

**MINUTE BOOK 27, PAGE 219  
CITY OF STATESVILLE COUNCIL MEETING  
OCTOBER 01, 2018 – 7:00 P.M.  
IREDELL COUNTY GOVERNMENT CENTER - 200 S. CENTER STREET,  
STATESVILLE, NORTH CAROLINA**

**Mayor Costi Kutteh presiding:**

**Council Present:** M. Johnson, Staford, West, Morgan, S. Johnson, Allison, Williams, West, J. Johnson

**Council Absent:** None

**Staff Present:** R. Smith, Smyth, Messick, Fugett, Davis, Currier, Staley, Slocum, Harrell, Onley, A. Smith, Maclaga, Gregory, Griggs, Lee, Cornelius, Ferguson

**Media Present:** Stacie Let Cain – Statesville Free News

**Others:** 13

**I Call to Order**

Mayor Kutteh called the meeting to order.

**II Invocation**

The City Clerk gave the Invocation.

**III Pledge of Allegiance**

Mayor Kutteh led the Pledge of Allegiance.

**IV Adoption of the Agenda**

Mayor Kutteh announced that items VIII, IX and X have been moved to the Consent Agenda. He asked for a motion to adopt the amended agenda.

**Council member Williams made a motion to adopt the agenda as amended, seconded by Council member Morgan. The motion carried unanimously.**

**V Consent Agenda**

Mayor Kutteh stated that all items below are considered to be routine by City Council and will be enacted by one motion. There will be no separate discussion on these items unless a Council member so requests, in which event, the item will be removed from the Consent Agenda and considered with the other items listed in the Regular Agenda.

**A. Consider approving the September 17, 2018 City Council Workshop, Pre-Agenda and Council meeting minutes.**

**B. Consider one (1) Board appointment to the Statesville Convention & Visitors Bureau. (Staley)**

**C. Consider approving the purchase of portable EF Johnson Viking radios to replace existing portable radios no longer being manufactured. The funds for this purchase will total \$136,984 and is included in the approved budget for the 2018-2019 fiscal year. (Cornelius)**

**VIII Consider approving 2<sup>nd</sup> reading of rezoning request ZC18-08 for a portion of property located adjacent to 2155 Amity Hill Road; Tax Map 4743-14-9526 from O&I-2 (Office and Institutional Complex) District to R-8MF (Medium Density Multi-Family Residential) District. (Currier)**

**IX Consider approving a request to place artwork on the property located at 213 Salisbury Road. (Currier)**

**X Consider approving an ordinance establishing a stop intersection on Marigold Drive at its intersection with Sterling Street. (Cornelius)**

Mayor Kutteh asked if any Council member wanted any of these items to be moved to the Regular Agenda. There being none he asked for a motion.

**Council member S. Johnson made a motion to approve the Consent Agenda, seconded by Council member Williams.**

**Council member Stafford said he does not want the item removed from the Consent Agenda, but he wants the record to reflect that he votes "No" on Item VIII.**

**Upon a vote the Consent Agenda carried unanimously with the exception of Item VIII.**

## **REGULAR AGENDA**

### **VI Conduct a public hearing and consider approving first reading of an ordinance to annex the property located at 1209 Williams Road. (Currier)**

Planning Director David Currier stated that the property being considered for annexation was submitted by Louis Young and is located at 1209 Williams Road. The subject property is approximately 3.74 acres in size and encompasses Iredell County Parcel Identification Number (PIN) 4724-91-4931. The subject property is not contiguous to the primary corporate limits of the City of Statesville, and therefore, the petition is being processed as a voluntary satellite annexation. The property is located in the City of Statesville's, ETJ and therefore will not have to be rezoned. The applicant is requesting City of Statesville water service. Since the change in regulations of statutory annexations, it has been the policy of the city to annex properties voluntarily requesting annexation so long as the site is not too remote and in close proximity to existing routes for city services. The tax value of this property is \$20,780. The estimated City tax of this property if it is annexed is \$99.75 annually plus the \$120 solid waste fee. The average water bill for a similar size and use house inside the city is \$25 per month for a total of \$300 per year. These three expenses total a payment to the city of \$519.75 annually if the property is annexed. If the property is not annexed into the city and water service is charged and additional 2.5 times the inside rate, the owner will be charged 62.50 per month for water service which means they would pay \$750 annually to the city. Currier added that annexing the property will also be financially beneficial for Powell Bill and Census funding. The Planning Department recommends approving first reading of the ordinance to annex the property located at 1209 Williams Road. City Manager Ron Smith also recommends approval.

Council member S. Johnson asked if there is any limit to what percentage of your continuous city limits can be satellite annexations and if there is are we close to reaching that number. Currier replied that state annexation law allows up to 10% of satellite annexations; however, in 2004 the City of Statesville filed an exemption in Session Law 2004-203 along with several other cities, so that percentage no longer pertains to Statesville and it could have 100% if it wanted.

Mayor Kutteh asked what the distance to the city limits is. Currier replied about 220 ft.

Mayor Kutteh declared the public hearing open and asked if anyone present wished to speak in favor or in opposition of the annexation. There being no speakers, he declared the public hearing closed.

**Council member West made a motion to approve first reading of an ordinance to annex the property located at 1209 Williams Road, seconded by Council member Allison. The motion carried unanimously.**

### **VII Conduct a public hearing concerning the condemnation of 117 Garfield St. and consider approving first reading of an ordinance to condemn the structure as unfit for human occupancy. (Currier)**

David Currier stated that the structure is owned by Mountain Pleasant AME Zion Church. A major section of the roof has been failing over time and now is at a point that the integrity of the house is seriously endangered. The church has been made aware of the issue and has been given time to remedy the situation. The conditions are now at a point to move forward with condemnation as the structure is too unsafe to enter. The church agrees the structure needs to be demolished but does not have the funds to do so and has agreed for the City to move forward with demolition proceedings. Currier explained

that since the Council meeting packet was distributed, church personnel have said that they want to demolish the building themselves because they can do it cheaper. Staff is asking that Council conduct the public hearing at this time and grant the request to delay first reading of the ordinance to give them time to demolish the structure.

Mayor Kutteh declared the public hearing open and asked if anyone present wished to speak in opposition to this demolition. There were no speakers in opposition. Mayor Kutteh asked if anyone present wished to speak in favor of this item.

Pauline Gabriel, church representative, stated that the church has decided to take out a loan to demolish the structure themselves because they do not want a lien placed on the property. She asked Council to delay first reading of the ordinance for 90 days to give them time to accomplish this.

There being no other speakers, Mayor Kutteh declared the public hearing closed.

**Council member Williams made a motion to lay first reading of this item on the table, seconded by Council member Morgan. The motion carried unanimously.**

Items VIII, IX and X were moved to the Consent Agenda.

**XI Present information gathered on surrounding municipal noise ordinances regarding residential construction. Expand residential construction noise ordinance to permit additional times for construction. (Onley)**

Police Chief Onley stated that fifteen surrounding cities were researched. Seven of those cities have specific ordinances covering construction on weekends. Some cities had fines associated with violations of these ordinances. Staff recommends amending Statesville Noise Ordinance 14-76 B-8 to permit Building Operations on Saturday's from 9:00 A.M. to 6:00 P.M. Ron Smith, the City Manager, commented in the Council Action Request that realistically, there are many violations to this ordinance on any given weekend in the City. It appears that the majority of our regional communities allow construction on the weekend, and at times it is a necessity.

Mayor Kutteh said he saw that some cities allow construction in the afternoon on Sundays. He asked if staff has considered allowing this. Chief Onley replied that after listening to the complaints from citizens, staff was not considering allowing construction on Sundays. He explained that there are elderly, retired people who listen to it all day, every day, and staff felt that at least one day of quiet was needed.

Council member Staford asked what Chief Onley's thoughts were on striking #8 completely from the noise ordinance. Chief Onley replied that he could foresee builders working until 10:00-11:00 at night, most likely using bright lights to see, which most likely would disturb a lot of people. Without #8 in the ordinance there would be nothing that the city could do to prevent it if someone did complain. He said he would not recommend doing this. Staford asked how many calls the department receives in a year complaining about construction noise. Onley replied that this issue arose within the last few months as a result of neighbors complaining about it, but prior to that he is not familiar with any complaints of this type and unless the department receives complaints they normally would not address it.

Council member J. Johnson asked if any consideration has been given to specifying different hours to take into account daylight savings time. Onley said that some cities clarify daylight savings time in their ordinance and there are also state laws that allow construction to start 30 minutes before daylight and must end within 30 minutes after sunset.

Council member Staford said he would like to strike #8 altogether and if it becomes problematic then Council can revisit it. Onley stated he would not recommend doing this because he fears that it will be perceived that the city is sending a message that it is not opposed to construction taking place all hours of the day or night. This puts the Police Department in a difficult position when they get a call and have to try to enforce it.

Council member Williams asked what the department is currently doing to enforce the rule on the weekends. Chief Onley replied that with this particular issue officers went to the site and asked them to stop and gave them a copy of the ordinance. If they do not stop after being asked to, then the officer can write them a citation or if necessary, this is

a misdemeanor, so the person could be arrested, and their equipment seized if they continue. The department has been lucky and so far, has always been able to negotiate with violators to the satisfaction of the person complaining as well as for the company to be able to get their work finished.

Council member West said he does not agree with removing #8. He likes the idea of 30 minutes prior to sunrise and 30 minutes after sunset everyday but Sunday.

Council member M. Johnson said he does not think the ordinance needs to be changed. Council member J. Johnson agreed.

**Council member M. Johnson made a motion to leave the ordinance as it is, seconded by J. Johnson.**

Mayor Kutteh said a motion is not needed if no change is being made to the ordinance.

Council member Staford said that laws that are not or cannot be enforced should not be left on the books.

Council member West pointed out that leaving the ordinance as it is eliminates allowing building construction to be done on Saturday.

**Council member West made a motion to approve amending the ordinance Section 14-76, Noise(b)(8) to state “Monday – Saturday from 7:00 a.m. to 6:00 p.m. and strike the sentence “except in cases of urgent necessity in the interest of public safety, and then only with a permit from the proper city officials”. Council member M. Johnson seconded the motion. The vote on the motion was as follows:**

**Ayes: West, M. Johnson, Allison, S. Johnson, Morgan  
Nays: J. Johnson, Staford, Williams  
Motion carried: 5-3**

Council member Staford said his opposition to this motion is that he feels that 6:00 p.m. is too early to have to quit working on a summer day when it does not get dark until almost 9:00 p.m.

**XII Continue the discussion on the maximum size of flags. (Currier)**

Mayor Kutteh stated that Council members Staford and J. Johnson have requested to have another discussion regarding the maximum size of flags allowed to be flown.

Council member West asked to make a point of order. He said that Council already voted on this item once to amend the ordinance and increase the size of the flag. He said he believes that according to the Rules of Order, only a Council member that voted yes on a previous motion can bring the item up again.

Mayor Kutteh asked City Attorney Messick to give an opinion on this. Messick stated that is true if a motion to reconsider was made. If anything was to be done the proper motion would be to rescind and amend.

Mayor Kutteh stated that any two Council members can ask to speak about any topic they would like to speak about. This is not calling for Council to take any action. He thought we would hear once and for all from everybody what they want to say about this item and move forward. If action needs to be taken, then Council will take it and if not, then the meeting will move forward.

Council member West said his contention with this has nothing to do with the American Flag, he is as much for flying the flag as anybody else on Council. His issue is that Council had an agreement with Camping World to compromise on the size of the flag and amended the ordinance. Camping World then violated the compromise by going ahead and doing what they wanted to do. It is a slap in Council's face.

Council member Staford said he does not believe the compromise was with Camping World but within the Council itself. He said he does not find the size of the flag offensive and just wanted to see if any other Council members felt the same way and might consider changing the ordinance to allow it. He agrees that our laws must be followed.

Council member Morgan said he would never call an American Flag offensive, no matter how big it is. He said his point is that he deferred and agreed to increase the size of the flag allowed in our ordinance from 96 sq. ft. to 1,000 sq. ft., ten times larger. He said he takes umbrage of the fact that Council is being vilified for not being patriotic. It has nothing to do with patriotism, it has to do with the law that Council has in place. He fully supports what he did, and he supports the ordinance as it stands and will not support going any further.

Council member Allison said that this issue is causing conflict because citizens feel that Council is attacking the flag. She has explained to constituents that Camping World chose to ignore the amended ordinance that Council put in place in deference to their request to fly a larger flag. Camping World should be held accountable for what they have done, and the City needs to do what it needs to do enforce the law.

Council member J. Johnson said he does not believe that Council has the right to tell anybody what size flag they are allowed to fly as long as it does not block the view of a business or creates a hazard. He reminded Council members that it has previously amended ordinances after they have already been changed so changing this one again would not be something different.

Council member S. Johnson said he has never questioned Council member West's patriotism and would like to congratulate him for having the courage to stand up for the rule of law. As much as we are patriotic and stand up for our flag, we must still respect the rule of law. Council passed the law and all West is asking for is that the City enforce it. S. Johnson said that as long as the flag does not interfere with somebody exercising their property rights, is far enough removed from the right-of-way, and does not interfere with the ingress/egress of traffic he personally does not care how big of flag they fly. Council did pass an ordinance, so it needs to either amend the ordinance to accommodate this flag or enforce it.

**Council member J. Johnson made a motion to amend the ordinance to allow a 40' x 80' size flag to be flown, seconded by Council member S. Johnson. The vote was as follows:**

**Ayes: J. Johnson, S. Johnson, Staford**  
**Nays: West, Morgan, M. Johnson, Allison, Williams**  
**Motion failed: 3-5**

**XIII Consider approving Streetscape design services for Shelton Avenue, from Garner Bagnal Boulevard to Amity Hill Rd and Budget Amendment #08. (Harrell)**

Scott Harrell stated that staff was requested to solicit a proposal from McGill Associates for engineering design services for Streetscape improvements on Shelton Avenue. McGill is currently under contract to design Streetscape improvements from Amity Hill Rd. to the southern end of the proposed Municipal Services Center site; these additional services will continue the design north to Garner Bagnal Boulevard. The intent is to develop construction drawings and specifications to guide development of the Shelton Avenue corridor.

**Proposed design services and associated costs are as follows:**

Survey Services	\$35,000	
Streetscape Design	\$141,000	
Water/Sewer Replacement	\$52,000	
Electrical/Lighting Design	\$189,000	Electrical design by Progressive Engineering
<b>Total Design Services:</b>	<b>\$417,000</b>	
Bidding/Award Services	\$7,000	
Construction Administration*	\$75,000	*If built as single contract; daily observation by City
<b>Total Bid &amp; C/A Services:</b>	<b>\$82,000</b>	

**McGill's current contract includes the following services, which are funded and in progress:**

Amity Hill & White's Mill	\$39,000	
Realignment		
MSC area Streetscape Design	\$64,000	Incudes water & sewer replacement
Bidding/Award Services	\$8,000	

<u>Construction Administration</u>	<u>\$50,000</u>	Daily observation by City staff
Total:	161,000	

**Budget/Funding Implications:**

**The additional design services may be distributed as follows:**

General Fund:	\$176,000
Water/Sewer Fund:	\$52,000
<u>Electric Fund:</u>	<u>\$189,000</u>
Total:	\$417,000

As segments of the streetscape are constructed, there will be annual maintenance costs associated with landscaping and lighting.

Staff recommends approval of Streetscape design services for the Shelton Avenue corridor in the amount of \$417,000, and approval of Budget Amendment #08.

In the Council Action Request City Manager Ron Smith that there are currently three significant redevelopment projects under consideration on the Shelton Avenue Corridor. These projects will all be required to comply with at least some of the existing streetscape requirements (street trees, sidewalks, and dedication of future right-of-way). To ensure that this is done properly, engineering design will be required. There is just over \$216,000 left in the streetscape fund, which would pay for just under half of this study. If this corridor is to redevelop with these requirements in place, the design will be necessary. Recommend for approval.

Council member Staford asked if there is an estimated cost for the land purchase for the Linear Park. Harrell replied that is actually a separate project. Staford asked if there is an estimated cost for the development of the Highway 21 corridor. Harrell replied not specifically at this time. Staford asked if staff has an estimated annual cost of maintenance for the Linear Park. Harrell explained the project is still in the very early stages of planning and those costs are not known yet.

Council member Williams asked if Harrell would recommend that these monies be spent for the design and development of this corridor even if the City does not build the Linear Park. Harrell replied yes that this is basically designs for back to curb and back to curb proposed cross-section, so any new development along this corridor will have this guidance on how to implement streetscape improvements on the front end.

Council member Allison asked if this will correspond with the Linear Park. Harrell explained that both are in the same concept plan.

Council member Staford asked if this design encroaches upon the easements on either side of the current corridor. Harrell replied that it increases the right-of-way width of Shelton Avenue by 110 ft. but in which direction is yet to be determined.

Council member M. Johnson explained that until the design services are done the engineering rights-of-way cannot be done. He asked Harrell to describe what he found when he checked the water and sewer utility lines in this corridor. Harrell stated that there is cast iron pipe there that is close to the end of its life span, which is 50-70 years. There is also clay pipe that has been there since the 1940's. M. Johnson explained that until the water/sewer lines are replaced we do not want to do development work in that area. M. Johnson said we have prospective clients in the corridor that are interested in redeveloping their property and are willing to contribute and/or match the streetscape design, but this cannot be done until the design done and it is known where curb cuts, utility lines, etc. are. Once the design is done then there will be a plan from which everybody can work from.

Mayor Kutteh stated that the best example of why we need this is the Dollar General on Shelton Avenue. What is currently there will have to be changed.

Council member Staford read a list of several reasons why he believes that this plan is no longer correct or usable.

Council member West stated that nothing can move forward without a plan.

Council member M. Johnson said that Center Street was shrunk on purpose to get the big truck traffic off of it. They were using it to avoid the weight scales. Shelton Avenue is not going to develop from north to south but from south to north.

Council member Staford said he agrees that we need a plan, but this plan is outdated and not it and he is not in favor of spending more money to go down the path of a failing plan.

**Council member Allison made a motion to approve, seconded by Council member West.**

Council member S. Johnson said he agreed with Staford. He does not understand why Council would want to do this to a commercial corridor. This plan does not enhance revenues.

**The vote on the motion was as follows:**

**Ayes: Allison, West, M. Johnson, Morgan, Williams**  
**Nays: S. Johnson, Staford, J. Johnson**  
**Motion carried 5-3**

**XIV Boards and Commissions Updates**

Mayor Kutteh advised that minutes from these meetings are included in the packet.

**XV Other Business**

No other business to discuss.

**XVI Closed Session**

None

**Council member S. Johnson made a motion to adjourn seconded by Council member J. Johnson. The motion carried unanimously.**

Attest:

Brenda Fugett  
Brenda Fugett, City Clerk



Constantine H. Kutteh  
Constantine H. Kutteh, Mayor