

**MINUTES  
REGULAR MEETING OF THE NEWTON CITY COUNCIL**

**November 20, 2012 – 7:00 P.M.**

The regular meeting of the Newton City Council was held on Tuesday, November 20, 2012 at 7:00 p.m. in the Council Chambers at City Hall.

**PRESENT:** Mayor Anne P. Stedman, Mayor Pro Tem Bill Lutz, Council Members Mary Bess Lawing, Tom Rowe, Robert C. Abernethy, Jr., Wayne Dellinger and Wes Weaver

**STAFF:** City Manager Todd Clark, City Clerk Amy S. Falowski, City Attorney Larry Pitts, City Department Heads, and members of the Management Team

**ITEM 1:      CALL TO ORDER – Mayor Anne P. Stedman**

Mayor Anne P. Stedman welcomed everyone and called the meeting to order.

**ITEM 2:      OPENING – Council Member Tom Rowe**

Council Member Wayne Dellinger led the Pledge of Allegiance.

**ITEM 3:      APPROVAL OF MINUTES FROM THE November 6, 2012 REGULAR CITY COUNCIL MEETING**

Mayor Stedman stated that a correction has been made to the minutes on Page 6, Item 6D “Consideration to Accept Donated Property from Family Care Center – Parcels located at 922 West 1<sup>st</sup> Street, 838 West 6<sup>th</sup> Street and West 7<sup>th</sup> Street.”

The first motion for this Item now reads:

“Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Robert C. Abernethy, Jr., to REFUSE the Donated Property from Family Care Center – Parcels located at 922 West 1<sup>st</sup> Street, 838 West 6<sup>th</sup> Street and West 7<sup>th</sup> Street, with Council Members Wayne Dellinger, Robert C. Abernethy, Jr., and Mayor Pro Tem Bill Lutz in favor of; and Council Members Tom Rowe, Mary Bess Lawing and Wes Weaver in opposition of; and Mayor Stedman voting in opposition of – MOTION FAILED.”

Upon motion duly made by Council Member Council Member Mary Bess Lawing, seconded by Council Member Wes Weaver, it was unanimously RESOLVED:

That the Minutes of the November 6, 2012 Regular City Council Meeting be –  
APPROVED

**ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS**

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Consent Agenda be – APPROVED.

- A. Proclamation – Small Business Saturday, November 24, 2012
- B. Proclamation – Native American History Month

(Ordinances, Resolutions, and Proclamations are hereby referenced and on file in the office of the City Clerk)

**ITEM 5: COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):**

Mayor Anne P. Stedman asked if there was anyone present that would like to make any comments concerning non-agenda items. No one appeared.

**ITEM 6: Old Business**

- A. Consideration of Zoning Ordinance Text Amendment 2012-02, Accessory Dwelling Units

Assistant Planning Director Alex Fulbright stated that at the June 26, 2012 meeting of the Planning Commission recommended that the City Council adopt a zoning ordinance amendment that would allow accessory dwelling units within residential districts. Mr. Fulbright explained that this item was discussed at a public hearing held by City Council at its July 10, 2012 meeting and that the Council had concerns with the ordinance that prevented them from taking action, so they referred the amendment back to the Planning Commission. Mr. Fulbright stated that staff requested that the Planning Commission review the City Council's concerns and send back a recommendation to Council. In addition, it was discovered that requiring a property owner to reside in one of the two units was not legally enforceable. Mr. Fulbright stated that the revised zoning amendment, which was recommended by the Newton Planning Commission at its October 23, 2012 meeting, is included in tonight's packet,.

Mr. Fulbright stated that the issues identified by the Council and members of the public during the public hearing were as follows: potential number of occupants, permitted locations, and relationships of accessory dwelling unit occupants to the principal dwelling unit occupants.

Mr. Fulbright stated that the City's Minimum Housing Ordinance Section 18-67, regulates the maximum number of occupants for any dwelling unit by size of the dwelling unit and size of each room used for sleeping purposes. He explained that every dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupant, at least 100 square feet of

additional habitable area for each of the next three occupants, and at least 75 square feet of additional habitable floor area for each additional occupant.

Mr. Fulbright stated there were also concerns about allowing detached dwelling to be placed in side yards and that it was felt that the appearance of the neighborhood would be impacted if this were allowed. Mr. Fulbright stated that this is a matter of preference which the Planning Commission's initial proposal addressed by requiring that the structure maintain design consistency of principle structure and requiring the use of the existing driveway.

Mr. Fulbright stated that there were concerns about the relation of the occupants of the accessory dwelling units to the occupants of principle dwelling unit, specifically limiting the occupancy of the one of the two dwelling units to the property owner. He explained that in accordance with City of Wilmington v. Hill, a 2008 North Carolina Court of Appeals case stated that a municipal ordinance requiring owner occupancy was an unconstitutional regulation of legal ownership and not a regulation of property use, according to the Court of Appeals of North Carolina.

Mr. Fulbright explained that while the case was specific on regulation of legal ownership, it could be applied to requiring a familial relationship to the occupancy of the dwelling unit. Initially, it would seem that regulating it to the same family would be appropriate; however, requiring familial relationship as condition of occupancy could be considered regulating the occupancy and not the use.

Mr. Fulbright stated that it is the recommendation of the Planning Commission that City Council hold a new Public Hearing in order to approve this text amendment as shown on the attached ordinance.

Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Wes Weaver it was unanimously RESOLVED:

That Public Hearing - Consideration of Zoning Ordinance Text Amendment  
2012-02, Accessory Dwelling Units - be set for the Newton City Council  
Meeting, December 11, 2012

**ITEM 7:**      **New Business**

A.      Presentation of the Audit

Marcie Spivey of Martin-Starnes & Associates presented the City Council with the 2012 Audited Financial Statement. Ms. Spivey stated that the financial statements of the City of Newton present fairly, in all material respects, the respective financial position which results in a clean, unqualified opinion. Ms. Spivey stated that this opinion basically means the auditors feel the City followed all accounting rules appropriately and that the financial statements are an accurate reflection of the financial position of the City with no material misstatements. Ms. Spivey stated that there were no findings or questioned costs, and that the Finance Staff was very cooperative.

City Manager Todd Clark thanked Ms. Spivey and also Serina Hinson, Finance Director, and her staff for the great job that they do for the City.

B. Consideration of Resolution to Proceed on Behalf of the City by Filing An Application Regarding the Financing of Equipment and Infrastructure To the North Carolina Local Government Commission (LGC)

Finance Director Serina Hinson stated that the City of Newton wishes to finance the acquisition of certain equipment and infrastructure which were approved by City Council as part of the City's Fiscal Year 2012-2013 budget. Ms. Hinson stated that the estimated cost of the acquisitions and infrastructure is \$4,396,150 (\$608,200 from the General Fund, \$2,592,050 from the Water/Wastewater Fund and \$1,195,900 from the Electric Fund).

Ms. Hinson stated that the Finance Department will be soliciting quotes from various financial institutions to borrow the funds, and will provide a recommendation to City Council on awarding the financing on December 11, 2012. Ms. Hinson recommended that City Council adopt the resolution authorizing the City Manager and Finance Director to act on behalf of the City and to authorize the filing of an application with the North Carolina Local Government Commission.

Mayor Pro Tem Bill Lutz introduced Resolution 12-2012, the title of which was read and copies of which had been distributed to each Council Member.

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Resolution 12-2012 – Making Certain Findings and Determinations Regarding the Financing of Equipment, and Infrastructure Pursuant to an Installment Financing Agreement and Requesting the Local Government Commission to Approve the Financing Arrangement be – ADOPTED.

(Ordinances, Resolutions, and Proclamations are hereby referenced and on file in the office of the City Clerk)

**ITEM 8: City Manager's Report**

- Canned Food Drive sponsored by Newton Parks & Recreation Department to benefit ECCCM – 11/12/12-12/22/12
- “Light up the Town” – Sunday, November 25, 2012 at 5:30 pm
- WPCOG's bimonthly Policy Board meeting – Tuesday, November 27, 2012 dinner at 6pm following the retirement reception for Jim Chandler and John Tippett scheduled from 3:30 -5:30
- Dedication of the Manufacturing Solutions Center – Thursday, November 29, 2012
- Christmas on Boundary Street (hosted by Meals on Wheels) – Thursday, December 6, 2012
- Employee Appreciation Luncheon – Friday, December 7, 2012

- Senior Citizen Holiday Luncheon (sponsored by Newton PD) – Tuesday, December 11, 2012 at Newton Rec.
- Retirement celebration for Bobby Chambers, Harold Presswood, Harold Duckworth and Ronald Wilson – Friday, December 21, 2012
- Electronic Payments Report
- Bids for the cleaning, patching and painting of City Hall – this week
- New license plates on city vehicles
- Flag Pole at City Hall

City Manager Todd Clark stated that Police Chief Don Brown had quotes to share with Council concerning the relocation of the flag poles at City Hall.

Chief Brown stated that the quotes include costs to relocate the 35' pole to display the United States Flag, and to install two 30' poles, one for the North Carolina State Flag, and one for the City of Newton Flag. These poles would be placed at the right side of the Police Department entrance with a total cost of \$3,735.72. City Manager Clark explained that when the flags are lowered they are obscured by the surrounding trees, and that they are too low at half-staff because there are several flags on one pole.

Council Member Wayne Dellinger stated that the poles are currently located at the main entrance to City Hall and that the poles should be there, unobstructed behind the city sign. Council Member Tom Rowe stated that no one uses that entrance anymore.

Mayor Stedman stated that this is a proposal to move the flags to the north parking lot of City Hall, on the Police Department side, just to the right of the entrance.

Council Member Mary Bess Lawing stated that unfortunately the way City Hall is laid out, not many people use the main entrance. Council Member Wayne Dellinger asked if Council wants the flags to be seen by people coming in to City Hall. Council Member Wes Weaver stated that the flags should be an identifying marker, seen from the road, and suggested that they be put on that same side but where the Oak tree is. Mayor Stedman stated that those two large trees do obstruct the view of the poles and that the Police Department side would be a better location. Council Member Dellinger suggested the trees be trimmed. Council Member Rowe stated that you cannot see the flags, only the poles. Council Member Weaver commented that it is hard to see out the windows from the inside also because of the two large trees.

Mayor Stedman stated there will be more traffic on the north side of City Hall due to the placement of an ATM. Mayor Pro Tem Bill Lutz stated that even if the trees are trimmed, the flags can't be displayed prominently on the side of the road. Mayor Stedman asked if Council Member Abernethy had any comments. Council Member Abernethy stated that he respected the

opinions of the Council Members that had served in the military. Council Member Weaver stated that they should be by the road side, but that they needed to be moved to a more prominent place even if it meant sacrificing a tree and planting a new one in its honor.

Council Member Dellinger stated that the Magnolia tree in the Police Department parking lot will obstruct the flags if they are moved. Council Member Rowe stated that the Magnolia would not block the view as much as the Oak tree. Mayor Pro Tem Bill Lutz stated that Magnolias are messy trees, and asked how the board felt about cutting it down. Council Member Rowe stated that he didn't want the Magnolia tree to cause a problem with the ATM. Mayor Pro Tem Lutz stated that it would be up to the Tree Board. Council Member Rowe asked how close the ATM would be to the Magnolia. City Manager Clark stated that it would be just under the canopy. Council Member Rowe stated that it might be good to cut down the Magnolia tree.

Council Member Mary Bess Lawing made a motion to move the three flag poles to the North side parking lot. Council Member Tom Rowe seconded the motion.

Mayor Pro Tem Bill Lutz asked exactly where the flags would be moved. Mayor Stedman stated they would be to the right side of the Police Department entrance. Council Member Wayne Dellinger stated that they would not be visible to people coming South. Mayor Pro Tem Bill Lutz stated that the parking lot looks nice, but that there are people that live in the curve that are concerned about signage needed to slow people down for cars that will be turning left in to the parking lot. Mayor Stedman stated that the new entrance will only be accessible as an entrance from the other side, and that it will be an exit on that side with the curve.

Mayor Stedman stated there is a motion and a second to move the three flag poles to the North parking lot of City Hall. With Mayor Pro Tem Bill Lutz, and Council Members Rowe and Lawing voting in favor of; and Council Members Weaver, Dellinger and Abernethy voting in opposition of; and Mayor Stedman voting in favor of it was RESOLVED:

That Flag Poles be MOVED to the North Parking Lot of City Hall.

Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Wes Weaver, with Council Member Mary Bess Lawing voting in opposition of, it was RESOLVED:

That the Magnolia Tree in the North Parking Lot of City Hall be  
REMOVED and REPLACED

**ITEM 9: Questions and Comments from Mayor and Council**

Mayor Stedman asked if there were any questions or comments from City Council. There were none.

**ITEM 10:     Closed Session to Consult with the City Attorney – G.S. 143-318-11(a)(5)**

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Council Member Mary Bess Lawing, it was unanimously approved to enter Closed Session to consult with the City Attorney per G.S. 143-318-11(a)(5).

**ITEM 11:     Adjournment**

There being no further business, the meeting was ADJOURNED.

---

Anne P. Stedman, Mayor

---

Amy S. Falowski, City Clerk

