

**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
MARCH 28, 2011
7:00 P.M.**

Present: Mayor Anthony G. Chavonne
Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Others Present:

Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Bryan Meyer, Assistant City Attorney
Renner Eberlein, Assistant City Attorney
Lisa Smith, Chief Financial Officer
John Kuhls, Human Resource Development Director
Brad Whited, Airport Director
Karen Hilton, Planning and Zoning Division Manager
David Nash, Planner II
Randy Hume, Transit Director
Donald Pike, Transit Safety and Training Coordinator
Nathan Walls, Public Information Specialist
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Pastor David Murphy, Purpose of Praise Outreach Center.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was recited by those in attendance.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Mohn moved to approve the agenda.

SECOND: Council Member Arp

VOTE: UNANIMOUS (10-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Mayor Pro Tem Haire announced the Foxfire Community would be hosting a scholarship fundraiser on April 9, 2011, at 9:00 a.m. at the corner of Glen Canyon Drive and Foxfire Road. Mayor Chavonne recognized Mr. Donald Pike, Transit Department Safety and Training Coordinator, who had been selected the Training Professional of the Year by the National Transit Institute who recognize excellence in transit training. Mr. Iman congratulated Mr. Pike and presented him the award.

6.0 CONSENT

MOTION: Council Member Mohn moved to approve the consent agenda with the exception of Items 6.3 and 6.10.

SECOND: Council Member Massey

VOTE: UNANIMOUS (10-0)

6.1 Approve Minutes:

- August 9, 2010 - Dinner and Discussion Meeting
- November 1, 2010 – Work Session
- November 8, 2010 - Dinner and Discussion Meeting
- November 8, 2010 - Regular Meeting

- November 18, 2010 – Special Joint Meeting
- November 22, 2010 - Dinner and Discussion Meeting
- November 22, 2010 - Regular Meeting
- December 6, 2010 - Work Session
- December 8, 2010 - Agenda Briefing Meeting
- January 3, 2011 – Work Session
- January 19, 2011 – Agenda Briefing Meeting

6.2 Capital Project Ordinance Amendment 2011-15 (North Carolina State Veterans Park 2).

The amendment reduced the overall budget for the North Carolina Veterans Park project by \$723,275.00.

6.3 Pulled for discussion by Council Member Mohn.

6.4 Special Revenue Fund Project Ordinance Amendment 2011-4 (Energy Efficiency and Conservation Block Grant).

The amendment appropriated an additional \$166,900.00 for the Energy Efficiency and Conservation Program.

6.5 Special Revenue Fund Project Ordinance 2011-11 (Washington Drive School Site Project).

The ordinance established a \$235,000.00 project budget for a gateway feature and a portion of the demolition work at the Washington Drive School site.

6.6 Consideration of assigning 18 recent annexation areas to election districts.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE ACCOUNTING FOR EIGHTEEN ANNEXATIONS OF TERRITORY TO THE CITY OF FAYETTEVILLE. RESOLUTION NO. R2011-012.

6.7 Special Sign Permit request for temporary event signs for the Fayetteville Farmers Market.

Staff recommended Council grant the special sign permit for up to 4 signs to be placed 1 hour before and removed 1 hour after the event on Wednesdays and Saturdays, April 16-October 29, 2011.

6.8 Bid recommendation for purchase of 9,000 feet of 500 MCM copper conductor.

The Public Works Commission approved bid award for purchase of 9,000 feet of 500 MCM copper conductor, PWC Stock No. 1-065-400 (with the option to purchase additional quantities within a one-year period upon the agreement of both parties) to Stuart C. Irby, Rocky Mount, NC, low bidder in the total amount of \$117,126.00. Bids were received March 2, 2011, as follows:

	<u>Cost Per Ft.</u>	<u>Total Cost</u>
Stuart C. Irby (Rocky Mount, NC).....	\$13.014....	\$117,126.00
WESCO (Raleigh, NC).....	\$13.485....	\$121,365.00

6.9 Bid recommendation for purchase of ten 230kV metering class combined potential and current transformers.

The Public Works Commission approved bid award for purchase of ten 230kV metering class combined potential and current transformers (with the option to purchase additional units within a one-year period upon the agreement of both parties) to Alstom Grid, Inc., Waynesboro, GA, low bidder in the total amount of \$300,000.00. Bids were received February 22, 2011, as follows:

	<u>Unit Cost</u>	<u>Total Cost</u>
Alstom Grid, Inc. (Waynesboro, GA).....	\$27,740.00....	\$277,400.00
Trench Limited (Scarborough, Ontario, Canada).....	\$27,900.00....	\$279,000.00
ABB (Lexington, KY).....	\$28,835.00....	\$283,850.00

6.10 Pulled for discussion by Council Member Mohn.

6.11 Consider resolution of award for South Reilly Road – Jeffrey Drive to Morganton Road Concrete Sidewalk Project.

RESOLUTION OF AWARD OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA (SOUTH REILLY ROAD – JEFFREY DRIVE TO MORGANTON ROAD CONCRETE SIDEWALK PROJECT). RESOLUTION NO. R2011-014.

6.12 Consideration of an Economic Development Incentive Agreement for MBM Hospitality, LLC. relating to the development of an Embassy Suites project on Lake Valley Drive.

6.13 Consideration of the Economic Development Incentive Agreement for Strategic Solutions Unlimited.

6.3 Special Revenue Fund Project Ordinance Amendment 2011-3 (Wayfinding Signage Project).

This item was pulled for discussion by Council Member Mohn. He inquired if the amendment was authorizing the \$50,000.00 from the general fund as outlined in the CIP. Ms. Karen Hilton, Planning and Zoning Division Manager, responded it was to make sure that all the funds were in a location that the contract could be placed against.

MOTION: Council Member Mohn moved to deny approval as recommended.

SECOND: Council Member Crisp

Mayor Chavonne inquired if this was included in this year's operating budget. Mr. Iman responded in the affirmative and stated the funding for the project was approved by Council. Council Member Arp inquired how the wayfinding signage would be impacted if not approved. Mr. Iman responded it would impact the work from the past 2 years through a partnership with the Convention and Visitors Bureau, several departments of the City, and the consultants.

VOTE: FAILED by a vote of 4 in favor (Council Members Crisp, Mohn, Applewhite, and Haire) to 6 in opposition

MOTION: Council Member Bates moved to approve as recommended.

SECOND: Council Member Hurst

VOTE: PASSED by a vote of 7 in favor to 3 in opposition (Council Members Haire, Applewhite, and Mohn)

6.10 Confirmation of assessment roll for LaGrange and Summerhill.

This item was pulled for discussion by Council Member Mohn. He inquired if this was approving the assessment roll and PWC moving forward with notifying the property owners of the assessment amount. Mr. Iman responded in the affirmative.

RESOLUTION CONFIRMING ASSESSMENT ROLL AND LEVYING ASSESSMENTS. RESOLUTION NO. R2011-013.

MOTION: Council Member Mohn moved to deny staff's recommendation.

Motion died due to lack of a second.

MOTION: Council Member Bates moved to approve as recommended.

SECOND: Council Member Hurst

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Mohn)

7.0 PUBLIC HEARINGS

7.1 Formation of a Municipal Service District to provide drainage improvements necessary for the Embassy Suites project on Lake Valley Drive and Budget Ordinance Amendment 2011-10 funding the drainage project.

Mr. Kristoff Bauer, Assistant City Manager, presented this item and stated the notice area was larger than the proposed Municipal Service District (MSD) area because there was confusion on what areas would benefit from the project and they wanted to make sure all areas that would benefit were noticed. He stated feedback and additional documentation from the property owners resulted in the size of the MSD being reduced to three lots. He reviewed a site plan of the improvements and stated the proposed assessed valuation would be .345 cents per \$1,000.00 in valuation and was based on the current estimate of the assessed value. He stated it was estimated the payback on the loan would be at a .12 interest rate over a ten-year period. A question and answer period ensued regarding the City being protected on the loan and bankruptcy. Mr. Bauer explained the loan was between the general fund and the MSD. He stated there was a taxable authority that would allow them to levy a tax on the parcels and it

would be levied until they received the proceeds back for the service being purchased. In response to a question, Ms. Karen McDonald, City Attorney, further explained the City would be on the top as far as the tax lien if there was a bankruptcy. This is the advertised public hearing set for this date and time. The public hearing was opened. Mr. Charlton Johnson, 334 Point Place, Apt. J, Fayetteville, NC 28301, appeared in favor and expressed concern with wasting money on the project and stated the City should waste the money downtown where they could make money.

There being no one further to speak, the public hearing was closed.

A RESOLUTION ESTABLISHING AND CREATING THE LAKE VALLEY ROAD MUNICIPAL SERVICE DISTRICT IN FAYETTEVILLE, NORTH CAROLINA. RESOLUTION NO. R2011-015.

MOTION: Council Member Bates moved to approve as recommended.

SECOND: Mayor Pro Tem Haire

VOTE: UNANIMOUS (10-0)

8.0 OTHER ITEMS OF BUSINESS

8.1 Settlement for Festival Park Plaza building and Budget Ordinance Amendment 2011-9.

Ms. Karen McDonald, City Attorney, presented this item and stated the City's commitment was the land valued at \$275,000.00 and a Master Lease. She reviewed the purpose, plan, and City's obligation under the Master Lease. She stated the initial tenants were Schoollink, Defense Technology Innovation Center, and Mitchell Brewer Richardson. She reviewed the ownership and management structure as follows:

- Festival Park Plaza Office, LLC (Owner)

	<u>Ownership Interest</u>
- James Baker, Jr.	33.33%
- Cumberland County Business Council (Fayetteville-Cumberland County Chamber of Commerce)	33.33%
- 3Aaab, LLC, Members: Erick Wells, Wendell Troy, L. Gavin Gutterson, and Molly Arnold)	33.33%
- Property Manager
 - The Lundy Group (James Baker, President/Owner)

Ms. McDonald reviewed various safeguards in the Master Lease, property management, and City ownership. She stated in June 2009 the City began making payments and for every \$50,000.00 Mr. Baker was losing 1.5 percent ownership interest. She stated in 2010, the City began trying to negotiate with Mr. Baker to acquire his interest with no success. She stated an appraisal was conducted with the building appraising at \$6.2 million and the individual interests appraising at \$1.55 million. She explained each individual interest was discounted because no one individual had a majority ownership. She reviewed the lawsuits and pointed out the important points of the settlement terms as follows:

- | <u>Baker Settlement Terms</u> |
|---|
| • The City will pay Baker \$500,000.00 for his one-third ownership interest in Festival Park Plaza Office, LLC (FPPO). |
| • The City and the Chamber will dismiss the lawsuit, with prejudice. |
| • The City and the Chamber will indemnify Baker against any action or collection on the personal guaranty he provided to Bank of America in connection with the Festival Park Plaza loan. |
| • The parties agree not to disparage each other. |
| • Upon execution of the settlement agreement, Baker will resign as manager of FPPO. Baker must account for all monies and assets held by FPPO to facilitate a smooth management transition. |

- | <u>Schoollink Settlement Terms</u> |
|--|
| • 3Aaab will convey its one-third interest in FPPO to the Chamber on or before March 31, 2011. |

- The City will dismiss the lawsuit, with prejudice.
- The City will indemnify 3Aaab and its owners against any action or collection on the personal guaranties they provided to Bank of America in connection with the Festival Park Plaza loan.
- The parties agree not to disparage each other.

Ms. McDonald stated the Chamber wanted to enter into an agreement with the City that the City would continue to incur all of the obligations with regards to the building and its operations would be the responsibility of the City, the City would retain a real estate management company to manage the building, and the City would forgive \$275,000.00 debt owed by the Chamber and accrued interest upon purchase of the building from the Chamber. In summary, she stated the three components were (1) the settlement of the lawsuits, (2) the budget amendment to fund the settlement agreement, and (3) the agreement with the Chamber.

MOTION: Council Member Hurst moved to authorize the City Manager and Chief Financial Officer, with advice from the City Attorney, to execute on behalf of the City all the necessary documents consistent with the terms regarding the Festival Park Plaza building.

SECOND: Council Member Bates

A question and answer period ensued regarding the taxes on the property once the property transferred to the City and future plans for leasing or selling the property. Ms. Lisa Smith, Chief Financial Officer, explained no taxes would be paid once transferred to the City. Mr. Dale Iman, City Manager, further explained there were several options for the future of the building that they would discuss and stated they would update Council on progress.

VOTE: UNANIMOUS (10-0)

Mr. Iman stated it was brought to his attention that there was an administrative error in the action that was taken under Item 7.1. He stated it was reported during the presentation that the tax rate was .345 cents per \$1,000.00 of assessed value. He stated the correct number was .345 cents per \$100.00 of assessed value. He also noted an administrative error on page 7-1-4-2 of the agenda. He stated the resolution should be amended to read .345 cents for each \$100.00 value and not 29 cents.

MOTION: Council Member Bates moved to reconsider Item 7.1.

SECOND: Council Member Massey

VOTE: UNANIMOUS (10-0)

MOTION: Council Member Bates moved to approve Item 7.1 with amendment to resolution for assessment fee to read .345 cents per \$100.00 valuation.

SECOND: Council Member Mohn

VOTE: UNANIMOUS (10-0)

8.2 Policy 115.11, replacing a vacancy on the City Council.

Ms. Karen McDonald, City Attorney, presented this item and provided background on the policy and the general statute requirements. She stated with the recent election of former Council Member Meredith to the Senate, the Council invoked the policy regarding his replacement. She stated after that process took place, Council expressed interest in making changes to the policy, specifically changes proposed by Mr. Mohn. She stated she incorporated those changes into the current policy for Council's consideration.

MOTION: Council Member Mohn moved to approve the revision of City Council Policy 115.11.

SECOND: Council Member Massey

A question and answer period ensued regarding the changes in the policy to include the applicant completing an application, the applicant addressing Council at a regular meeting, and the requirement that the vacating Council member must vote.

Council Member Applewhite requested the City Attorney interpret the statute as to whether an actual vacancy or projected vacancy was the same. Ms. McDonald explained the statute states that when you have a vacancy, you must replace the vacancy and does not address that. She stated there was nothing in the statute that precluded the Council from filling the vacancy in advance to ensure continuity on the Council. She further explained it was up to the Council as

to what they wanted to do as it pertained to the policy.

Council Member Mohn explained the policy was calling the vacancy the event and reviewed the possible events.

SUBSTITUTE MOTION: Council Member Applewhite moved to amend the policy to include a provision that Council would not vote to replace a sitting Council member until the departing member had left the seat.

SECOND: Mayor Pro Tem Haire

Further discussion ensued regarding the substitute motion.

SUBSTITUTE MOTION VOTE: FAILED by a vote of 3 in favor (Council Members Applewhite, Haire, and Massey) to 7 in opposition

ORIGINAL MOTION VOTE: FAILED by a vote of 4 in favor (Council Members Massey, Mohn, Haire, and Crisp) to 6 in opposition

9.0 ADJOURNMENT

There being no further business, the meeting adjourned.