

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

July 10, 2012 – 7:00 P.M.

The regular meeting of the Newton City Council was held on Tuesday, July 10, 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 Attorney Larry Pitts, City Clerk Amy S. Falowski, 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 Wayne Dellinger

Council Member Wayne Dellinger led the Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES FROM THE June 19, 2012 REGULAR CITY COUNCIL MEETING

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

That the Minutes of the June 19, 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 Mayor Pro Tem Bill Lutz, it was unanimously RESOLVED:

That Consent Agenda be – APPROVED

- A. Sewer Adjustments
- B. Authorization for Fireworks Display – Hickory American Legion Fair Association
- C. Consideration of Appointment of Chairman to the Catawba County Economic Development Corporation Board of Directors – Joe Beaman – 1 year

- D. Consideration of Resolution to Revise Purchasing Policy
- E. Consideration of Disposal of Surplus Property Exceeding \$5,000
- F. Proclamation – Recreation and Parks Month – July

(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.

Victor Yamouti, Criminal Lawyer from Morganton, N.C., stated that he is an attorney that represents several of the owners that have Internet Sweepstakes businesses. After giving a brief history of events surrounding these businesses, Mr. Yamouti stated that there are many misconceptions of these businesses, and that they tend to be discriminated against. He stated that the fees and charges that cities attach to these businesses are comparable to a “sin tax”. He stated that these Internet Sweepstakes businesses invested in and chose the City of Newton to do business, and asked that City Council treat them equally, and not charge an arbitrary, punitive fee to do business here.

Mayor Stedman thanked Mr. Yamouti, and asked if there was anyone else that would like to speak. No one appeared.

ITEM 6: **PUBLIC HEARINGS**

- A. Text Amendment #2012-02 Filed by the City of Newton Planning Commission Proposing to Allow Accessory Dwelling Units Within Residential Zoning Districts

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

That Public Hearing be – OPENED

Planner Max Sigler stated that the City of Newton Planning Commission is requesting the approval of a Zoning Ordinance Text Amendment that would allow Accessory Dwelling Units (ADU) within Residential Districts. Mr. Sigler explained that the ADU would be a secondary dwelling unit created on a lot with an owner occupied single family dwelling unit and may be either located within the principal dwelling or as a detached accessory structure. Mr. Sigler stated that the ADU shall not exceed 25% of the main house or 650 square feet, whichever is greater, and that the ADU shall not be in the front yard and must comply with all of the setbacks

for the district in which it is located. Mr. Sigler stated that the ADU must maintain design consistency with the principle structure with a separate means of egress and shall apply to all state building codes and that any detached ADUs would need to be served by separate utilities and must be permitted and registered with the Planning Department.

Mr. Sigler explained to City Council that over the past couple of years the demand for Accessory Dwelling Units has increased around the country with the challenging economic times. He stated that the ADUs are good for college graduates moving home and looking for work, older parents needing assistance, and for those with a desire for additional income to help with expenses.

Mr. Sigler stated that during their April meeting, the Newton Planning Commission directed the Planning Department staff to come up with some sample regulations for Accessory Dwelling Units as well as look at some of the surrounding jurisdictions to see what is being done within them. In May, the Planning Commission agreed to some of the regulations that would need to be met by a homeowner that would like to construct an ADU. Mr. Sigler stated that these changes and suggestions were formed into a draft ordinance and voted upon during the June meeting. The vote carried unanimously in favor of recommending the draft ordinance for Accessory Dwelling Units for approval by the Newton City Council.

Mr. Sigler stated that the following is what other surrounding jurisdictions allow:

Hickory: Does allow Accessory Dwelling Units. They are limited to 25% of the floor area of the principle dwelling and must have a separate entrance. They do not have to be attached to the principle structure.

Conover: Guest quarters are allowed as an accessory building on a residential lot. No more than 30% of the rear yard and must be 20 feet from any residence on adjoining lots, must maintain design consistency with the primary residence, meet NC building code.

Catawba County: Allowed, the same owner must own both houses and reside within one on the property. Accessory dwelling may not exceed 50% of the main house or 650 sq. feet, whichever is greater. Must be detached, meet setbacks for principle structure, may not be erected in front setbacks, separated from house by 10 feet of open space, manufactured homes or truck trailers with current tags or untagged may not be used for accessory structures.

Catawba: Allowed, may be attached, within, or separate from principle dwelling, Manufactured homes shall not be allowed, Accessory Dwelling must be owned by the same owner as the principle dwelling. Separate driveways are not permitted. Accessory dwelling must not exceed 650 sq. feet of first floor area, must be located in rear yard, and must be registered with planner.

Maiden: Allowed, no more than 750 sq. feet in size, attached to principle structure, shall have a separate means of access that meets State Building Code requirements from outside the building, one per lot in conjunction with a single family residence.

Charlotte: Currently does not allow accessory apartments in single family zoning but there is a proposed text amendment that is addressing this issue.

Cornelius: Rental cottages in outbuildings are allowed in a few districts. Minimum floor area is 480 sq. feet Principle building shall be owner occupied.

Mr. Sigler stated that the Newton Planning Commission requests that the City Council amend the City of Newton's Zoning Ordinance to address the use of Accessory Dwelling Units by adopting Ordinance 2012-20.

Council Member Tom Rowe asked if the Accessory Dwelling Units would be allowed in all residential districts. Mr. Sigler stated that they would. Mr. Rowe asked if an ADU could go in a side yard of 150' if it met the set-back requirements and Mr. Sigler answered yes, as long as the design requirements were met. Mayor Stedman stated that the building would have to have the same look on the outside as the original structure.

Collette Touchette stated that she was concerned about allowing Accessory Dwelling Units to be built in the City of Newton. She asked what would happen to the ADU when the parent dies, or the student moves out. She stated that she is concerned that the ADU would become a rental unit and perhaps a slum property. She wanted to know if restrictions could be placed to prevent that from happening and that some cities have restrictions stating that an ADU could only be occupied by a family member or employee of the homeowner. Ms. Touchette also stated her concerns about parking, and Assistant Planning Director Alex Fulbright stated that there would be a requirement of two parking spaces per ADU. Ms. Touchette asked about the maximum number of occupants allowed to live in a single ADU. Mr. Fulbright stated that the maximum number of occupants would follow along with the requirements of Catawba County's building code.

Ms. Touchette expressed that she was not against the building of Accessory Dwelling Units, she is just concerned about how to control them after their original purpose has been served.

Mayor Stedman thanked Ms. Touchette for her comments.

Mayor Pro Tem Bill Lutz stated that one year ago City Council had a discussion about outbuildings, parking, etc., and he sees that this could become a problem.

Assistant Planning Director Alex Fulbright stated that the Planning Department has received approximately three to four requests per year for Accessory Dwelling Units. Mayor Pro Tem Bill Lutz stated that this could be an enforcement nightmare. Ms. Touchette stated that she is concerned that all the issues have not been addressed.

Pastor Paul Fitzpatrick stated that he keeps hearing the phrase "other cities are doing it, we should too" but he hopes that City Council will think things through for themselves. Pastor Fitzpatrick stated that he trusts that Council will do something better, and he hopes they realize that their decisions will affect a lot of people.

Mayor Stedman thanked Pastor Fitzpatrick for his comments.

Council Member Robert C. Abernethy, Jr. stated that he is concerned about government restrictions on private property.

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Public Hearing be – CLOSED

Council Member Wayne Dellinger stated that restrictions could be added and that if someone moves out, then each new resident must get approval. Council Member Abernethy asked how it could be regulated.

Council Member Mary Bess Lawing stated that she feels like the City is not ready to do this and that just because someone else is doing it is not a good reason for us to do it. She stated that other situations and issues need to be considered.

Council Member Robert C. Abernethy, Jr. stated that the hang-up that he has is having the ADUs placed in the side yard. He stated that maybe front and side yards should not be allowed, otherwise everything seems well thought out.

Council Member Bill Lutz stated that he has concerns, and feels like the matter deserves further consideration.

Council Member Wes Weaver stated that he does not like telling people what they can do with their property.

Mayor Stedman asked Attorney Larry Pitts if the City would need another presentation or Public Hearing if the matter is tabled at this time. Mr. Pitts stated that unless there are substantial changes, Council would not need another Public Hearing.

Council Member Tom Rowe stated that he thinks the buildings should only be allowed in back yards, and that the number of residents should be restricted.

City Manager Todd Clark stated that this item will be sent back to the Planning Commission, with comments from City Council, to be further investigated.

B. Text Amendment #2012-03 Filed by the City of Newton Planning Commission Proposing to Amend the Parking Requirement for Schools

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

That Public Hearing be – OPENED

Assistant Planning Director Alex Fulbright stated that Newton-Conover City Schools is preparing to replace the existing South Newton Elementary School with a new facility. Mr. Fulbright explained that the new school will be located just behind the existing South Newton Elementary School. Mr. Fulbright stated that the existing buildings will be demolished to accommodate parking for the new facility once the new school is complete. Mr. Fulbright further explained that as a result of reviewing the preliminary plans, staff discovered that the minimum parking requirements for a school is the same whether it is an elementary, junior high and senior high school, which is 1.6 per classroom, 0.33 per student, plus 1.0 per staff member.

Mr. Fulbright stated that at its May 2012 meeting, the Planning Commission agreed to recommend that City Council amend the zoning ordinance to keep the existing parking lot requirements for senior high schools; and create a new minimum parking lot requirement for elementary and junior high schools that would take into consideration the lower parking demands for these types of schools. A required public hearing was then held at the Planning Commission's June 2012 meeting.

Mr. Fulbright stated that the Newton Planning Commission is recommending that City Council amend the City of Newton's Zoning Ordinance to address the disparity of parking demand for elementary, junior high, and senior high schools by approving this text amendment.

Council Member Robert C. Abernethy, Jr. asked if there would be issues with parking during PTA or other meetings. Police Chief Don Brown stated that there have never been any issues in the past, and that the number of parking spaces would be double what the school has now.

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Council Member Tom Rowe, it was unanimously RESOLVED that Public Hearing be – CLOSED.

Council Member Wes Weaver asked if this would affect all new schools in the future. Mr. Fulbright stated that it would, and that there would be overflow parking for special events.

Council Member Robert C. Abernethy, Jr., stated that this would bring us in line with Catawba County.

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

That Text Amendment #2012-03 Filed by the City of Newton Planning Commission Proposing to Amend the Parking Requirement for Schools be – APPROVED.

Council Member Wes Weaver expressed a concern that this may not allow for future growth. Mr. Fulbright stated that if classes were added, parking would also be added.

ITEM 7: OLD BUSINESS

A. Consideration of Adoption of Budget Ordinance Amendment for the Rehabilitation and Widening of East 26th Street

Public Works and Utilities Director Wilce Martin stated that staff has requested quotes for the rehabilitation and widening of East 26th Street to 16' from three local vendors and received the following bids:

1. Carolina Paving
 - A. Alternate 1 remove and replace the last 326 LF at the end of E. 26th Street and widen to 16'. \$ 12,600.00
 - B. Alternate 2 would widen the first 1,250 LF of E. 26th St. to 16' feet. \$ 25,160.00

2. MidState
 - A. Alternate 1 remove and replace the last 326 LF at the end of E. 26th Street and widen it to 16'. \$ 11,786.00
 - B. Alternate 2 would widen the first 1,250 LF of E. 26th St. to 16' feet. \$ 24,678.00

3. J.T. Russell Paving No Bid

Mr. Martin added that property corners will need to be located along the south side of E. 26th in order to ensure that the roadside ditch remains on City right of way. He stated that it is estimated that locating the corners will cost \$10,400 (\$800/parcel) based on recent work by surveyors.

Mr. Martin explained that additionally there would be approximately \$4,000 for legal fees and easement acquisition will be needed in the event that an estimated two parcels do not adhere to the right-of-way line. Mr. Martin stated that the county GIS indicates that the City owns a 25' wide right-of-way for the entire length of 26th St., but this must be verified prior to any work taking place. He explained that it is not possible to accurately estimate how many of the parcels may need easements until the surveying is completed. The total costs using the lowest bid from Mid-State for alternate 1 and 2 are estimated to be as follows:

Alternate	Description	Cost
Alternate 1	Removal of existing asphalt, replacement of base, and repaving of last 326 LF at 16' wide.	\$ 11,786.00
Alternate 2	Removal of 200 SY of existing asphalt and sub-base, placement of 550' of base, and 1,250 LF of asphalt overlay, 16' wide.	\$ 24,678.00
Surveying Cost		\$ 10,400.00
Legal Cost / Easement Acquisitions (2 parcels)		\$ 4,000.00
Contingency	Assume 10% (Will purchase 265 SY of base for alternate 2)	\$ 5,968.00
Total for Alternate 1 and 2		\$ 56,832.00

Mr. Martin stated that an estimate to address the access and storm water runoff issues on the last 326 LF of E. 26th St was developed. Mr. Martin explained that this alternate will not make any of the street Powell Bill eligible, and will not address any issues on the first 1,250 LF of the street. He stated that removing the existing asphalt, replacement of the base, and repaving the last 326 LF at 15' wide has been estimated at \$8,815.00.

Mr. Martin recommended that the City Council adopt the attached budget ordinance amendment to fund the rehabilitation and widening of East 26th Street.

Council Member Wayne Dellinger stated that the last 150 to 300 feet need to be paved, and that the property owners should deed the right-of-way to the City at their expense.

Council Member Tom Rowe stated that the City should pave all the road, and that if we keep waiting it will cost more.

Council Member Wayne Dellinger stated he believes that the City doesn't have the right-of-way, why should we pave it for eight or 10 people. Council Member Rowe stated that the road will keep going down.

Mr. Martin stated that the City needs to have legal right of way, and that we would investigate and ask for the deed.

Council Member Mary Bess Lawing stated that if the City does it right, the road should last for 20 years.

Upon motion made by Council Member Tom Rowe, to Adopt a Budget Ordinance Amendment for the Rehabilitation and Widening of East 26th Street Adding That Owners Agree to Give the City the Right of Way if it is Needed, seconded by Council Member Mary Bess Lawing. Motion failed due to lack of votes.

Council Member Robert C. Abernethy, Jr. stated that he needed to recuse himself before the vote.

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

That Council Member Robert C. Abernethy be – RECUSED from Item 7A

Council Member Wayne Dellinger stated that there are roads in the City that are in much worse shape. Council Member Rowe stated that he didn't know if there were or not. Council Member Wayne Dellinger stated that he felt like the City was moving too fast.

Council Member Wes Weaver stated that if the City paves the road, that it should be done so that it meets Powell Bill approval, and he agreed that the residents need to give the right-of-way to the City.

Council Member Tom Rowe made a motion to repair E 26th Street to meet Powell Bill approval, with the property owners granting right-of-way easements to the City at no cost to the City with the exception of survey costs. Council Member Mary Bess Lawing seconded the motion.

With Council Members Wes Weaver, Mary Bess Lawing, and Tom Rowe voting in favor of, and Council Members Bill Lutz and Wayne Dellinger voting against, it was RESOLVED:

That Budget Ordinance Amendment 2012-22 - Rehabilitation and Widening of East 26th Street be ADOPTED with the Understanding that the Property Owners Must Pay for all Right-of-Way Acquisitions.

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

ITEM 8: NEW BUSINESS

A. Second Quarter DNDA Report – Jeremy Petty

Jeremy Petty, Chairman of the DNDA, presented the Second Quarter DNDA Report to City Council.

- Added new member for UCHS
- Had second meeting of the Downtown Arts Group
- Working on Community Calendar
- Vacant building tour
- Phostell's makeover nearly complete

B. Consideration of an Amendment to the Budget Ordinance by Creating a New Fee in the City's "Fees and Charges" to Include a Fee for Businesses Known as "Internet Sweepstakes" and Businesses Related to Internet Gaming

City Manager Todd Clark stated that over the course of the last several years, the City of Newton has issued a number of zoning permits to businesses that are engaged in the provision of internet or computer services which include access to electronic sweepstakes or games wherein the user may receive prizes, products, tokens or similar markers which may be redeemable for cash or credits, where such gaming or sweepstakes constitutes a substantial part of the operator's business.

Mr. Clark explained that despite an initial effort by the North Carolina General Assembly to ban these types of businesses, internet sweepstakes operations have reportedly proliferated statewide following a court decision March 6, 2012 that declared the businesses are legal in the state. Mr. Clark stated that in light of that court decision, several North Carolina House Members (Owens, Spear, and Collins) introduced House Bill 1180 aimed at passing a statewide "video sweepstakes entertainment tax". While the General Assembly did not act upon the proposed statewide tax during the short session this year, numerous cities across the State have proceeded to institute a variety of different fees in their jurisdictions in accordance with existing North Carolina law.

Mr. Clark stated that as the result of an increase in the number of internet sweepstakes operations in the City of Newton, the staff has closely monitored the actions of the General Assembly and other cities before making any recommendation to Council. He explained that as part of this ongoing review, staff is now prepared to recommend to Council that a fee be established for these businesses and other similarly established businesses with activities related to internet gaming. Mr. Clark stated that currently there are six internet sweepstakes “cafes” in Newton. The six existing businesses include:

- Internet Triple 7’s Sweepstakes, 121 W B St;
- Little Vegas LLC, 2017 NW Blvd;
- Carolina Sweepstakes Enterprises, 1378 #C S NC 16 Business Hwy;
- Real Deal, 1901 Northwest Blvd Suite V;
- 321 Business Center, 411 W A Street; and
- Main St Business Center, 1111 N Main Ave.

Mr. Clark stated that based on a review of fees imposed or being considered by other area cities and across the state, staff recommends an annual fee of \$2,500 per establishment, and a \$1,000 annual fee per machine. This would be about midpoint considering those fees adopted by other municipalities. The courts have indicated that in setting these fees, factors that may be considered by the cities include the profitability of the business, and the additional costs likely to be incurred in policing and/or regulating the business due to the nature thereof. Mr. Clark stated that penalties for non-payment are recommended to follow North Carolina General Statute 160A-211 which authorizes 5% for every thirty days that business is conducted without a license, up to 25%. Collection remedies include:

- Attachment, garnishment, and levy
- Set-off debt collection
- Civil suit
- Criminal misdemeanor prosecution

Mr. Clark stated that if the recommendation is approved by City Council, the staff will implement the fee on a fiscal year basis and a City permit will be issued accordingly and that any business that starts up after July 1st will have their annual fee pro-rated for the first year. He stated that existing businesses that add a machine during the year will be pro-rated accordingly for any additional machines added and that in all cases, the annual fee will be due by July 1 and is non-refundable.

Mr. Clark recommended an amendment to the City’s 2013 Budget Ordinance by creating a new fee in the “Fees and Charges” section, and that if approved; the fee will apply to the Fees and Charges for Fiscal Year 2012 – 2013. He explained that the Fees and Charges Schedule will be revised to include Privilege License Fee – Internet Sweepstakes Cafes (Electronic Gaming Operations) with a recommended annual flat fee per establishment of \$2,500 and annual flat fee per machine/device of \$1,000.

Council Member Wayne Dellinger asked what would happen if the State passes a fee. Mr. Clark stated that staff would have to come back to City Council for an adjustment.

Council Member Robert C. Abernethy, Jr. asked if other businesses are charged a fee. Assistant Planning Director Alex Fulbright stated that Sexually Oriented Businesses are charged a fee also. Council Member Abernethy asked if there was more crime associated with this type of business. Police Chief Don Brown stated that there had been an armed robbery at the business located on Hwy 70.

Council Member Abernethy asked if the fee would be due upon passage and Mr. Clark stated that it would.

Council Member Mary Bess Lawing made a motion to pass the amendment to the Budget Ordinance by creating a new fee in the City's "Fees and Charges" to include a fee for businesses known as "Internet Sweepstakes" and businesses related to internet gaming. Motion FAILED – No Second.

Council Member Robert C. Abernethy, Jr. stated that he felt like there should be more discussion on the matter. He did not think that it is a bad thing to charge a fee, but that maybe the fee is too high. Council Member Mary Bess Lawing stated that if the City doesn't set fees, more businesses of the same nature will move to Newton. Council Member Wes Weaver agreed that the City could become inundated with these businesses with no regulations in place.

Council Member Robert C. Abernethy, Jr. stated that he would hate to run anyone out of business if the fee is too steep.

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

That Amendment to the Budget Ordinance by Creating a New Fee in the City's "Fees and Charges" to Include a Fee for Businesses Known as "Internet Sweepstakes" and Businesses Related to Internet Gaming be – ADOPTED

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

A. Consideration of SAFER Grant Application

Fire Chief Kevin Yoder stated that the Fire Department has previously applied to the Federal Government through the SAFER Grant for funding for additional personnel for firefighting purposes. He stated that the department has applied for the grant since its inception each of the last seven years excluding FY 2010, and that previously this grant was a five-year grant with a local match each of the first four years with the local unit committing to 100% of the funding in the fifth and final year.

Chief Yoder stated that following the adoption of the ARRA legislation this grant (SAFER) was modified to a three-year grant with no local match each of the first two years. The local unit of government would however have to commit to 100% funding during the third and final year. After that, for FY 2013-2014, the grant was modified to 100% funding for two years with no required match after the two-year period.

Chief Yoder explained that if awarded, the local unit would have the authority to eliminate the personnel in the third year following the award with no penalty. However, if positions were eliminated after the two years the City would be responsible for approximately \$22,500 for unemployment compensation. Also, during the two-year grant period the local unit can have no reduction in force in the fire department without forfeiting part of the entire grant.

Chief Yoder stated that if the council chooses to submit an application for funding for firefighting personnel, the recommendation of the staff is that the request be for three personnel. He stated that a yearly budget is included that outlines the funding in each of the two years of the grant period by the Federal Government as well as, the City of Newton and the third year following the completion of the grant. Chief Yoder stated that the justification for this funding request is to comply with NFPA (National Fire Protection Association) minimum guidelines for staffing of the Fire Department. Additional information was presented, and requested that the City Council provide direction to staff whether or not to apply for the FY 2013-2014 SAFER grant.

Council Member Robert C. Abernethy, Jr. asked if there would be a negative impact if the City applied for the grant, but then chose not to accept it if awarded. Chief Yoder stated that he did not think so.

City Manager Todd Clark explained that the only action being taken at this time would be whether or not to apply for the grant. Council Member Wes Weaver asked if the Council would vote when the two years are up whether or not to keep the three positions. Mr. Clark stated that yes, Council would vote on that issue.

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Wes Weaver, and with Council Member Robert C. Abernethy voting in opposition, it was RESOLVED:

That SAFER (Staffing for Adequate Fire and Emergency Response) Grant Application for FY 2013-2014 be – APPROVED.

- B. Consideration of Adoption of the United States Army Corps of Engineers Section 14, Resolution to Obtain Funding for Stream Restoration

Assistant Public Works and Utilities Director Dusty Wentz stated that a section of the Heritage Trail Greenway between Radio Station Road and Hwy 10 is in danger of failure due to stream bank erosion. He explained that the top of the bank has eroded to less than 5 feet from the edge of the trail, and that in order to preserve the current alignment of the trail, stream bank

stabilization will be required. Mr. Wentz stated that the United States Army Corps of Engineers (USACE) offers an Emergency Stream Bank Stabilization program, Section 14, which assists municipalities with protecting existing structures. He explained that the first step in a Section 14 project is the feasibility study which would include an assessment to determine the best method of bank stabilization. The first \$100,000 of this cost is funded by the USACE, with the municipality and the USACE sharing 50% of the costs above that limit. Mr. Wentz explained that for a Section 14 study, the cost is estimated at \$85,000, and that the study would determine the most effective solution, and provide an estimated project cost.

Mr. Wentz stated that there is no commitment from the City until Council executes the "Project Partnership Resolution". This resolution would be presented after the estimate has been finalized, and prior to the conclusion of the feasibility study. He stated that USACE also normally provides a "ballpark" estimate of the project early in the study in order to alert the municipality to the scope of the project. The City may also choose to terminate the study at that time, which normally takes 12 months.

Mr. Wentz stated that after the study is completed and the Resolution is signed, the next phase is design. All design and engineering is provided by USACE, and the cost is split 65/35 with the City's portion being 35%. USACE will also bid the project out for construction, and split those costs with the City on the same 65/35 schedule. Mr. Wentz stated that the City would be responsible for any easement or right-of-way purchases required.

Mr. Wentz stated that staff is requesting City Council to provide direction on proceeding with USACE's Section 14 program. If continuing work is directed, the Resolution in the agenda packet would have to be approved, along with authorization from the Mayor by signing the letter, also included.

Council Member Robert C. Abernethy, Jr. asked if the City doesn't accept the study, and fixed the problem, would the City have to check with the USACE. Mr. Wentz replied yes.

Council Member Wayne Dellinger asked if the City initiated contact with USACE. Mr. Wentz stated that the City did initiate the contact. Council Member Dellinger stated that the City could spend up to \$100,000 to \$200,000 and wanted to know if something has to be done. Mr. Wentz answered that the City does not have to do anything, but that it could become a safety issue if the situation becomes worse.

Council Member Tom Rowe stated that the trail is too close to the creek, and wanted to know if it could be straightened out and possible moved over. Mr. Wentz stated that the relocation could be more costly, and that anything five feet from the creek is protected wetlands and would therefore require an elevated boardwalk

Public Works and Utilities Director Wilce Martin stated that this action would be taken just to do the study.

Council Member Robert C. Abernethy, Jr. asked how long the study would take. Mr. Wentz answered 12 months.

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

That Consideration of Adoption of the United States Army Corps of Engineers Section 14, Resolution to Obtain Funding for Stream Restoration be – APPROVED.

ITEM 9: City Manager's Report

- EDC 2012 Annual Meeting – Wednesday, July 18, 2012 – 11:45 a.m. Hickory Metro Convention Center
- Meeting to discuss analysis by Southern Growth Policies Board to determine the Competitive Position of our area Mon., July 30, 10:00 a.m. to 11:30 a.m. Convention Center
- Fire Station 3, 1-2 months from completion (Open House end of August, or first of Sept.)
- Rabies Clinic, Saturday, July 28, 9:00 a.m.-1:00 p.m., Justice Center
\$5/rabies shot, \$15/microchip
- Building Dedication Ceremony for Newton-Conover Middle School, Sunday, July 29, 2012 at 3:00 p.m.
- Workshop for City Council prior to August 7th meeting (at 6:00 p.m.) to receive report from Steve Allen
- Projects Update
- Electricities Annual Conference at Myrtle Beach, August 9-11

ITEM 10: Questions and Comments from Mayor and Council

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

ITEM 11: Closed Session to Consult with the City Attorney – G.S. 143-318-11(a)(5) and G.S. 143-318-11(a)(6)

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Council Member Wes Weaver, and unanimously approved to enter Closed Session to consult with the City Attorney per G.S. 143-318-11(a)(5) and G.S. 143-318-11(a)(6).

ITEM 12: Adjournment

There being no further business, the meeting was RECESSED until 6:00 p.m., August 7, 2012

Anne P. Stedman, Mayor

Amy S. Falowski, City Clerk

