

MINUTES OF MEETING OF THE  
CITY COUNCIL OF THE CITY OF SANFORD  
SANFORD, NORTH CAROLINA

The City Council met at the Sanford Municipal Center, 225 E. Weatherspoon Street, on Tuesday, November 20, 2012 at 7 P.M. in the Council Chambers. The following people were present:

Mayor Cornelia P. Olive  
Mayor Pro Tem Sam Gaskins  
Council Member Walter H. McNeil, Jr.  
Council Member Jimmy Haire  
City Manager Hal Hegwer  
City Attorney Susan Patterson

Council Member Rebecca Wyhof  
Council Member James Williams  
Council Member Charles Taylor  
Deputy City Clerk Janice Cox

Absent: Council Member Poly Cohen  
City Clerk Bonnie White

Mayor Cornelia Olive called the meeting to order. A moment of silence was observed. The Pledge of Allegiance was recited.

**PUBLIC COMMENT** – (Exhibit A)

Donald Jackson of 1025 Washington Avenue stated that he was concerned with the level of violence in his neighborhood and asked council what could be done about the shootings. He stated that recently shots were fired into his home and a nearby store is often a target. Mayor Olive stated that Council would discuss his problem and someone would be in touch with him.

**APPROVAL OF AGENDA**

City Manager Hegwer stated that there is a change in the agenda under 8A which is an application by T. L. Stewart Builders, Inc. It was a case for public hearing. Proper notice was not given to the surrounding community that would be affected by the rezoning, so the request is to cancel the scheduled public hearing and reschedule it for December 18.

Council Member Walter McNeil made the motion to approve the amended agenda; seconded by Council Member Rebecca Wyhof, the motion passed unanimously.

**CONSENT AGENDA**

- A. Approval of City Council Meeting Minutes Dated October 2, 2012– (Filed in Minute Book 77)
- B. Approval of City Council Meeting Minutes Dated November 6, 2012 – (Filed in Minute Book 77)
- C. Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FY2012-2013 – (Revenue from Insurance Company for Damage to Golf Cart) – (Exhibit B)

- D. Approval of Interlocal Agreement for Bidding Solid Waste Services for the Town of Broadway – (Exhibit C)
- E. Approval of Interlocal Agreement with the Town of Goldston for the Wastewater Project and Encroachment Agreement with the Town of Goldston to Allow Wastewater Collection Pipes to be Constructed Within the City of Sanford Easements – (Exhibit D)
- F. Approval of Selection and Authorization to Execute the Contract for a Playground Installer for Neighborhood Park at Maple Avenue and Fourth Street for the FY 2009 Maple Avenue Community Development Block Grant Community Revitalization Project – (Exhibit E)
- G. Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FYH 2012-2013 (McIver Street Sidewalk Addition to Chatham Street Parking Lot) – (Exhibit F)
- H. Approval of Capital Project Ordinance Amendment Downtown Improvements (McIver Street Sidewalk Addition to Chatham Street Parking Lot) – (Exhibit G)

Mayor Pro Tem Sam Gaskins made the motion to approve the Consent Agenda; seconded by Council Member James Williams, the motion passed unanimously.

## **SPECIAL AGENDA**

### **Cases for Public Hearing: to be held jointly with the Planning Board**

- A. Application by T. L. Stewart Builders, Inc. – to rezone two tracts of land totaling 2.16 acres +/-, with one tract addressed as 2203 Woodland Avenue and an adjoining vacant lot, from Residential-Mixed (R-12) Zoning District to Woodland Storage Conditional Zoning District to allow for the development of a mini-warehouse storage business. The property is the same as depicted on Lee County Tax Map 9652.18, as Tax Parcels 9652-31-3881-00 and 9652-31-5897-00 Lee County Land Records.

This item was removed from the agenda by council vote.

- B. Public Hearing on Proposal to Enact a Licensing Permit for Internet Sweepstakes/Cafes – (Exhibit H)

Mayor Olive opened the public hearing.

Chris Marion whose internet café is located at 1011 Spring Lane stated that he and his wife have been in a fight with the city of Fayetteville for the last two and a half years over the same topic and just recently won a hearing in the appellate courts in their favor against the tax. He understands that the tax being discussed here is the same amount as what they were paying in Fayetteville in the case he won. Mr. Marion stated that the tax would have to be equitable and there is no other business in Sanford being

taxed now. He stated that it could not be punitive, and a tax of that amount would certainly close down some internet cafes, including his. He stated that it had to be fair. He wanted council to consider the fairness of sweepstakes being the only business in Sanford being taxed and at a rate that would be about \$25,000 for him when other businesses are not being taxed. As a legal business, he felt his business should be treated like other businesses. He felt that the city should wait and see what the court deems fair and equitable. At that time, he would be willing to discuss with council what a fair and equitable tax would be. He did not think a flat tax would be. Maybe a percentage of gross income could be considered because all cafes don't earn evenly. He stated that 40 percent of the money that comes in goes to the software company who owns the license to the software. That leaves 60 percent for operating costs. Mr. Marion stated that if you made \$100,000 in a year in gross income, the owner is only keeping about \$60,000. He stated that after payroll, rent, and other expenses, probably they would have a net loss with a \$25,000 tax.

John Martin, of 4600 Barbecue Church Road, spoke representing J & J Vending—a family-owned business in Sanford for about thirty years with seven full-time employees. He explained that the games they use are different. They use an internet game with one to four machines. He stated that this is not a café type of business. The machines are located in convenience stores, bars, lounges, fraternal organizations, etc. He stated that they are used to promote the sale of their long-distance phone time. Mr. Martin stated that they pay sales tax on all of the phone time they sell. Last year, he stated their company paid \$11,683.12 to the state and \$5,534.13 to the county. The property tax they paid Lee County last year on their operating equipment in Lee County was \$5,580 and that does not include the trucks they run or the building they are in. He stated that the businesses only operate one to four machines in a location and the locations depend on those machines as another source of revenue. He asked council to consider not making the tax too high because it will put them out of business if it is.

Richard Frye identified himself as a commercial real estate broker in Southern Pines, North Carolina and Legislative Committee Chairman for the Entertainment Group of NC and stated that he is often called on to come to these types of meetings. He stated that he does not have any equipment in Lee County so he is not here fighting for anything he wants. He reviewed the paperwork he distributed to Council (Exhibit I) which includes their opinion of the current state of video gaming in North Carolina. Mr. Frye stated that for years, they dealt with GS 14-306 known as the Slot Machine Law which covered illegal cash payouts. Then they went to GF 14-306.1A—current law passed in 2009 that there is an injunction against which is included in Exhibit I. That injunction gave them permission to run four machines, selling long distance telephone time, and using the games as a promotion. That injunction is still in effect. He stated that in 2010, the legislature wrote GS 14-306.4—the Entertaining Display Law. That is the one in a battle with the Supreme Court right now.

Mr. Frye stated that there are two cases in front of the State Supreme Court that were heard on October 17, 2012—Hess Technologies vs. the State and Mr. Frye's company, Sandhills Amusements vs. the State. This case will probably be decided in the

next thirty to sixty days and will help to define the legality of how the machines can be run in North Carolina. The second case (127A12) is IMT, Inc. vs. the City of Lumberton. It is a case over taxes. Game operators in the City of Lumberton decided the taxes were too exorbitant, so they filed the lawsuit which has been going on for about two years. The city of Lumberton had to escrow the money they had collected and go to court. It was argued in front of the Supreme Court on November 13, 2012 and they will probably have a decision in late January or early February of 2013. Mr. Frye stated that it was important to notice the difference between a big game room with 20 – 100 pieces and the games where you are limited under an injunction to a maximum of four, as there is a serious difference between the two. The four games are found in fraternal organizations, convenience stores, restaurants, bars, etc. They supply only a small amount of income.

Mr. Frye stated that his recommendation is not to do anything for the next sixty days and let the Supreme Court decide the cases. He suggested that council use a sliding scale if they want to go ahead and put a tax in place so the small convenience stores, fraternal organizations, etc. are not penalized.

Council Member Taylor thanked Mr. Frye for the information and asked if he was seeing some of the larger sweepstakes operators favoring a tax in order to get rid of smaller competitive businesses. Mr. Frye responded that putting a punitive tax encourages the situation for company stores to take over because they don't have the 25-28 percent to pay in overhead to a parent company.

Bobby Brewer of 1203 Hawkins Avenue stated he has a little dealing with a place on Hawkins and a fraternal organization. He reminded council of the privilege tax that was put in place and then pulled off. Mr. Brewer stated that he views this tax as a privilege tax and is not fair. It is the key way many fraternal organizations are making money which goes back into the community in some form. He stated that he wished Council would not have to tax them.

Mayor Olive read comments from David Nestor, a local real estate agent, who could not be present at the meeting. These included the following: He indicated that the tax would be a privilege tax and the stores would move outside the city limits. He stated that there had never been a police call to Internet café establishments. It could represent taxation without representation. There would be costs involved in collecting the tax and monitoring the sweepstakes operation. Most of the operations have an escape clause in their leases to be able to move in the event of government intervention.

Mr. Hegwer stated that the city had tried to complete a phone survey of the sweepstakes operations. One difficulty was getting information from employees who answered the phone and not necessarily reaching the owners. He pointed out that they were trying to find out how many jobs these facilities were creating. Some were full time jobs and some were part time jobs and some were volunteers. Those he talked to, in depth, echoed the same concerns expressed tonight. One real estate agent had advised that the rent for the locations ranged from \$8 - \$12 per square foot per year, with a typical

facility having a minimum of about 2,000 square feet, producing rents ranging from \$1,300 to \$2,000 per month.

Mayor Pro Tem Gaskins stated he appreciated the input tonight. He stated that council had been apprised of the laws and is aware of the potential punitive nature. He expressed that council has no intentions of trying to be punitive. He wished to have clarified any distinction between a privilege tax and licensing permit.

City Attorney Patterson explained that a privilege tax is a revenue-generating vehicle. It is a tax placed on a business for the privilege of operating within the city limits. It is usually imposed under Chapter 160A-211 of the General Statutes. There are different categories under which the privilege taxes are enacted. There are different amounts and different rates or schedules under which you would be able to tax, authorized by the legislature. You do not have to have a privilege tax on every business; you can determine to have them on some and not on others. A permit or license is often used for another purpose, often to determine if the business is what the permit is for, within your jurisdiction—like building permits. In this situation, some people could say the fee being discussed is essentially a privilege tax although they could make distinctions.

Attorney Patterson stated that some speakers spoke about the amounts we were talking about, but to her knowledge, instructions have not come from this council on how much or what type or whether it should be done through a certain process or the other.

Mr. Gaskins stated that his concern in the whole matter is that Sanford residents are spending their money and receiving no goods or services in return and a great deal of the funds are leaving Sanford and Lee County. With the exception of the fraternal organizations, most of this money is diverted completely out of Sanford and Lee County. That is a major concern of his.

Council Member Taylor stated that he had visited five internet cafes last night for the first time. He stated that he, personally, did not like them, but he would vigorously defend their right to exist until the courts prove otherwise. He feels the legislature will address this issue in the upcoming session. Regarding Mr. Gaskins's comment, Mr. Taylor stated that it is up to the people how they spend their money. He does not advocate it, but they have a legal right to exist and operate. He stated they should support that whether or not they ethically or morally agree with it. He stated they are operating small businesses and that 80 percent of the jobs in America are created by small business and he feels it is important for council not to stifle activity where they are paying rent. Mr. Taylor stated that you have to be sure people are getting equal services for the taxes they are paying. In this case, there have been no instances where police have been called; there has been no crime in these facilities; the property tax is being paid on the buildings; they are paying taxes on the goods being sold in those facilities, but yet they are not using law enforcement services. He stated he was in favor of a "hands off" approach with the vast array of unknowns. He stated the need for clarity for why council keeps talking about this eight months after it was originally brought up.

Council Member Williams stated that it is his thinking that whenever council acts, he would like to have contact numbers for the people who spoke tonight. He would like a committee to help council make the best decision for all involved. He stated that we are pro business in this town and not interested in putting anyone out of business.

With no other persons requesting to speak, Mayor Olive closed the public hearing.

### **REGULAR AGENDA**

#### **Consider Financial Guarantee for the Marketplace at Tramway – (Exhibit I)**

City Manager Hegwer stated that Exhibit I contains a list of estimates for the public improvements, totaling \$569,000 that would be necessary to be installed by the developer prior to the developer conveying property from the existing subdivision. These public improvements have not been made at this point, but the developer would like to proceed and sell some of the property there. This is asking council to approve security in the amount of \$569,000 to make sure those public improvements are put in place.

City Attorney Patterson stated that the ordinance calls for council to approve the type of security given and the arrangement that Mr. Hegwer is explaining. The estimate is determined by the Public Works department at 125 percent of the estimated amount of the improvements to be put in. The memo shows they choose to post a guarantee.

Mark Lyczkowski, project manager with assistant Bobby Branch for this project, stated that the security would be a certified check as opposed to a bond or letter of credit. It will be brought to City prior to any signatures being put on the plat. Once city is in receipt of the \$569,000, planning will be able to sign the plat and allow them to record it. City will have the money in place that bonds the amount estimated by the Engineering Department. This will allow them to close a few lots before the end of the fiscal year because one of the buyers needs to close this year and not put the money into next year. He stated that the city is protected because nothing is being signed until the check is received.

Council Member James Williams made the motion to accept the security deposit in the amount of \$569,000 from Mark Lyczkowski before the plat for The Marketplace at Tramway is signed. Seconded by Mayor Pro Tem Gaskins, the motion passed unanimously.

### **OTHER BUSINESS**

Council Member Wyhof stated that this morning, she had a great public official's tour as a part of Farm-City Week. She visited Blueberry Hill, the Dyson's, and Mr. Hall at the Christmas Tree Patch. She said it was wonderful to see local agriculture at work and the impact on the economy and the agri-tourism business. She encouraged everyone to visit these people and see what a real difference this business is making in Lee County and Sanford.

Council Member Taylor wished the citizens and employees a happy and safe Thanksgiving.

**ALL EXHIBITS CONTAINED HEREIN ARE HEREBY INCORPORATED BY REFERENCE AND MADE A PART OF THESE MINUTES.**

**ADJOURNMENT**

With no further business to come before the council, the meeting was adjourned on motion of Council Member James Williams; seconded by Mayor Pro Tem Sam Gaskins, the motion passed unanimously.

Respectfully submitted,

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Cornelia P. Olive, Mayor

ATTEST:

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Janice Cox, Deputy City Clerk