MINUTES
REGULAR MEETING
CITY COUNCIL

December 3, 2018

Ronnie Thompson, Mayor   Sally W. Sandy, City Manager
Wendy Cato               Louis E. Vinay, Jr., City Attorney
Forrest A. Fleming       ) Council
Christopher Hawkins )
Sidney Simmons )

I. Call to Order – The Meeting was called to order in the Council Chambers at City Hall at 6:00 p.m. by Mayor Thompson.

II. Public Comment – The Mayor stated the guidelines for public comment and said speakers were to be called in order of sign-up.

• Anita Fox resides at 610 Alexander Avenue. Mrs. Fox related that she recently received a late/turn-off notice for her utility bill. She expressed her dismay at the way the billing department handles past due bills.

• Sharon Erwin resides at 203 South Anderson. She stated she is a lifelong resident and has concerns about the price of cable continuing to rise. She expressed her dissatisfaction with the cable service being provided by the City.

No other speakers were signed up or appeared.

III. Pledge of Allegiance to the Flag – Mayor Pro-tem Fleming led the recitation of the Pledge of Allegiance to the Flag.

IV. Invocation – The invocation was given by the Rev. David Doster, pastor of Burke Community Bible Church.

V. Introduction of Council – The Mayor introduced the Council and staff.

VI. Retiree Resolutions

The Mayor read a resolution honoring Kenneth R. (Kenny) Fleming who retired from the City of Morganton on December 2, 2018 with 30 years and 5 month’s service. Kenny retired from the Wastewater Department as Pre-Treatment Coordinator/Back-Up ORC.
Upon motion by Councilman Fleming, seconded by Councilwoman Cato, and carried unanimously, the Council approved Resolution #18-33 honoring retiree Kenny Fleming.

Kenny thanked the City for the opportunity to begin work back in 1989, to serve the citizens of Morganton, and to protect the Catawba River.

The Mayor read a resolution honoring Roney E. Parker who retired from the City of Morganton on December 2, 2018 with 30 years and 4 month’s service. Roney retired from the Wastewater Department as Senior Compost Operator. Roney was unable to attend the meeting and will be presented his resolution at a later time.

Upon motion by Councilman Fleming, seconded by Councilman Hawkins, and carried unanimously, the Council approved Resolution #18-34 honoring retiree Roney Parker.

VII. Service Pins - The Personnel Committee and City staff have decided to recognize long-term employees for years of service at a Council meeting. Leo Watson is a Technical Services Supervisor in the Electric Department with 20 years’ service. Councilwoman Cato presented Watson with his service pin.

VIII. Public Advocacy Issues and Strategies

a. The Mayor announced a joint meeting with the City Council and the Morganton Cable Commission to be held on Tuesday, December 11, 5:30 p.m., in the Morganton City Council Chamber.

b. The Mayor also announced the following upcoming events at CoMMA: Lisa Rock in A Carpenters’ Christmas, December 13; Messiah Sing-a-long, Tuesday, December 18; and a New Year’s Eve Masquerade, December 31. The Mayor also announced the following events occuring in Downtown Morganton: the Christmas Parade will be held December 4, 6:00 p.m.; Carriage rides continue on Friday and Saturday evenings; and a Holiday Market, to be held on December 8, 10:00 – 2:00 p.m.

c. Chris Jernigan, Director of the South Mountains Children and Family Services, announced the 20th Anniversary of the Gingerbread House, a children’s advocacy center. The center helps to coordinate the investigation and intervention of child abuse. The center works with local law enforcement, DSS, and other entities during an investigation. Working together has increased prosecution and increased services to families. There will be an open house on December 13, 12-2:00, to which everyone is invited.

d. Ed Phillips, Director of Burke County Travel and Tourism, presented a short video about tourism in Burke County. Phillips stated that visitors spent over $100 million in Burke County in 2017. Phillips stated there has been an increase in the number of visitors expressing interest in moving to Burke County. Phillips stated that Burke County needs housing now. Phillips stated that tourism is a large part of the local economy and it continues to grow.
•The City Manager expressed appreciation to the Electric Department, the IT Department, Public Safety, and Public Works for their work during the recent ice storm. She stated that crews moved five dump truck loads of debris on Saturday in order to clear the path for the linemen, and another 68,000 pounds of debris on Monday were taken to the landfill. The City Manager stated that in addition to power outages, a fiber line for a large communication company went down, adding to the difficulty of the weather event.

The City Manager stated that it is always the policy to go to the hardest hit area with the most outages. She stated a customer should never hesitate to call, and to call back if needed. There are times when communication drops, such as during this last storm. She went on to say that within 24 hours all power was restored.

IX. **North Carolina Municipal Power Agency Number 1 Update** – There were no updates.

X. **Consent Agenda** – The City Manager presented the Consent Agenda and asked if any items should be removed from the Consent Agenda. No request was made.

Upon motion by Councilwoman Cato, seconded by Councilman Hawkins, and unanimously carried, the Consent Agenda was approved and each individual item adopted as stated, these being as follows:

A. Approved minutes for a Regular Meeting held on November 5, 2018 as submitted.

B. Approved tax releases in the amount of $2,563.75

C. Approved a budget amendment (Ord. #18-63) in the amount of $3,850 for receipt of the grant/expenditures for the Billy Goats Gruff show and Burke Honors Chorus at CoMMA.

XI. **Items Removed from Consent Agenda** – There were no items removed from the Consent Agenda.

XII. **New Business**

A. **Public Hearings**

1. **Public Hearing and Consideration of Closing an Alley Extending Northward from Concord Street between South Sterling and South Green Streets**

The Mayor opened the public hearing at 6:30 p.m.

The City Attorney stated there is an alley about 10 feet wide, historically open to the public, which extends from West Concord Street in a northerly direction through the
middle of the block and parallel to South Sterling Street and South Green Street. This is best described as the alley beside Catawba Brewing Company.

While this alley has long been used by the public, and appears on numerous maps and plats, it is not and has not been maintained by the City. The alley, which is mostly paved but in rough condition, could serve as a means of access to the rear portions of several buildings that face either South Sterling or South Green Street.

Catawba Brewing Company has submitted a petition to close this alley, from West Concord Street as far back as the northern most line of the tracts owned by Pyatt Properties, LLC (which is owner of the brewery properties). The remainder, that is the northern most portion of the alley, which extends all the way to a cross alley connecting South Green to South Sterling, would not be affected by this proposed closure.

Before a public street or alley may be closed, General Statutes Section 160A-299 requires that the City call for and properly advertise notice of a public hearing. Council called for such hearing at its October 1, 2018 meeting, and notice of such hearing was published in the News-Herald on October 5, 12, 19 and 26, 2018. The Statutes also require that notice of the hearing be mailed to the owners of all real property bordering upon the portion of the street or alley which may be closed. Because this mailing was not timely done, the initially scheduled hearing at the November 5, 2018 Council meeting was postponed, and re-scheduled for the December 3 Council meeting. Proper notice was mailed to all neighboring property owners.

General Statutes Section 160A-299(c) provides that upon the effective date of the Order closing a public alley, all right, title and interest in and to the right-of-way of the alley is conclusively presumed to vest in the owners of the properties adjoining the alley. The proposed Order would also expressly release and relinquish any claims the City has to the closed portions of the alley.

The Mayor invited public comment.

• Mike Fischesser resides in Jonas Ridge. Fischesser works with a youth organization that uses the basement of the building at 205 South Sterling, which backs onto the alley in question. He stated they were looking for a compromise situation because they store canoes and camping equipment in the basement. They access the basement via the alley with their 25 passenger van in order to hook to their trailer; not having access creates more work for their participants.

The City Manager asked Fischesser how they currently get past the Catawba Valley trailer in the alley. Fischesser stated it was a challenge and sometimes they would have to hand-pull the trailer to the gravel parking lot.

The City Manager asked if they had talked to the Pyatts regarding the fact they were putting a building on the gravel lot. Fischesser stated property owner Monica Lesch had spoken to them about it.
The City Attorney stated that the only thing before the Council was whether that portion of the alley should or should not be closed. He stated there is another alley access available. He stated that what the Council should look at is whether there is reasonable ingress and egress. The Attorney stated there had been no other contact from neighboring property owners.

There being no further public comment, the Mayor closed the public hearing at 6:35 p.m.

Upon motion by Councilman Cato, seconded by Councilman Hawkins, and carried unanimously, the Council adopted Ordinance #18-64 an Order permanently closing a public alley extending northward from West Concord Street between South Green Street and South Sterling Street, and to vest title to the lands encompassed within said alley to the respective real property owners on either side of the alley.

2. Public Hearing and Consideration of Petition to Re-Zone approximately 3 Acres on Either Side of Lyman Court, from Residential Low/Conditional Use to Medium Intensity District (MID)

The Mayor opened the public hearing at 6:39 p.m.

The City Manager stated that William Andrews owns 4 separate and adjoining vacant lots on either side of Lyman Court, including one lot fronting on West Union Street. All of the properties are currently subject to a Conditional Use Permit granted in 2005, when the base zoning was Residential Low and Residential High. The Conditional Use provides for development only in conformity with specific plans submitted in 2005 by Mr. Andrews. No development has actually occurred in the 13 years since the last zoning action was taken.

Phillip Lookadoo, Director of Development and Design, stated that now, Mr. Andrews plans to develop housing on these properties in a manner that diverges from the original plan, and thus would not be allowed under the Conditional Use Permit. The City’s current Zoning Ordinance, in effect since 2015, does not provide for substantive amendments of such permits, nor for any new conditional uses. Mr. Andrews therefore has petitioned to re-zone all the properties to MID.

After holding a public hearing at its August, 2018 meeting, the Planning and Zoning Commission denied, by a vote of 4-2, a motion to approve the requested re-zoning. Mr. Andrews then timely filed an appeal from P&Z to bring this matter before City Council. At his request, the matter was postponed until this December meeting. Proper notice of this hearing has been mailed to neighbors, posted on the property, and duly advertised in the News-Herald.

The Department of Development and Design prepared a full and thorough analysis and recommendation on this matter, which was included in the Council’s agenda packet.
Councilman Simmons asked how many more units were planned to be built on this property. Lookadoo stated that if the rezoning was successful there would be up to ten units per acre allowed. Because of the available acreage up to 19 units could be built.

Councilman Hawkins asked if there was anything allowed in MID that was not allowed in LID that is non-housing related. Lookadoo stated there were a number of uses allowed in MID that are not allowed in LID and shared some details about those uses.

Councilman Fleming stated without a doubt that everything west of this property is residential. He stated that if changed to MID that it may be unlikely for it to be developed as commercial property, however it “could” be developed commercial. He stated that since this is a residential area, he is not sure he is in favor of taking the chance.

• William Andrews, 4721 NW 27th Avenue, Boca Raton, Florida, owns the property in question. Andrews stated he has always viewed this as a residential project. He stated that on the first project the bids were way over what the marketplace would bear. He stated he continued to hold onto the property and waited to begin the project. His sister, who lives in the area, told him of the need for housing so he began to look into the project again. He stated the original units as designed were coming in at $375,000 which is more than the market would bear. He stated the next problem is that many contractors have moved or gone out of business since the recession. Andrews stated he began to explore modular housing as an option for this project. He stated that the type of modular housing he is looking into is very high end with a wind load of 150 mph. He stated that this company uses one-third more lumber than a stick-built home. He stated that if he started tomorrow, theoretically he would have housing in 6-8 weeks because majority of it is done already.

The City Attorney asked Andrews why he wants this property to be zoned MID. Andrews stated that he wants to turn the buildings east and west, but by doing so it does not meet minimum lot width. He shared other details about the plan.

• Leanne Brittain resides at 103 Terrace Place. She asked Council to deny the request. She stated that Andrews has never broken ground in the 13 years he has owned the property. She stated the intent was to keep the property residential. By attaching Conditional Use at that time there was some leeway to develop the property while also protecting the adjoining property owners. The current zoning ordinance does not provide for Conditional Use. If MID is approved the parcels could be developed commercially. She stated that at the August Planning and Zoning meeting the P&Z members voted it down 4-2. She stated her hope was the Council will put some weight to the decision they made.

• Matthew Robinson resides at 101 Terrace Place. Robinson questioned if there had been traffic flow studies in this area of West Union. He stated there are a large number of “cut through” drivers on Terrace Place. There are high rates of speeds and in his
opinion the area is not monitored by police. He stated he is adamantly opposed to the rezoning.

As a response to Robinson’s question, Phillip Lookadoo stated the traffic count in 2016 was 9,300 cars per day on West Union Street. Lookadoo stated the new traffic counts are 9,200 vehicles per day.

- Janet Kropelnicki resides at 107 Terrace Place. She questioned whether MID was required in order to place modular homes on the property and if was the reason for requesting the rezoning.

Lookadoo stated the reason for the rezoning is because of the change of design in the development. He stated that the MID really addresses the number of units available to be built per acre.

Kropelnicki stated that her concern is about the difference between 14 and 19 units, and the risk of what the next person may do with the property.

- Ken Bonfield resides at 315 West Union. He stated that the plan on the west side of the property is acceptable. He stated that to get a better configuration on the east side to all face Lyman Court it makes more sense. He questioned whether the City can strike a deal to change only the east side property.

The City Attorney stated that the current Ordinance does not allow for Conditional Use which is a change made in 2015.

- Stan Hendricks resides at 108 Lyman Court. He stated that his family sold Mr. Andrews the two properties hoping for an improved street and emergency access. He stated legalities are standing in the way. He questioned if there was a way to exempt the front lot from this request.

The City Attorney stated that the request is to rezone all four lots to MID; however the front lot would be in the neighborhood conservation overlay. He stated that while MID allows for dozens of uses, none of those uses are allowed in the neighborhood overlay. He stated that for all practical purposes that front lot can only be used for residential purposes.

Hendricks stated that if there becomes a traffic issue a signal could be installed. He stated it is time to develop this property.

- Matthew Robinson stated that if Burke Charitable Properties was to sell, the entire area could become a commercial area. He stated that as a member of the community he is excited to see the good things happening in Morganton. He stated that finding a house that was appropriate and affordable for his family was very difficult; housing is important.
There being no further public comment, the Mayor closed the public hearing at 7:21 p.m.

Councilwoman Cato made a motion to approve the re-zoning of 4 tracts of real property on Lyman Court, owned by William Andrews, from Residential High/Conditional Use to Medium Intensity District (MID). No second was made so the motion failed.

Councilman Fleming made a motion, seconded by Councilman Hawkins, to deny re-zoning of 4 tracts of real property on Lyman Court, owned by William Andrews, from Residential High/Conditional Use to Medium Intensity District (MID). This motion to deny the re-zoning passed by a vote of 4-1; Councilwoman Cato voting nay.

Councilwoman Cato stated that from the beginning she has been concerned about this. She appreciates the time Phillip Lookadoo spent with her helping her to understand the details. She feels that the risk of someone coming in and using the back portion of that property for commercial development is very low and that is why she voted the way she did.

B. Other Business

1. Consideration of a Resolution to Endorse the Conveyance of Property at the Burke Business Park by Burke Development, Inc.

The City Manager stated the Burke Partnership for Economic Development, Inc. (“BDI”) has requested the City, the County and all other towns which fund BDI to adopt resolutions supporting a plan by which BDI would convey one of the lots at the Burke Business Park to a developer for construction of a “spec” building. The conveyance would be for free, on condition that the developer (identified for confidentiality reasons as “Project Raise”) begin construction within 12 months on a building of at least 50,000 square feet. The resolution would also direct BDI leadership to negotiate other terms with the developer.

Burke Partnership for Economic Development, Inc., which is now known as BDI, is the sole owner of the Burke Business Park off Kathy Road, which consists of about 80 acres of almost totally undeveloped real estate. All concerned parties desire that some commercial development be made at this Park. The Interlocal Agreement in 2005 which funded acquisition and development of Burke Business Park gives BDI’s Executive Director and Board full authority to buy, sell, mortgage or lease real property, with no requirement for involvement of the various funding governments—except that BDI shall “in good faith consult with” the governments “prior to any such disposition of property”. The present request from BDI is just such “good faith consultation”. The County and at least some of the other municipal governments have already passed resolutions of support.

This proposed resolution would simply express the City’s endorsement of BDI’s planned action in granting a tract of land to a developer for construction, and would not commit
the City to any other action at this time. It should be noted, however, that almost any commercial development at the Park will require major City water system improvements, for which BDI is currently seeking funding.

The City Attorney stated this tract would be less than 10 acres.

Upon motion by Councilman Simmons, seconded by Councilman Hawkins, and carried unanimously, the Council adopted Resolution #18-35 endorsing the plan of BDI to convey a portion of the Burke Business Park property to a developer in consideration of developer’s promise to construct speculative building on that property.

2. Consideration of Approval of Master Services Agreements (MSA) with Engineering Consulting Firms to Perform On-Call Engineering Services for the City of Morganton

Phillip Lookadoo stated that from time to time it is necessary to engage the services of engineering consulting firms that specialize in disciplines within the engineering field that are not germane to the areas of focus held by a traditional civil engineer, the typical City Engineer. Further, from time to time, the work load of the Engineering Division becomes more than City staff can accommodate thereby necessitating assistance to meet deadlines for grant related and other city projects. While it is not necessary, at this point, to add positions in the engineering division, there is a present need for both specialized engineering assistance and general civil engineering assistance.

Additionally, while working to fill the position of City Engineer, the need to fill the gap and maintain progress on City projects, presently exists. Though we will not be able to attain the level of responsiveness we are accustomed to with a City Engineer, we are seeking the engagement of multiple firms to achieve an acceptable level responsiveness. City staff recommends approval of master service agreements with AECOM, Gannett Fleming and West Consultants to provide this service.

Work authorizations, governed by the master service agreements, will be issued based on a scope of work and associated fees. The fees will be based on a range of hourly rates, from $18 to $116 per hour, as well as a multiplier that accommodates overhead costs and profit. Scope of work and fees will be negotiated based on the project and result in a work authorization to the consultant. Ultimately, costs will be held to meet funds budgeted for engineering services.

Upon motion by Councilman Hawkins, seconded by Councilman Simmons, and carried unanimously, the Council authorized the Mayor and City Manager to execute master services agreements with AECOM, Gannett Fleming and West Consultants for on-call engineering services on behalf of the City and the additional authority to make such alterations, technical amendments and changes as may be necessary to implement each of the agreements.

3. Consideration of a Sidewalk Encroachment at 301 North Sterling Street
The City Manager stated the Main Street Program is actively and aggressively trying to attract downtown residential units. As identified in the 2017 Downtown Masterplan, over 1,000 housing units within a 10 minute walking distance of downtown are needed to meet the demand.

One of the first developers to start construction on two housing units is Keith Whitaker dba 301 North LLC who recently purchased the Stoney Kistler Building located at 301 North Sterling Street. Mr. Whitaker has gutted the building and is putting in two new apartments on the second floor with commercial on the first floor. The commercial space has been leased. Additionally, the building directly behind the Stoney Kistler building formerly known as Stephens Electric is under construction for housing and commercial space.

Mr. Whitaker is asking the City of Morganton for an encroachment on the sidewalk that leads up to the front door, which would be the corner of Sterling and Stoney Place. The encroachment entails a newly formed patio to allow for handicap access, a seat wall, steps going from the patio to Stoney Place, an at grade area for handicap and finally a pole in the center of the patio to support a new outdoor deck for the larger apartment upstairs. City staff recommends granting the encroachment agreement contingent on the power pole, located in the sidewalk adjacent to the building, being removed.

The Mayor asked if there would be a visual impairment for vehicular turns when coming down North Sterling Street. The City Manager stated there should not be a problem.

Councilman Fleming asked how far the encroachment would be from the building. Lookadoo stated that the encroachment was for the pole and a small sitting wall.

Upon motion by Councilman Fleming, seconded by Councilwoman Cato, and carried unanimously, the Council approved a sidewalk encroachment at 301 North Sterling Street with Keith Whitaker dba 301 North LLC.

4. Appointments to Boards and Commissions
   a.  Burke Development, Inc (BDI) – Burke Development, Inc. (BDI) by-laws state the City of Morganton will have two members on the BDI Board with three year terms.

   The by-laws state: The City of Morganton shall appoint a total of two (2) Directors, one to be the Mayor of Morganton or designee (designee becomes board member). One Director shall be the City Manager. All appointments will be for a three year time period and they shall serve until their successors are appointed.

   The Mayor now wishes to reappoint Councilman Chris Hawkins as his designee for a term to expire December 2021.
Upon motion by Councilwoman Cato, seconded by Councilman Fleming, and carried unanimously, the Council approved the reappointment of Councilman Chris Hawkins as the Mayor’s designee to the BDI Board of Directors for a term to expire December 2021.

b. Community House Board of Control – The Community Building Board of Control is a Council appointed board that advises the Council concerning matters of operation of the Community House and responds to directives from the Council relating to the operation of the Community House.

Recommendation to the Council is to reappoint Wanda Burnette, Marchelle Speas, Phil Scarboro, Kay Dignan, Ron George and Colleen Bennett for terms to expire on December 31, 2020. These members have been excellent participants on this Board and have expressed interest in continuing to serve.

Upon motion by Councilman Hawkins, seconded by Councilman Simmons, and carried unanimously, the Council reappointed Wanda Burnette, Marchelle Speas, Phil Scarboro, Kay Dignan, Ron George and Colleen Bennett to the Community Building Board of Control for terms to expire on December 31, 2020.

c. Human Relations Commission – The Human Relations Commission (HRC) is a committee established by the Mayor and City Council to address matters involving race, discrimination, human relations and to encourage and promote tolerance and goodwill to all people. By putting together this committee the Mayor and City Council get a closer look at ways of improving our city for all, and members are appointed by the Mayor.

Commission bylaws state when a member has two consecutive unexcused absences, a written notice shall be sent to the member indicating that another unexcused absence could result in the appointment being rescinded. This scenario has occurred with a current member who is unable to attend regularly. Diana Pedro has been thanked for her service to this commission. Duabhav Lee has expressed interest in serving on this commission.

The Mayor appointed Duabhav Lee for a term to expire on May 3, 2020.

XIII. Other Items from City Manager and City Council Not on Agenda – The following item was added:

Consideration of an Amendment to the Audit Contract – The City Manager stated that the Morganton ABC Board is considered a component unit of the City for purposes of annual financial reporting. As such, Morganton ABC’s financial statements (although completely separate) are incorporated in the City’s audit report.

Morganton ABC Board has not submitted a final audit as of June 30, 2018 as they are waiting for an actuarial study on OPEB. Lowdermilk and Church, auditors for the ABC Board, have submitted a draft.
As a matter of procedure, the LGC requires an amended audit contract for reports filed after December 1, 2018. No additional funding is required for the extension.

Upon motion by Councilman Simmons, seconded by Councilman Fleming, and carried unanimously, the Council approved the amended audit contract to comply with LGC requirements.

XIV. Reports – Reports were distributed to Council.

XV. Adjournment – The Mayor adjourned the meeting at 7:43 p.m.

Preparation of Minutes. These minutes were prepared by Mikela D. Russell, Assistant City Clerk. Copies of all resolutions, ordinances and orders referenced in these minutes are intended to be incorporated into these minutes as if fully set forth herein. Prior to including them into the official minute book, the minutes have been read and approved by the City Manager and the City Attorney, then distributed to each member of the City Council for further review and final approval, at a subsequent Council Meeting.

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Mayor                                      Assistant City Clerk