

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, June 2, 2015, at 7 P.M., in the Council Chambers. The following people were present:

Mayor T. Chet Mann
Council Member Byron Buckels
Council Member Jimmy Haire
Council Member Charles Taylor
City Clerk Bonnie Davis
City Manager Hal Hegwer

Mayor Pro Tem James Williams
Council Member Sam Gaskins
Council Member Norman Charles Post, III
Council Member Rebecca Wyhof
City Attorney Susan Patterson

Mayor Mann called the meeting to order. Council Member Taylor delivered the invocation. The Pledge of Allegiance was recited.

PUBLIC COMMENT

No citizens signed up to speak.

APPROVAL OF AGENDA

City Manager Hal Hegwer requested to remove the Project Closeout Documentation for the Big Buffalo Wastewater Treatment Plant Expansion from the regular agenda. Council Member Wyhof made the motion to remove the item from the regular agenda. Seconded by Council Member Buckels, the motion carried unanimously.

Mayor Mann requested that the April 21, 2015, City Council Meeting Minutes be added to the consent agenda for approval.

Council Member Gaskins made the motion to approve the agenda as modified. Seconded by Council Member Wyhof, the motion carried unanimously.

CONSENT AGENDA

Approval of City Council Meeting Minutes Dated April 21, 2015 – (Filed in Minute Book 83)

Approval of Law and Finance Committee Meeting Minutes Dated May 13, 2015 – (Filed in Vault)

Approval of City Council Budget Workshop Minutes Dated May 19, 2015 – (Filed in Minute Book 84)

Approval of City Council Meeting Minutes Dated May 19, 2015 – (Filed in Minute Book 84)

Council Member Gaskins made the motion to approve the amended consent agenda. Seconded by Council Member Taylor, the motion carried unanimously.

CASE FOR PUBLIC HEARING

Public Hearing – Proposed Annual Budget Ordinance for Fiscal Year 2015-2016 – (Exhibit A)

City Manager Hal Hegwer advised that this is a revised budget ordinance, replacing the ordinance in Council's agenda. The only difference is a lift was removed that was to be used in the Public Works Department which cost \$23,000. The next sheet (Exhibit B) that you have is the total changes to the budget that are different than originally presented. The overall budget totals \$50,381,473. The budget contains revenue to provide the services we currently provide with no reductions. There is adequate revenue to support the debt service associated with bond projects which is \$1,050,470. There is no tax increase. There is a fee increase in the building permit for commercial, which will provide an additional \$40k- \$50k. There is no Utility/Water and Sewer rate increase. Our utility debt peaked last year and we are seeing reductions now and into the future. The budget includes the addition of one new employee in the Public Works Department (utility locator position due to state mandates) and a fire fighter position was unfrozen. Also included in the budget was cost-of-living adjustments, and reestablishment of the merit program. The salary study recommended 21 positions receive an increase up to a minimum acceptable salary and this was included in the budget.

Council Member Taylor said we had several items that were discussed and questioned in the work session held last night (\$65,000 expenditure of a tractor) and he felt there was not a level of comfort. He felt more dialogue was necessary on several items.

Council Member Gaskins stated that in the last two work sessions, there was 7.5 hours of dialogue and he did not feel the need for an additional work session.

Council Member Taylor added that there was a list of items that were updated last night and council has not received an update on those items. Staff has done an outstanding job of addressing each question/concern but there was no wrap up on those issues discussed last night.

Mayor Mann opened the public hearing. No one spoke in favor or in opposition. Mayor Mann closed the public hearing.

- **Consider Adoption of Annual Budget Ordinance for Fiscal Year 2015-2016 - (Exhibit A)**
Council Member Gaskins made the motion to adopt the Annual Budget Ordinance for Fiscal Year 2015-2016. Mayor Pro Tem Williams seconded the motion.

Council Members praised staff for the job they did on the budget, answering and addressing all the questions raised by council members. Mr. Taylor questioned the addition of funding a code enforcement position for a half-year and adding an intern to the budget. Mr. Hegwer explained that staff did not feel ready at this time to add another position to code enforcement. Staff felt that once the new software has been received and installed, then it would be more efficient and effective to hire an additional officer. However, Council can fund it now or come back later. Mr. Downey has called the software company to push this issue along.

Mayor Mann stated that he took the staff's recommendation that they were not quite ready for an additional position; however, if Council wants to do add it, they can do so tonight or come back later.

Mr. Downey explained that the real challenge is a two-step process. The first step is the company will come and perform an assessment of the existing system and what they need to do. It is a desktop base system now and it will go to a web-based system, which will make it a lot more mobile and user friendly. Part of the process is they have to assess the current planning department, inspections, code enforcement and environmental health, as these departments will be located in the Buggy Factory. This first step is to get the assessment in place and staff will not know the timeline of how long it is going to customize the software until that assessment is completed. They anticipate at least four to six months.

Mr. Taylor mentioned expanding the internship role, especially in the engineering arena. He said to keep in mind that if you are coming to do an internship, that decision is usually made in the spring to try to secure internship for the summer next year. This is something he has been an advocate for whenever possible. It gives the candidate great work experience, gives them an item on their resume and is a great way to vet good work ethic. Staff could put together a program that might benefit the City. We have one internship in the budget.

Mr. Hegwer replied that we could bring back a plan and it could be funded in the Utility Fund. He had a brief discussion with the Public Works Director this morning and he will have to think about what that role would accomplish and to be productive for the intern and the City.

Council Member Gaskins called for the question. The vote was five to one in favor to adopt the ordinance. Council Member Taylor cast the dissenting vote.

REGULAR AGENDA

Consider Project Closeout Documentation for the Big Buffalo Wastewater Treatment Plant Expansion – (Exhibit C)

This item was removed from the agenda.

Consider Authorizing the Execution and Approval of Documents Related to the Buggy Factory Building

City Attorney Susan Patterson explained that we have five documents relative to the Buggy Factory rehabilitation projects. In March, Attorney Susan Ellinger, from Ellinger and Carr, who represents Progressive Development Company, came before Council to talk about the need to subordinate our Deed of Trust to the construction loan for the Buggy Factory. Since that time, they have had a change in the investor for the historic tax credits program. We have new documents for Council that will need approval of and authorization to execute. Attorney Patterson explained the five documents.

- **Assignment, Assumption and Modification Agreement (Buggy Building Lease) - (Exhibit D)**
Attorney Patterson explained that this document is between Progressive Development Company, City of Sanford, County of Lee, Lee County Partnership for Prosperity (who is doing business as the Sanford Area Growth Alliance - SAGA), and Sanford Buggy Building, LLC and Sanford Buggy Master Tenant LLC. They are changing the ownership of the building to a new entity which will own that building. Thus, we have to change some of our documents. We had already signed a lease on the building; all the parties to the lease need to change to allow the assignment to the new owner and also a change in the time of occupancy

from October to January 2016. Except as modified, the remainder of the lease is in full force and effect. Basically, we are going to allow them to change owner and we are going to change the date of occupancy.

- Subordination Agreement (BB&T) – (Exhibit E)
Attorney Patterson explained that they are receiving construction loan financing with BB&T to make the renovations to the building. They are then going to ask the City to subordinate its current Deed of Trust in the amount of \$412,624 to come behind the BB&T loan in priority. This is a normal financing transaction. She pointed out that the first lender is requiring a stand-still agreement with the City, which means the City would agree not to foreclose during the time period – the five years that BB&T gets paid back for the construction loan. The City’s Deed of Trust does not start payment until the sixth year after occupancy (after the CO is issued). In the event they would go into a liquidation, foreclosure, or collection, the City would allow BB&T to be paid off first. This is a requirement for their bank loan.
- Subordination, Non-Disturbance & Attornment Agreement – (Exhibit F)
Attorney Patterson explained that this is one of the most complicated documents because this is one that the tax partners/tax credit investors is requiring. It has a lot of recitals in it and in this document, the City is the lender because it is talking about the City’s Deed of Trust. It is designed so that in the event as a lender we should have a transfer of ownership into us because of some default, the City would not disturb the lease with the tenants, who are the City, the County, and SAGA. There are a lot of clauses in this document that basically allows assurances to the investors that during any recapture period, which is the time after a transfer occurs to the City, that the City would allow the lease to continue.
- Loan Modification Agreement (Note and Deed of Trust) – (Exhibit H)
Attorney Patterson explained that any references in our current note and Deed of Trust from Progressive Development Company are now changed to Sanford Buggy Building LLC, who is the new limited liability corporation who will take ownership of the property. The note is changed so that they are now the borrower; the Deed of Trust is the same. She had them to put in that this is not designed to defeat any way of the City’s claims to the property. We would have all our rights to foreclose.
- Assumption Agreement (Note and Deed of Trust) – (Exhibit G)
Attorney Patterson explained that the assumption agreement is where they assume the loan and agree to pay the City.

Attorney Patterson recognized Joni Martin with Progressive Development and Attorney Steven Carr with Ellinger and Carr, who drew up these documents. They have spent a great deal of time revising and editing these documents, trying to protect the City and to accomplish the goal so that the building can be rehabilitated and they can get the tax credits to put a \$7.5 million investment into this building.

Mr. Haire asked who is the master tenant? Attorney Patterson replied that in the document when Progressive Development (who owns the land now) deeds it to the new owner, they have an agreement where there is a master landlord and a master tenant; so the new owner becomes the

master landlord under the master lease and Sanford Buggy Master Tenant becomes the master tenant which will be the City's new landlord.

Mr. Haire asked who are these people? Attorney Patterson replied it is a Limited Liability Corporation and has different parties in it; the majority of which is Progressive Development.

Attorney Carr stated that Progressive will still manage the project. They set up the structure so that they can enable a federal investor to come in and will be the principle investor in the master tenant entity for the purposes of federal tax credits. There is a state investor that will also participate in the management of the managing member but Progressive is still the manager of the project and is fully responsible for making sure all this happens. Progressive Contracting, Mr. Bystry's contracting firm, will be involved in making sure all this project happens. We have these structures in order to bring in the equity and debt financing required for the project.

Attorney Patterson clarified with Attorney Carr that First NBC Historic Tax Partners, LLC is not affiliated with NBC Television. Mr. Carr replied that it is not; it is a bank in New Orleans. They are an investor for Federal Income Tax Credits associated with this project. They have done a number of these projects across the country.

Attorney Patterson also stated that we have a ten-year term; we had negotiated annual renewals of that term. There is now a cap of five years on the annual renewals just so that we qualify and don't disqualify anyone as being an interested party for the tax credit.

Mr. Carr assured Council that Mr. Bystry at the end of the term will want to keep the City as tenants.

Mayor Mann added that the \$412,624 was a pass-through grant to Progressive. Any improvement to the Buggy Factory is an improvement to the City of Sanford.

City Manager Hegwer read an excerpt from City Council minutes dated January 6, 2009 where Downtown Development Manager David Montgomery stated "in early 2004, the City received \$900,000 in urban redevelopment funds from the NC Department of Commerce. Since 2004, the CDBG funds have been used to fund pedestrian improvements on Chatham Street and Charlotte Avenue in the amount of \$310,000; this included brick-banded sidewalks, underground utilities, period lighting and urban friendly trees. We were also able to provide low-interest loans to Progressive Development of over \$450,000 in a public-private partnership for the historic preservation and commercial rehabilitation of three buildings – the Sanford Buggy Factory, 121 Chatham Street and the Montessori School. We also acquired and removed two vacant, dilapidated buildings at 131 and 133 McIver Street for nearly \$125,000. The overall result has been approximately \$2.5 million in public and private investment in this area since 2003, which included the opening of a new restaurant and general office space. It has been a catalyst for other pedestrian improvements funded through the NC Department of Transportation Enhancement program." Mr. Hegwer advised that the whole intent was to remove urban blight in downtown. It was money that was available at that time and we took advantage of it.

Council Member Haire made the motion to approve the Assignment, Assumption and Modification Agreement (Buggy Building Lease), Subordination Agreement (BB&T), Subordination, Non-Disturbance & Attornment Agreement, Loan Modification Agreement (Note and Deed of Trust), and the Assumption Agreement (Note and Deed of Trust). Seconded by Council Member Post, the motion carried unanimously.

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

OTHER BUSINESS

Council Member Taylor extended condolences to Herb Hincks' family, who passed away today. He served this community proudly, not only as a County Commissioner but was a great public servant in so many aspects including the Airport Commission. He asked that a resolution be prepared honoring his life and contribution to our community.

Mr. Taylor mentioned that he is working on a trip to a facility in Downtown Raleigh that has done a great job of reaching out to feed homeless and to meet needs. He would like to have a cross-section of community leaders, as well as, council members to attend the tour. This project has effectuated change without taxpayer dollars invested. The tour would last about one and one-half hours. We would be joined by the pastor that is heading up that project in Downtown Raleigh. Mayor Mann asked Mr. Taylor to let Council know the date.

Mayor Pro Tem Williams echoed Mr. Taylor's comments regarding the passing of Mr. Hincks. Mr. Williams thanked staff for the hard work on the budget. He feels good about the budget as Council was able to do more for its employees.

Council Member Gaskins reiterated condolences to the family of Herb Hincks. Mr. Hincks was the first person to whom he went when he decided to run for political office. He provided him a lot of advice, support and guidance. Also, his wife, Helen Hincks, has done a lot for the City and County.

Council Member Haire said that a lot of people have asked why the City is leasing the Buggy Factory and not owning it. In December 2013, there were three buildings being considered – the old Belk Building on Steele Street, the Food Lion on North Horner, and the Buggy Factory. Mr. Haire said that if his recollection is correct, the County was the lead in deciding which building to lease, so it was their decision and the City went along with it. He felt it was a good decision.

Council Member Wyhof reiterated Happy Birthday wishes to Council Member Byron Buckels and City Clerk Bonnie Davis.

Council Member Buckels recognized and congratulated Financial Services Director Beth Kelly and the financial staff for their achievement in receiving the financial reporting award. The City has been receiving this award for the last thirty years.

City Manager Hegwer added that it was a collaborative effort with Lee County to lease the Buggy Factory together and it makes it so much better and efficient for the citizens. It will help

Downtown with the building being renovated, hopefully to add further investment from the private sector. Mr. Hegwer acknowledged and read several upcoming events, which will be held, that will lead up to National Night Out on August 4.

Mayor Mann stated that the Citizens Academy is coming up and he encouraged everyone to get their friends and associates to participate to learn more about the City.

Mayor Mann echoed Mr. Haire's comments regarding the Buggy Factory. He said to save the Buggy Factory, which is 28,000 square feet, is a rare opportunity in a small town. It is all part of a master plan.

Mayor Mann stated that 911 Supervisor Pat Garner took upon himself to take a child to the dentist and pay for his dental work. A couple of individuals called him to tell him about Mr. Garner doing this act of kindness and he wanted to acknowledge him.

Mayor Mann felt that a resolution should be done for Mr. Hincks. He was a family friend and during his tenure, he got things done that needed to be achieved. He did what was right by all the citizens.

Mayor Mann commended Financial Services Director Beth Kelly on receiving the financial reporting award again.

Council Member Taylor stated that he met with the Department of Transportation last night and the key date to opening the round-a-about is June 27; that is the day the period of time before they get the penalty phase. There is a 60-day closure window. Mr. Taylor asked if they could open a single lane during business hours and close it off at night time and finish the work they need done. Originally, they came back and looked at a single lane closure; however, they are going to keep it closed completely and maybe be no more than five to six days late; they are looking at getting it completed before the July 4th holiday.

ADJOURNMENT

Council Member Haire made the motion to adjourn the meeting; seconded by Council Member Wyhof, the motion carried unanimously.

Respectfully Submitted,



T. CHET MANN, MAYOR

ATTEST:



BONNIE DAVIS, CITY CLERK