reference Manual has been compiled with basic information about the role of the City Council and City operations. It includes a wide variety of information from elections to meeting rules and procedures to local government finance to departmental operations. Key words and topics can be found in the index at the end. However, this manual is not intended to be comprehensive; the book provides enough information to have useful conversations with the City Manager, City Clerk, City Attorney, and Department heads about any issue the City may encounter, or any project you would like them to pursue. The reference manual is being released in anticipation of the elections this fall for anyone interested in learning more about the City Council.

Online copies of the Kinston City Council Reference Manual are available at kinstonnc.gov/288/Mayor-City-Council or on paper by request from the City Clerk at 262-939-3115.

Councilman Aiken stated that the Board of Election requires any individual who runs for council or for mayor must take ethics prior to the election. Ms. Arney stated that this is not intended to replace any ethics training that is required for elected officials.

3. Emma Webb Update-----Corey Povar

Ms. Arney states that she will be handing this over to Mr. Povar. She also states that this project is a collaboration between planning, parks and recreation, American Flood Coalition, and Kinston Teens. The project is about a comprehensive redesign of the park and to address flooding that the stream has running through the park. There was also a recent community workshop that had a great turnout.

Mr. Povar stated that the workshop was a huge success with a lot of great feedback. He thanked the council members who came out to support the event as well as the park and recreation board member and other community leaders. They had a follow up meeting today and they are drafting the survey that will be going out. The information from the workshop will go to guide the survey which will go out in the utility bills and also be available electronically.

Mayor Hardy thanked everyone for coming out and the he had fun using those fake dollar bills to help choose what should go in the park. He also thanked Kinston Teens and the Flood Coalition group for helping put the event on.

4. Closed Session pursuant to North Carolina General Statute 143-318.11(a) (6) – Personnel – closed session was entered at 6:00 pm.

Councilmember Swinson made the motion, seconded by Councilmember Hardy, the Council approved returning to open session at 6:45pm.

5. Wastewater Asset Inventory and Assessment Grant -----Rhonda Barwick

The City of Kinston has officially been approved for a \$150,000 Wastewater System Asset Inventory and Assessment Grant from the Division of Water Infrastructure. We had applied for this grant in September, 2020 to conduct a condition assessment of the johnnie Mosley

Water Reclamation Facility, preform CCTV work in the wastewater collection system and prepare engineering reports for our top sewer capital projects. The grant does require a 5% cash match and requires a 1.5% grant fee.

In and order authorize to accept the City grant, City Council will need to adopt the attached resolution to accept the grant and authorize the City Manager to execute documents to adopt satisfy the grant requirements.

The finance department will need to establish a capital project budget. In your packet you have the grant offer letter and resolution.

**6. Ordinance to Amend Wastewater Asset Management Grant (S9205) Capital Project
-----Donna Goodson**

The City has been awarded a grant from the State of North Carolina Department Environmental Quality division of Water Infrastructure. This ordnance is to amend the capital project fund for the wastewater assets management grant that we already have on record.

7. Acceptance of American Rescue Plan Act----- Donna Goodson

The City of Kinston has received notification from the General Assembly of North Carolina that the City’s share of the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (CSLRF) has been calculated to be \$6,387,015.47, with payments to be made in two equal tranches. The City has received its first payment of \$3,193,507.74, and an ordinance is being presented to the City Council at the July 20, 2021 meeting to establish a special revenue fund (C2908) for associated revenues and expenditures. Per NC General Statute 160A-17.1, the City Council must vote to ratify the acceptance and receipt of the funds and delegate the responsibility to execute any necessary agreements on behalf of the board to the City Manager and the Director of Finance. The second payment is expected to be received twelve months from the date the first tranche was received. The City may use the funds to cover eligible costs that the City incurs between March 3, 2021 through December 31, 2024, and expended by December 31, 2026.

8. Special Revenue Ordinance for the American Rescue Plan Act-----Donna Goodson

This is the ordinance to establish the special revenue fund for the American Rescue Plan Act. The project reference number will be C2908. The Council will need to accept the allocation into the revenue fund and the actual ordinance is for the entire \$6.3M.

Mr. Sears stated that while we wait for the final rules regarding ARP funds, he has started working on the essential works pay. That is Council approves the ordinance tonight, he anticipates coming back at the August to present a plan to pay those workers work during the pandemic. He estimates that the number for the plan is \$900k of the \$6.3M from the ARP. He is looking at a number of \$2,500 for the employees. Mr. Sears also states that while most workers will qualify for the ARP funding, there will be some employees who are not eligible. He will be working on a plan to compensate those employees as well.

Mayor Hardy thanked Mr. Sears and said he too had read the section regarding essential employees and it was a big deal.

9. City-owned lots transferal to Kinston Teens-----Adam Short

Mr. Short states he has received a request from Kinston Teens to do a direct transfer of city owned property in the vicinity of the Kinston Teen hub which is located on Towerhill Rd. The properties are 401 N Orion St (10363), 403 N Orion St (106250), 812 Tower Hill Rd (13183), 821 Tower Hill Rd (6196), 819 Tower Hill Rd (12331), 900 Tower Hill Rd (12880), 903 Tower Hill Rd (12332), 823 Tower Hill Rd (14124).

Councilman Hardy asked Mr. Short to explain how this has been done before and what is the actual process?

Councilman Aiken asked what is the adopt-a-lot program?

Mr. Short states the Adopt-A-Lot program is different from property transfers. He stated that, in the past, if a private individual or group comes and wanted to request property in the past has been through and upset bid process. The Kinston Teens runs the adopt-a-lot program that is affiliated with the City of Kinston where there are City owned lots that Kinston Teens will adopt out to other community nonprofits. If that organization manages that property over the course of two years they would then have the ability to come back to City Council and request a direct transfer. Through the adopt-a-lot program only one lot have been directly transferred to Ms. Chauncey Gray for property that was off the river walk.

Councilman Aiken states that the program has been in existence for approximately 5-6 years.

Councilman Swinson states that during this time Kinston Teens has taken care of these lots and maintained them at their expense not the City of Kinston's.

Mr. Cauley states that the conveyance of properties to a nonprofit is allowed provided that the nonprofit used the property for a public purpose. The deed will be restricted to ensure the property will be used for a public purpose.

Chris Suggs speaks stating the he had sent an email to the board that outlined their plan for the properties. He states that over the course of two and a half years that Kinston Teens has rehabbed a house on Towerhill Rd to be their center that they can use by the organization to conduct food outreach and have community events. Kinston Teens has identified eight properties on Towerhill Rd. and Orion St. that they maintain and beautified. Their plan is to use the properties for a public use to include a picnic shelter, outdoor play area, community garden, and a food distribution center.

Councilman Hardy thanked Mr. Suggs for coming and explaining their plan for the lots.

Councilman Aiken states that citizens have expressed to him that they thinks it's a conflict of interest for the City to give the property to Kinston Teens and that an active City Councilman's organization is receiving land from the City and not purchasing it.

Mr. Cauley states that Councilwoman Suggs had approached him about this in the past and he has advised her that she is compelled to vote by law because it is not a personal financial conflict. She cannot even be excused from voting. The conveyance is not to a council person, it is to a nonprofit organization and it would be restricted to be used for a public purpose.

Councilwoman Suggs states that part of the issue is the appearance, that she is a volunteer and does not get paid nor is she a salaried employee of Kinston Teens. Kinston Teens has done all of the appropriate paperwork and it is not her organization. She stated that they had talked to the attorney about the difference between a conveyance and a direct sale. Given the proposed use of the property it was determined that conveyance was the better choice.

Mr. Cauley stated that you could do a direct sale but usually there are no restrictions on how the property can be used. While the conveyance is not subject to a public bidding process, it does allow for the public purpose restrictions into perpetuity.

Councilman Aiken stated that the City is spending five to thirteen thousand dollars to tear down a property, which the City should get something for it.

Councilman Swinson asked Mr. Cauley what would happen if Kinston Teens was dissolved, would that property revert back to the City. Mr. Cauley stated that it would.

10. RTP Trails Funding-----Adam Short

The RTP grant was awarded to the City for a piece of the Riverwalk to connect south of Queen St. south to the music park. The total grant was a hundred thousand dollars, seventy-five thousand from the State and twenty-five thousand from the City. The current estimate for that portion of the trail is two hundred and seventy dollars. Mr. Short states that Council could either increase their portion of the match for the estimated cost or to forfeit the grant and reexamine the project at a later date.

Mayor Hardy asks what the consensus of the board is. The members agree to forgo the grant.

11. Interlocal Agreement Between City of Kinston and Lenoir County-----Adam Short

Mr. Short states that this agreement would be between the County of Lenoir and the City of Kinston for planning services. He states that this is his last meeting as a city employee. Community Development would stay with Sarah here at the City and other planning services would be on a contract bases with him at the County.

Mr. Sears stated that an updated version of the agreement was at their seats and that the changes were for liability responsibilities that the City would maintain for any work that that the County preformed on behalf of the City. Mr. Cauley has seen the revision and accepts the changes. Mr. Sears states that the City will paying the County four thousand dollars monthly for the service and that it is an initial three month contract with the ability to extend the contract for an additional three months if needed.

11. CDBG-CV Project Update-----Sarah Arney

Ms. Arney states the City of Kinston was awarded \$550,000 from the State of North Carolina’s CDBG-CV (Corona Virus) Program. The City is using these funds to promote WIFI connectivity in City facilities, assist with utility payments, and provide access to vaccinations particularly focused toward our predominantly low and moderate income populations.

So far, the City has had three vaccination events—Rochelle Middle School, Southeast Elementary, and a table at the Summerfest concert series. We have vaccinated a total of 30 people at the events and through in-home vaccinations, and completed outreach to over 850 homes in Kinston with the support of Resourceful Clinical Labs, One-to-One with Youth Community Health Workers, and Kinston Teens. Our upcoming event will be at Southeast Elementary School July 27th from 3-6pm—food boxes, a food truck, gift cards, and games will be provided for a fun, family friendly event! We encourage everyone who has a child over 12 who has not yet been vaccinated to attend, as we will have Pfizer doses available.

Public Services and United Way are also making excellent progress distributing emergency utility payments to folks who have been impacted during the pandemic and as a result have accrued unpaid utility bills.

RECESS FOR REGULAR MEETING
REGULAR MEETING

Mayor Hardy called the meeting to order at 7:50 pm

Mayor Hardy delivered the prayer.

The Pledge of Allegiance was recited by everyone.

CITIZEN COMMENT Citizens seeking assistance or asking questions will be contacted by a member of the Governing Body or by appropriate City Staff. There are no in-person comments permitted. Please visit our website to complete and submit a Citizen Comment Form. (Link can be found at the bottom of the home page under FAQ’s-Frequently Asked Questions)

1. Jeannie Bryan, 405 W. Highland Ave, Unit-2. Ms. Bryan submitted her statement online and was requesting council consider installing a speedbump or a traffic light at W. Highland Ave and Heritage.
2. Lorie Carman, 1404 E. Washington Ave. Ms. Carman stated that she was concerned about property being given way with the matter being brought before the public. She wishes for the board to consider alternative plan for that site. Her group is working on finalizing those plans and will present them to the board at another time. The property is located at the corner of Martin Luther King St and King St.

- 3. No name or address was given. He was concerned about the Kinston Teen property transfer. Stated that he tried to find the properties that were available from the City but felt he was given the run around. He also stated that he went to the tax office for this information.

MINUTES

Consider approval of the minutes of the City Council meeting held on June 15, 2021--Tony Sears Councilmember Hardy made the motion, seconded by Councilmember Suggs. [4-0] the minutes of July 15, 2021, were approved.

Mr. Sears stated that Councilwoman Soloman was unable to attend the meeting due to a conflict with her job, she hopes to Zoom into the meeting later if she is able.

CONSENT AGENDA
All items listed below are considered to be routine, and will be enacted by a single vote. There will be no separate discussion of these items, unless a Councilmember so requests, in which case the item will be moved to the end of the Action Agenda.

- 1. Consider adoption of a Resolution accepting the Wastewater Asset Inventory and Assessment Grant and authorize the City Manager to execute any necessary documents to satisfy the grant requirements-----Rhonda Barwick
- 2. Consider adoption of an Ordinance to amend the Wastewater Asset Inventory and Assessment Grant-----Donna Goodson
- 3. Consider adoption of a Resolution to accept the American Rescue Plan Act Funds-----
-----Donna Goodson
- 4. Consider adoption of an Ordinance to establish a special revenue fund for the American Rescue Plan Act Funds-----Donna Goodson

Councilmember Swinson made the motion, seconded by Councilmember Hardy, [4-0], the Consent Agenda items 1-4 were approved.

ACTION AGENDA

- 1. Conduct a Public Hearing AND consider approval of a text amendment to change sections 6.5 & 7.13 of the UDO-----Adam Short**

Mr. Short state they he has received a proposed ordinance amendment to the Unified Development Ordinance to allow bars and clubs in the I-1 and I-B zoning districts. The same rules would apply for I-1 and I-B as they do for B-1 zoning districts. This would amend section 6.5 of the permitted use table. This would allow bars in these districts by they would still come before the board for a conditional use permit. I-1 and I-B districts are very similar to the B-1 district.

Jim Cauley asks if the two conditional use permits for tonight are dependent on the passage of this text amendment. Mr. Short states that they are.

Mayor Hardy opens the Public Hearing.

Dr. Jerry Hill steps forward to speak. Dr. Hill is a DJ with Beach Boogey and Blues. He stated that his group has had difficulty locating a building for his group and Mr. Lloyd Moody offered his building to the group. He knows that are several restaurants with bars Vernon Avenue and he said there wasn't much different than a bar and a bar with a restaurant. He is requesting the approval of the amendment.

Mayor Hardy closed the Public Hearing.

Mr. Sears asks Mr. Short to speak to is there a difference between the separation allowance in the industrial use and other uses. Mr. Sears also reminds council that if you make a change to the zoning text it will affect all of I-1 and I-B. Mr. Short state the separation allowances would not be allowed if it was within three hundred feet of another bar or if it was within one hundred feet of a church.

Councilmember Swinson made the motion, seconded by Councilmember Hardy, [4-0], the text amendment was approved.

2. Conduct a Public Hearing AND consider approval of a Conditional Use Permit for a bar at 304 Mitchell Street-----Adam Short

Mr. Short states that he has received an application for a Conditional Use Permit (CUP) from Terry Harper to operate a bar. The property is located at 304 Mitchell Street, which can be identified by NC PIN 452513234656. The property is zoned I-1 (Light Industrial), which allows for bars, night clubs, and social clubs with an approved Conditional Use Permit (subject to prior approval of text amendment allowing such uses). For a bar located within the I-1 district, the only supplemental regulation requires such uses not be located within 100 feet of an existing church (Section 7.13). Upon inspection of the site, this location is not within 100 feet of any church or other place of worship.

Mayor Hardy opens the Public Hearing.

No one speaks.

Mayor Hardy closes the Public Hearing.

Councilmember Suggs made the motion, seconded by Councilmember Swinson, [4-0], the conditional use permit was approved.

1. - Conduct a Public Hearing AND consider approval of a Conditional Use Permit for a bar at 2928 West Vernon Avenue-----Adam Short

Mr. Short has received an application for a Conditional Use Permit (CUP) from Jerry Hill to operate a private club and bar. The property is located at 2928 West Vernon Avenue, which can be identified by NC PIN 451503041904. The property is zoned I-B (Industrial Business), which allows for bars, night clubs, and social clubs with an approved Conditional Use Permit (subject to prior approval of text amendment allowing such uses). For a bar located within the I-B district, the only supplemental regulation requires such uses not be located within 100 feet of an existing church (Section 7.13). Upon inspection of the site, this location is not within 100 feet of any church or other place of worship. While there is a church across the street, it is not currently operating as a church, and staff measured the distance on the ground and there are 105 feet separating the uses; therefore, this location is in compliance with this requirement.

Mayor Hardy opens the Public Hearing.

No one speaks.

Mayor Hardy closes the Public Hearing.

Councilmember Swinson made the motion, seconded by Councilmember Suggs, [4-0], the conditional use permit was approved.

2. Consider approval of grant awards for qualified applicants-----Jennifer Wilson

Ms. Wilson says she is back for the Council to allocate the organizational support grants. She states that the balance that is available to allocate after the contracts and any pass through funds is \$257,695. The completed applications that were received were from the Arts Council, Kinston/Lenoir County Library, Safe. There were also two new applications from 1901 Building group and Victory Cathedral Worship Center International. Victory Cathedral is not eligible to a late submittal. Staff recommend is to fund the Arts Council at \$35,000, Kinston/Lenoir Library at \$205,000, and Safe at \$15,000 which totals \$255,000. The remaining unallocated fund is \$2,695.

Mayor Hardy states that he recommends that the Council allocates the remaining \$2,695 to Downtown Kinston.

Councilmember Aiken made the motion to include the remaining \$2,695 to Downtown Kinston, seconded by Councilmember Hardy, [4-0], the grants awards were approved as stated above.

3. Consider adoption of a Resolution authorizing the sale of property located at East Caswell Street, Lot 1H-----James Cauley

Mr. Cauley states that this had been previously approved by council for advertisement for upset bid. There were no upset bids and there is a resolution in your packets proposing to convey the surplus property for the purchase price of \$900.

Mr. Cauley also addresses the next item on the agenda (item 4) which is also the proposal to sale excess property located at 124 S. Adkin Street.

Mr. Cauley states the next item was also approved several weeks ago as well. It was advertised and there were no upset bids. The last and highest bid was \$500.

Councilmember Suggs made the motion seconded by Councilmember Swinson, [4-0], both of the above properties were approved.

INFORMATION AND UPDATE

1. National Night Out-----Interim Chief Spencer

National Night Out will be August 3rd in Pearson Park from 5-8pm. This is the 37th Night Out and is a nationwide event law enforcement and public service agencies get out in the community to build relationships. There will be vendors, an informational booth; the NAACP, Kinston Community Health Center, and Lenoir County Sheriff will also be present.

2. Summerfest -----Leon Steel

Mr. Steel thanked everyone in the community and the volunteer for making Summerfest a success this year. He also thanked parks and recreation for the fireworks show. Also, the street pole banners have arrived and they will begin putting them up soon.

Mr. Sears stated that he forgot to add the vote for the Kinston Teens transference of property to action agenda. He asks Council to consider the item for a vote.

Mr. Aiken requests that the matter be delayed to another meeting. Mr. Sears stated that it should have been voted at this meeting and recommends that the vote happens this evening.

Mayor Hardy states he will entertain a motion for the Kinston Teens property transfer and to add the Interlocal Agreement between the City and County for planning/code enforcement services.

Councilmember Swinson made a motion to add the Interlocal Agreement to the action agenda seconded by Councilmember Hardy, [4-0], the motion was approved.

Councilmember Suggs made a motion to add the transfer of land to Kinston Teens to the action agenda seconded by Councilmember Swinson, a roll call vote used. Councilmembers Suggs, Swinson, and Hardy voted in favor. Councilmember Aiken voted against [3-1], the motion was approved.

CITY MANAGER’S REPORT

1. Removal of requirements for advertising positions ----- Tony Sears

Mr. Sears stated that for the last year Council had required that any positons was to come before the board for approval before hiring. Mr. Sears stated that it was understood that the budget for FY20 would be tight due to the pandemic and that Council wanted this additional step to ensure the positons were necessary before hiring. Now that we are in a new fiscal year and the uncertainty of revenues due to COVID from FY20 is passed, he hopes that Council would remove the restrictions.

Councilmember Hardy made a motion to remove the hiring restrictions seconded by Councilmember Swinson, [4-0], the motion was approved.

ADDED ACTION ITEMS

8. Transference of property to Kinston Teens

Councilmember Aiken states that he still believes it’s in appropriate for Councilmember Suggs to vote on an issue that benefits an organization that she is a member of. He acknowledges that the attorney has stated she doesn’t have to recuse herself. He asks that she recuses herself.

Councilmember Swinson reminds Councilmember Akin that the attorney has advised that she cannot recuse herself and that the board has been advised.

Councilmember Suggs states, that even if she were to get up and walk out of the room her vote would still be counted as a yes vote. She is here and she will vote. She reminds Councilmember Aiken that she does not financially benefit from Kinston Teens.

Mr. Cauley again affirms that he believes that Councilwoman Suggs is required to vote.

Councilmember Swinson made a motion to transfer the property seconded by Councilmember Suggs, roll call vote Councilwoman Suggs, Councilmember Hardy,

Councilmember Swinson all vote YES, Councilmember Aiken votes NO [3-1], the motion was approved.

APPOINTMENTS

1. Appointment to NRWASA-----Rhonda Barwick

Mrs. Barwick informs Council that NRWASA has requested that the body consider reappointing Mr. Bruce Parsons and Councilmember Aiken to their board.

Councilmember Swinson made a motion to reappoint the nominees, seconded by Councilmember Hardy, [4-0], the motion was approved.

MAYOR AND COUNCILMEMBER REPORTS

Councilman Hardy says he has two items. August 7th at Fairfield 2-5 pm this will be a basketball tournament in remembrance of Charles Shackelford. He also states that there are legal laws that the city council has to go by. He wants the public to know that there are certain limitations and please sign up for the Kinston 101 for a better understanding us what they can do.

Councilman Aiken says he has two issues. Mr. Aiken says that on Facebook, former Mayor BJ Murphy and Neuse News, put up a chart of the city’s fund balance online. He stated that the city has lost revenue due to hurricanes, Hill Crest deannexation, property tax devaluation, and COVID revenue losses. If you have questions please ask us. Also, he sees on Facebook he notices people who live in the county but own property in the city stating they would move into the city to vote in this election. He mentions that he has talked to the local board of election, NC attorney general, and his granddaughter in DC at the department of Justice to make sure they keep an eye on Kinston during this next election.

Councilmember Suggs wishes to follow Councilmember Hardy about the benefit of Kinston 101. She says is will help people understand the responsibilities of the city council and the process of our different departments.

2. Hiring for Vacant Positions in the Enterprise Funds-----Tony Sears

PRESENTATION

1. - Kinston Citizen Review Board-----Tiffani Crawford and Katie Webb

Tiffani Crawford shared her concerns for a citizen’s review board in Kinston for transparency and accountability. Ms. Crawford proposed the traditional review-focused model. It is the earliest and most common type and the level of authority varies based on community needs.

CLOSED SESSION

Councilmember Swinson made the motion, seconded by Councilmember Hardy [4-0] the Council entered into closed session pursuant to North Carolina General Statute 143-318.11(a)(4) and (6) at 9:20 pm.

After no further discussion, Councilmember Swinson made the motion, seconded by Councilmember Hardy [4-0] the City Council returned to open session at 10:25 pm.

CITY ATTORNEY'S REPORT

James Cauley, City Attorney, stated a lawsuit was filed in 2018 against the City and former police officer, A.N. Greene, in connection with events that occurred in 1991-1992. The lawsuit alleged that the officer was deficient in his investigation of a child molestation case and that the City was deficient in its officer training resulting in a wrongful conviction of plaintiff, Howard Dudley. The underlying molestation case resulted in a jury conviction and a sentence of 99 years in prison. In 2016, the conviction was reversed and he was released from prison. The State chose not to re-try the case.

The case against the City and its former police officer has now been settled and this report is to put the settlement in the Council minutes.

In 1991-1992, Diana Moore came to the City of Kinston Police Department with her 9-year-old daughter, Amy, with the contention that Amy disclosed to a babysitter that her father Howard Dudley (the defendant in the criminal case, and the plaintiff in our case) had sexually abused her on at least two prior occasions within the past year or so. Allegedly, the disclosure was originally made to a babysitter, and it was confirmed that the babysitter and the babysitter's daughter had heard Amy make those allegations in 1991. Recall that this was around the same time frame that the Little Rascals Daycare case was in the news.

The officer's investigation consisted of interviewing the mom, the child--Amy Moore, the babysitter, and the babysitter's daughter. He then got a copy of the forensic medical examination to which the little girl submitted, and the medical examination substantiated her reports of abuse. Two different cases were then going on, a criminal case against Dudley and a juvenile case where DSS and a Guardian ad Litem had been appointed to look at whether or not to terminate his parental rights. In both those actions, Dudley had a criminal defense attorney who would have gotten all the information from the juvenile proceeding that adjudicated the substantiated abuse as well as the criminal case. Mr. Dudley was convicted in criminal court and sentenced to 99 years.

24 years later, his conviction was reversed. The daughter, Amy Moore had recanted her story. She originally recanted in 1999 in an affidavit. At that time, the court did not consider it credible

and denied Dudley any relief. In 2005, she testified in a court hearing. The presiding judge found her not credible, and again denied any relief. Thereafter, the case came to the attention of one of the prisoner advocacy groups. In 2016, no one from the State was aggressively prosecuting the case to keep the conviction in place. Diana Moore was dead and Amy Moore was testifying that she made it all up. This time, the court granted the motion for relief and vacated the verdict. Dudley was released from prison. Two years later, in 2018, the City of Kinston and officer Greene were then sued in this civil action.

The City was insured in 1991-92, the year of the events that are the subject of the case, and that policy included coverage to provide for the City's defense. As you know, the City's insurance defense attorneys have recommended settlement of this case. That settlement has now been concluded. It is now appropriate to disclose the terms of that settlement so that they can be entered into the minutes of the Council.

The settlement amount was, at least partially, guided by two very recent similar cases involving persons who were incarcerated for a long period of time and then later found innocent, pardoned, or had their conviction overturned. One was a jury verdict and one was a settlement.

- 1) in May of this year, in a jury verdict, two men were awarded over \$75M, including compensatory damages of one million dollars per year of incarceration for events that occurred in 1983.
- 2) also in May, a case where there was no insurance coverage was reportedly settled for \$2M by the County for events that occurred in 1976 and resulted in an incarceration of 43 years.

Unlike this case, both of those cases involved men who had been pardoned and Mr. Dudley has not been pardoned. These cases were still deemed instructive.

Given that the law allows this type of claim, your insurance attorneys believe, and I concur, that the City, although having done nothing wrong, has been able to negotiate a settlement that acknowledges the significant risk of a verdict and that limits the City's financial exposure. The City and the former officer deny any liability; however, it was recognized that, if this case had gone to trial, the City would have either won big or lost big with potential verdict estimates ranging from zero to \$26M. For a settlement of \$850k, this risk has been avoided.

The settlement amount in this case is \$1.85M with \$1M being paid by the City's insurer and \$850k being paid by the City.

It is unfortunate that the City and this sitting Council have been compelled to defend conduct not of your making and not even under your watch. Thirty years ago in 1991, most of you were just kids. While it may not seem fair for the City of Kinston to face an expensive lawsuit in this situation, that is allowed by law.

The settlement in this case is believed to be reasonable and in the public interest. The case is now closed.

ADJOURNMENT

Councilmember Swinson made the motion, seconded by Councilmember Suggs [4-0], the Kinston City Council Meeting was adjourned at 10:37 pm.

Respectfully submitted,

Tony Sears, City Manager