

REGULAR SESSION OF JANUARY 31, 2023

The City of Kings Mountain, North Carolina met in Regular Session at 6:00 p.m. on Tuesday, January 31, 2023 in the Council Chambers of City Hall with Mayor Scott Neisler presiding.

ATTENDANCE

The following Councilmembers were present: Annie Thombs, Keith Miller, Mike Butler, Jimmy West, Jay Rhodes and David Allen. Councilmember Tommy Hawkins was absent.

Also, present: Jim Palenick, City Manager, Mickey Corry, City Attorney, and Karen Tucker, City Clerk.

INVOCATION

The invocation was given by Dr. Chip Sloan, First Baptist Church, Kings Mountain.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Scott Neisler.

AGENDA ADOPTION

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Annie Thombs, it was unanimously voted to adopt the proposed agenda.

SPECIAL PRESENTATIONS AND RECOGNITIONS

Mayor Neisler recognized Nakisha Wenzel and presented her with a Proclamation and the 2022 Community Spirit Award.

Mayor Neisler recognized Marilyn Sellers congratulating her on her retirement and presented her with the Order of the Long Leaf Pine.

Mayor Neisler recognized Diane Wilson and presented her with a Proclamation honoring her work in the community.

CITIZEN RECOGNITION

Jim Champion, General Manager of the Kings Mountain Little Theater updated Council regarding the upcoming Liberty Mountain season and requested that the City partner with the theater on various publicity projects.

Dale Greene, 235 Landry Drive, Kings Mountain addressed Council regarding his recent public records request.

David Stone, 1220 N. Piedmont Avenue, Kings Mountain addressed Council regarding proposed development in Kings Mountain and why these developments have not started. He also addressed Council regarding problems with the current Unified Development Ordinance that needs to be addressed.

Nakisha Wenzel, 819 Landing Street thanked Council for their support in the past for the special events. She welcomed the new City Manager and addressed Council regarding the positive opportunity and potential for growth in Kings Mountain.

MAYOR, CITY COUNCILMEMBERS, AND CITY MANAGER’S COMMENTS AND REMARKS

Councilmember Jimmy West stated his concerns regarding housing development in Kings Mountain and he understands that we are behind.

Councilmember Keith Miller stated that he does not feel that the City is behind based upon the developments that have been approved. The city is working very hard to get where we need to be.

Mayor Neisler addressed public records requests stating that we are required to provide records that exist, but sometimes there are no records to give.

Councilmember David Allen addressed the recent issues at Kings Mountain High School and commended Chief Childress on the action that he and the police department have taken to mitigate these problems and protect the safety of our children.

CONSENT AGENDA

Upon motion by Councilmember Jimmy West, seconded by Councilmember Jay Rhodes, it was voted unanimously to adopt the following Consent Agenda:

- A. Minutes of the Regular Meeting of December 13, 2022.
- B. Listed below is a budget amendment which requires Council approval.
 - Amendment in the amount of \$25,000 to budget additional Powell Bill restricted funds for paving. Bids came in slightly above anticipated amounts necessary to complete scheduled paving for the budget year. Council approval is required given that we are increasing total Powell Bill Fund budget.
- C. Authorize the Mayor to execute an Audit Contract with Martin Starnes and Associates for the fiscal year ending June 30, 2023.

Authorize Mike Butler, Chairperson of the Kings Mountain TDA to execute an Audit Contract with Martin Starnes and Associates for the fiscal year ending June 30, 2023.
- D. Award contract to United Financial, a Division of HomeTrust Bank, in the amount of \$375,108.66 for financing of 2023 garbage truck. **(Resolution 23-01)**
- E. Appoint the City Manager or his designee as the contact person involving Project South and Metcon.
- F. Adopt **Resolution 23-02** authorizing the City to enter into an Interlocal Agreement to purchase items from the North Carolina Sheriff’s Association Interlocal Cooperative Agreement.
- G. Schedule a Public Hearing for Tuesday, February 28, 2023 at 6:00 p.m. in Council Chambers at City Hall to consider a rezoning request from Applicant/Owner Luke Judd, located on the south side of Dillon Road and southwest of the intersection with Patterson Road and consisting of approximately 42.89 acres, being further known as Cleveland County Parcel

Numbers 64022, 64023 and 10910 from Suburban Residential (SR) to Rural (RU) – Case No. Z-22-25.

Upon Motion by Councilmember David Allen, seconded by Councilmember Mike Butler, it was unanimously voted to recess the Regular Meeting and enter into a Public Hearing at 6:36 p.m.

PUBLIC HEARING

ITEM 9A: Continuation of rezoning request from YG Homes, LLC to rezone property owned by Brinkley Farms, LLC, located at Crocker Rd. and consisting of approximately 100.01 acres, being further known as Cleveland County Parcel Numbers 11074, 11068 and 11073 from Suburban Residential (SR) to Semi-Urban Residential (SU) Case No. Z-22-6.

City Manager Jim Palenick recognized Stuart Gilbert, Economic Development and Planning Director to address this matter.

Mr. Gilbert stated that after discussions with the owner/developer of this project, it is their intention to continue to work with staff to develop this property utilizing the revised UDO text amendments and current zoning classification, which is Suburban Residential (SR). At this time, they would like to request to withdraw this request.

No one spoke in favor or against this request.

ITEM 9B: Consider a rezoning request from Scott Moss MD, Applicant/Owner, located at the southeast corner of South Battleground Avenue and Kings Mountain Boulevard, consisting of approximately 6.68 acres, being further known as Cleveland County Parcel Numbers 11750 and 65674 from Suburban Residential (SR) to Auto-Urban (AU) – Case No. Z-22-21.

City Manager Jim Palenick recognized Stuart Gilbert, Economic Development and Planning Director to address this matter.

Mr. Gilbert stated that all legal requirements have been met regarding public notice for this public hearing. The property is located at the southwest corner of Kings Mountain Blvd. and S. Battleground Avenue and consists of just under eight acres. The current zoning is Suburban Residential and the proposed rezoning is Auto-Urban Commercial. The surrounding land uses consist of Suburban Residential and Heavy Industrial. The future land use map indicates that the property should be Auto-Urban. Planning and Zoning Board recommends unanimously to approve the recommendation to rezone the property to Auto-Urban.

Richard White, 1407 S. Battleground Avenue spoke against this request stating his concern regarding how this rezoning might affect his privacy, as well as concerns regarding a driveway that he shares with the Moss property.

Dale Greene, 235 Landry Drive spoke against this request requesting that an impact study be done prior to the approval of this project, and asked that this be placed on hold.

David Stone, 1220 N. Piedmont Avenue spoke against this request questioning the Future Land Use Map that was adopted last year, which classifies this property as Auto-Urban, a classification that permits commercial buildings, and how they knew that these areas would support commercial property.

Beth McDaniel, 830 Dixon School Road spoke against the request stating her concern for the traffic at the intersection at times when there may be an emergency on the interstate.

ITEM 9C: Continuation of Public Hearing to consider text amendments to the City of Kings Mountain Unified Development Ordinance.

ITEM 9D: Continuation of the revision of the Comprehensive Plan and Future Land Use Plan as recommended by the Planning and Zoning Board.

City Manager Jim Palenick addressed Items 9C and 9D stating that both public hearings have been opened and continued for several months. After discussion with Director Gilbert, he is requesting that both public hearings be closed and that they create a new notice and new date specific for the public hearing. This will allow the public more specific detail on what is being amended, as well as providing staff with more time to ensure that what is being presented is in good order. The re-advertisement period will also allow time to talk with interested parties from the downtown area regarding the standards being presented. In the furtherance of transparency, staff's recommendation would be that no action would be taken tonight, but instead that the public hearings be closed and the new notice be established.

As to Item 9C, David Stone, 1220 N. Piedmont Avenue spoke stating that he did not know what the text amendments that were scheduled to be presented were. He also spoke about the Ad Hoc Committee and the commitment to come back to the business owners regarding the standards.

As to Item 9C, Jimbo Thompson, 1305 Wales Road, addressed Council regarding the appointment of members to the permanent standards committee.

No one spoke in favor or against Item 9D.

Upon Motion by Councilmember Keith Miller, seconded by Councilmember Jay Rhodes it was voted unanimously to close the Public Hearing and re-enter the Regular Meeting at 7:12 p.m.

REGULAR MEETING

Item 11 – Action on Item 9A

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Jimmy West, it was voted unanimously to accept the applicant's withdrawal of their rezoning request.

Item 12 – Action on Item 9B

Mayor Neisler read the Consistency and Reasonableness Statement In Favor and Against this request.

Councilmember Keith Miller made a Motion to adopt the Consistency and Reasonableness Statement **FAVORING** the request. The Motion died due to lack of a second.

Upon Motion by Councilmember Jimmy West, seconded by Councilmember Mike Butler, it was voted 5-1 to adopt the Consistency and Reasonableness Statement **AGAINST** the rezoning Parcel Numbers 11750 and 65674 from Suburban Residential (SR) to Auto-Urban (AU) as follows:

PLANNING & ZONING BOARD'S STATEMENT AGAINST THE CHANGE FROM Suburban Residential (SR) to Auto-Urban (AU) (Parcels 11750 and 65674): The proposed area to be rezoned is approximately 7.72

acres located at the southeast corner of S Battleground Ave and Kings Mountain Blvd. The petitioner seeks to convert this vacant residential property into auto-urban commercial. Adjacent properties are zoned Suburban Residential (SR) and Heavy Industry (HI). Requested rezoning is consistent with the Future Land Use Map (FLUM). While this rezoning does align with the FLUM, it is currently contiguous to Suburban Residential (SR) and may disrupt current residents. The proposed use is likely to be disruptive to neighbors and is unreasonable at this time.

Councilmember Keith Miller was the dissenting vote.

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Mike Butler it was voted 5-1 to deny an Ordinance amending the zoning map of Kings Mountain, NC to rezone Parcel Numbers 11750 and 65674 from Suburban Residential (SR) to Auto-Urban (AU). Councilmember Keith Miller was the dissenting vote.

Item 13 - Action on Item 9C - No action taken.

Item 14 - Action on Item 9D - No action taken.

Item 15 - Authorize City Manager to issue a Notice of Intent to Annex and Request the Town of Grover to enter into an Annexation Agreement

Mickey Corry, City Attorney addressed Council regarding this process stating that this 23.14-acre tract is the site of the future wastewater facility which will be constructed as part of Project South. This parcel is closer in proximity to the primary town limits of Grover, which triggers a N.C.G.S. requirement to give them notice of the City's intent to annex this property into the City limits. This action also begins the process of an annexation agreement between the municipalities. The subject property is inclusive of property that is owned by the City of Kings Mountain only.

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember David Allen it was unanimously voted to authorize the City Manager to issue a Notice of Intent to Annex and make a request of the Town of Grover, North Carolina to enter into an annexation agreement with the City of Kings Mountain to allow the annexation of approximately 23.14 acres off of Jim Patterson Road into the City of Kings Mountain.

Item 16 - Mutual Aid and Assistance Agreement for Water and Wastewater Utilities

City Manager Jim Palenick addressed Council stating that this item was removed from the Consent Agenda for discussion due to the fact that the City has not participated in this agreement until the present. He recognized Rick Duncan, Water Resources Director to give some background information regarding the agreement.

Mr. Duncan stated that this program began in 2005 and is a nationwide program in which 49 states participate. It enables the City to lend assistance with anything from a small water break to a major disaster. It was designed by the Water Agency Response Network. Basically, we give them our inventory, and help if it is requested. We have the choice as to whether we respond or not.

There was discussion regarding amendments that could be made by the participants of the agreement, and Mr. Duncan stated that any changes to the agreement would result in a new contract which would come before Council for approval.

Upon Motion by Councilmember Annie Thombs, seconded by Councilmember Jay Rhodes it was unanimously voted to authorize the Mayor to execute a Mutual Aid and Assistance Agreement for Water and Wastewater Utilities.

Item 17 – Approve and Authorize the Mayor to execute the AIA 141 Design Build Agreement with Metcon

City Manager Jim Palenick addressed Council giving an overview of Project South and the \$39 Million grant that will allow the construction of a new wastewater treatment plant, as well as the infrastructure to extend down to that plant which will dramatically enhance and improve the failing system in the Town of Grover, allowing for growth in that community and along the route of the system. The process for contracting this effort is somewhat different than the typical “Design-Bid-Build.” With a very large, transformational project like this, with constraints on timing and wanting to get it moving and with the desire to have certainty of what the cost will be, particularly in an inflationary environment, this is proposed to be a Design-Build process. This follows a process whereby sixty percent of the design drawings are completed, with the goal of then getting the Design Builder to provide a guaranteed maximum price (GMP). This contract follows an AIA – American Institute of Architects standard template, which puts into place the first portions of this contract and obligates us to a little over a \$1.5 Million, which gets us to that next stage which is primarily sixty percent of the design drawings, so that in turn gets us to the guaranteed maximum price. One of the most important pieces of information to know is the GMP because there is a belief that the \$39 Million will not fully fund this project. The hope is that we will be able to complete a fully discreet project whether we get additional funding or not, and the City will work very hard to get any additional funding necessary; however, that can’t be determined until the GMP is known. The City Attorney, along with Joel Woods and Staff, have been working with Metcon to ensure that this contract provides what is needed for the City.

Mr. Palenick indicated that Council will not be approving a contract for \$39 Million tonight, just the first portion of this effort. Amendments will be brought before Council as they are established that will further obligate what we are doing, but we will have more information at that time.

Mr. Corry reviewed recommended changes to the existing contract as follows:

- Section 7.1.1 “General” – amend language striking “all” and stating that amendments and modifications to this agreement **are not permitted** to be approved by the authorized representative
- Section 11.1 “Uncovering of work” – add language that states that if work is uncovered and is found not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder’s expense
- Section 2.1.4.1 – add the word “annual” to specify the interest rate agreed upon

Mr. Palenick stated that staff is comfortable with these amendments and would recommend them as well.

Upon Motion by Councilmember Keith Miller, seconded by Councilmember David Allen it was unanimously voted to approve and authorize the Mayor to execute the AIA 141 Design Build Agreement, with the amendments listed above between the City of Kings Mountain and Metcon.

Item 18 – Set the Date of Saturday, July 1, 2023 for the July 4th Red, White and Boom Festival

Christy Conner, Special Events Director addressed Council regarding this request stating that this would be her recommendation due to this being consistent with the concert series dates, as well as cooperative efforts that are made with neighboring municipalities. This date also lessens the demand for entertainment, which is more cost effective and opens up exploring mutual aid resources if needed.

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Mike Butler it was unanimously voted to set the date of Saturday, July 1, 2023 for the July 4th Red, White and Boom Festival for this calendar year.

Item 19- Adopt Ordinance to Demolish and remove dilapidated dwelling at 105 Urban Drive

Clint Houser, Codes Director addressed Council stating that several complaints have been submitted regarding this property. There was a hearing with the owner and a reasonable time was give to make such repairs. The time has expired with no repairs being made. He stated that it is the recommendation of staff to approve the Ordinance for demolition.

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Annie Thombs it was unanimously voted to adopt **Ordinance 23-01** to demolish and remove the dilapidated dwelling located at 105 Urban Drive.

Item 20 - Amend the 2023 City Council Regular Meeting Schedule to add a 2nd Monthly Meeting

City Manager Jim Palenick addressed Council regarding this matter stating that this community has a lot of work ahead of it. There is also discussion regarding greater transparency. In an effort to further both, it is his recommendation to hold a second monthly Council Meeting that would serve as a work session. The meeting would give an opportunity for discussion regarding items that may come before Council for action at a later time, but also give opportunity for items that require action without waiting until the end of the month. This would be primarily designed as a work session for items that will truly impact action items. The recommendation is adding a regular work session for the second Thursday each month, at a time established by Council.

After discussion, Council determined that holding the work session at 6:00 p.m. would be consistent with the regular meetings at the end of the month.

Upon Motion by Councilmember David Allen, seconded by Councilmember Keith Miller it was voted unanimously to amend the 2023 City Council Regular Meeting Schedule, to add a second regular meeting each month on the second Thursday at 6:00 p.m.

ADJOURNMENT

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Mike Butler, it was unanimously voted to adjourn at 7:38 p.m.

ATTEST:

Karen A Tucker
Karen A. Tucker, City Clerk

BY: G. Scott Neisler
G. Scott Neisler, Mayor