

SPECIAL MEETING OF JUNE 14, 2022

The City of Kings Mountain, North Carolina met for a Special Meeting at 6:00 p.m. on Tuesday, June 14, 2022 in the Council Chambers of City Hall with Mayor Scott Neisler presiding. This meeting was considered to be a Remote Meeting allowable under N.C.G.S. § 166A-19.24, as one or more Councilmembers participated remotely. This meeting was open for public attendance in Council Chambers at City Hall.

ATTENDANCE

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

Also present: Mickey Corry, City Attorney, Marilyn Sellers, City Manager and Cynthia Cash, Deputy City Clerk. Karen Tucker, City Clerk, was absent due to vacation.

INVOCATION

The invocation was given by Mayor Pro-Tem Keith Miller.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Neisler.

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Annie Thombs, it was unanimously voted to recess the Special Meeting and enter into a Public Hearing to discuss the proposed budget for FY 2022-2023 and the Continuation of Public Hearing to receive public input regarding the adoption of the City of Kings Mountain Comprehensive Plan and Future Land Use Plan at 6:03 p.m.

PUBLIC HEARING

Consider the proposed budget for FY 2022-2023.

Marilyn Sellers, City Manager thanked the Mayor and City Council members. She stated that before them they have the proposed budget for FY 2022-2023, which is balanced for all municipal operations as required by the General Statutes for the state of North Carolina. It is a very responsible budget and it identifies the revenues and expenditures that are necessary to maintain and improve the present level of service to our citizens and customers. This budget meets all state and federal mandates, maintains our tax and utility rates at a below state and local average, invests in our employees, maintains responsible fund balances, has a responsible debt load, and includes capital outlay, along with continued funding to our capital reserve fund, so that is really important.

This budget navigates uncharted territory of supply chain unknowns, inflationary pressures and prolonged adverse effects of the pandemic while attempting to continue governmental and utility service costs at a low-cost competitive fashion.

The last two budget cycles have been very challenging and as Marilyn stated during last year’s budget cycle session, the City has made good decisions in the past and have been proactive to be ready for unforeseen circumstances and emergencies. We want to remain cautious and responsible and be good stewards of our fund balances because that has taken us years to build those fund balances. She recommended that we carry forward the same concept that we have in the current budget, which is to monitor revenues and expenditures, and approve budget amendments throughout the year as we prioritize our capital, our many projects and make recommended salary adjustments keeping up with the market.

The budget ordinance before them is \$53,904,833. This is about a 7% increase over the approved budget in 2021-2022. This is not including the budget amendments throughout the year. This increase is mainly due to the Market Study, the implementation of the inflation and some projects. This includes all grants, incentives, loan payments, capital outlay, and purchase of gas and electricity for nine separate funds. These funds are broken down as follows:

- General Fund - 37.3%
- Emergency Telephone System (E911) - .2%
- Water & Sewer - 16.3%
- Stormwater - .9%
- Electric – 30.3%
- Gas – 12.4%
- Powell Bill - .8%
- Economic Incentives – 1.9%
- Cemetery Perpetual Care Fund – too minor for a percentage

Our FY 2022-2023 debt payments, which are very low, are approximately \$2.7 million. Total long-term debt is \$23.7 million, with the majority of that (\$20.7 million) being the water infrastructure loan which is interest free. These numbers are principal only. Our debt is extremely low and we are very proud of that. Also, we are in the process of finalizing the loan process for our Capital and Infrastructure improvements in Electric and Gas. That has to go through the LGC and we are going through that process now, so that is not included. Our total capital outlay from all funds is approximately \$4.6 million, which is less than 8% of our total budget. Phase I of Streetscape has been completed. We will be completing Phase IIA in this budget, which Council has said is a priority, being a vital part of our Economic Development and in FY 2023-2024, hopefully Phase IIB and Phase III will be completed if Council approves and revenues are available. It is very important that we pass along any inflationary increases that are absolutely necessary because the cost of your operations will be paid out of your

Fund Balance and your Capital Reserve.

Marilyn Sellers updated the Council on the major budget highlights for FY 2022-2023. They are as follows:

- No property tax rate increase. Remains at .43 cents per \$100. Each penny on the tax rate generates approximately \$190,000. Very proud that we are one of the lowest rates in the region and the state. No change is recommended at this time but we must continue to evaluate annually, given the economy and inflation and increase in recurring costs and the ability of our Electric Fund to transfer monies. City of Kings Mountain is approximately 8 cents below our peer group average as defined by the Local Government Commission and we offer more services. We offer several services, our tax rate is lower and there are very few in our peer group that operate their own water source, Moss Lake and we also operate the Senior Center and a municipal library. We are one in two cities in NC that operate five utilities. We are proud of our rate and all that we offer our citizens.
- No proposed adjustments to City General Fund fees
- No proposed Electric rate increase
- No proposed Water rate increase
- No proposed Wastewater rate increase
- No proposed Natural Gas rate increase
- No proposed Sanitation or Stormwater rate increase at this time but Marilyn noted that on June 9th, she received a notice from Cleveland County that tipping fees for landfill disposals will be increasing 10% but the City had already prepared the budget. She spoke with the County Manager and he agreed this was late notice but there was a delay in the results of the outside landfill study. He stated that if this is a hardship then we could make it effective mid-year in January. So, we are currently evaluating and will bring a recommendation. It looks like this is an impact of \$25,000-\$30,000 annually.
- No benefit changes to health insurance premiums for employees or dependents. Still offering the 3 plan designs. This is a huge benefit for our employees and it shows that the city invests in their employees.
- There were 2 additional employees that were added to the budget. One is a full-time firefighter that was added mid-year and the other one is a part-time Administrative Assistant that was added in Planning. There are also two transfers. This did not increase the number of employees. The first one is a transfer from the Library to a position in Special Events because that area is really growing. The Main Street monies transferred into an Economic Development position. This is where our growth starts in Planning and Economic Development. They really needed more employees there and they are in the process of hiring for this position.

The City has a total of 260 full-time and part-time employees. It's important to note that over 72% of our budget in General Fund is personnel costs. Total personnel costs for all funds, including salaries, taxes, retirement and medical is approximately \$18 million. A 2.5% cost of living allowance is included for all employees, with another 2.5% bonus mid-year or an additional cost of living, based on actual revenues and on other economic factors for a total of 5% COLA during the year and the important implementation of the Market Study by a 3rd party consultant. The City should continue in their future budgets to remember to implement a cost of living and a constant monitoring of the salary market changes in order to maintain and recruit employees because that is getting more and more difficult. She said we all agree that our employees are our greatest assets and we need to make this a priority and not fall behind after we funded a 3-year in-house study. The numbers captured for this current study, we are already seeing changes that need immediate attention in one critical department. Marilyn is going to call for a Work Session as soon as possible and discuss plans going forward because we are reaching a critical point.

Even though COVID has caused a lot of delays and inconveniences, we are still on track with a lot of great things happening in Kings Mountain. There is no way she can tell you everything that has happened in the past year and all the progress we have made. Just a few things this year: We are in the process of completing a UDO, Comprehensive Plan, setting up a Strategic Plan to be led by an outside consultant as requested, 3rd party Comprehensive Plan Pay & Classification Study, Utility infrastructure upgrades, Project South, Grant received in the amount of \$39 million for new wastewater project to provide wastewater needs to the southeastern portion of Cleveland County, which is a major economic project. We completed the loop system of three of our major utilities, \$1.8 million EPA Grant received for I & I, new Economic Incentive Policy to retain and attract new businesses, implemented Open Gov – an online permitting system to allow automation of codes and planning development permits, thus allowing developers and citizens expedited review processes. We have had many downtown investments. To name a few – Trackside Hall, Stonewright Properties, sale of McGinnis building and many others. A lot of subdivisions are being reviewed now, completion of the Kings Mountain Boulevard line extension from Phiifer Road to Kings Mountain Intermediate School, completing the transmission easement right-of-way to the new substation, #5 located on Kings Mountain Boulevard, integration of our AMI project with the NorthStar Billing Software, completion of the final Duke purchase power agreement – this resulted in a refund of almost \$700,000, I-85 natural gas connection to York Road station in progress, new second gate station with a 5-year payback, and more aggressive ordinances dealing with minimal housing and new non-residential code.

Marilyn also reported that so far in this current budget year, 7 dilapidated structures have been demolished, 10 minimal housing conditions abated, 66 junk vehicles removed, 225 community appearances violations abated, conducted over 1700 building inspections and issued 727 building permits. These are just a few of their accomplishments.

LED lighting changeover project is in progress, Phase IIA of Streetscape is in progress, improved concerts and growth of our Special Events at the park and amphitheater, new subdivisions on the horizon, casino development and progress with all the utility deadlines met for the pre-launch facility, expansion of that facility, improvements being made at Exit 5 by the DOT – Staff has been working with the DOT. Benestar was completed and the infrastructure has been sold to a larger company, as well as several promising Economic Development inquiries about five spec buildings. We are very fortunate that we have not had to partner to bring these spec buildings in the county, they have been coming to us, including one 300,000 square foot building, a 1.2 million square foot building, which is the largest in the Southeast in progress and the street paving project is almost complete. We are getting ready for the next phase.

Marilyn said she could go on and on but we are a really blessed city!! Said she is proud to be City Manager. Thank you to the Management Team and the Staff who have worked diligently to produce budget requests that are responsible and she is very proud. Our employees have a lot of passion and pride for the community. Thanks also to Nick Hendricks, Assistant City Manager/Energy Services Director, for his expertise in utilities and the projects. Thanks to Chris Costner, Finance Director, for his financial expertise and for the great audits we have received. We have so much to be proud of. Also, she thanked City Council for their leadership and their support and the difficult folks they have to deal with in order to move the city forward because some don't understand, but there are a lot of difficult decisions that have brought us to where we are today. The budget as presented tonight, if approved, will be effective July 1st, 2022.

Mayor Scott Neisler thanked Staff for all they do for the citizens of Kings Mountain because this is a very responsible budget. Our tax rate remains at .43 cents and our peers are in the .50's. We can't do any better than this. Also, we are doing this with a 5% cost of living increase for the employees to try to keep up with the market, plus implementing a market study plan that gets everyone up to where they need to be. There will still be some tweaking that needs to be done and adjustments made but doing this without any tax increase and being .08 cents-.09 cents lower than our peer groups is amazing. We are blessed with having great Staff doing what they do every day to be responsible in helping the City hold the line to do good on our expenditures. We really owe Staff a debt of gratitude. He asked the crowd to give them a round of applause.

Councilmember Miller stated that the LGC watches very carefully, and Charlotte & Asheville got in trouble for this, to see that we are taking advantage of our utilities, our Enterprise Fund and they are running well, profitably, smoothly and reliably, but we are also reinvesting capital back into them and maintaining responsible fund balances. That is one of the things we watch is to make sure we are not depreciating it out. He also mentioned that one of the state representatives, when they were thinking about taking the Water Department from Asheville, said he had calculated that they are running a 230-year replacement cycle, which meant that they were putting very little

back in. The City of Kings Mountain doesn't do that. That is one of the things the LGC appreciates.

Councilmember Thombs commented that as she listened to the City Manager talk about the list of accomplishments, that as Council attends meetings and approves different things, to hear the projects that have taken place and so much is going on, that she just wanted to say to the City Manager and to the Staff what an excellent job they've done in moving the City forward. She said she knows that most of the time they may not feel like they are appreciated because Council doesn't always say it, but she wanted to take this opportunity. Also, in listening to the budget and with having a balanced budget, she said one thing about the current Council is they all have the same objective in mind and that is to move the city forward and do what's best for the citizens of Kings Mountain. She said they might not always agree on the path to get there, but they do have the same objectives, so she just wanted to say thank you.

David Stone, 1220 N. Piedmont Avenue, Kings Mountain, inquired as to where the MSD tax was going to be allocated.

Chris Costner, Finance Director, said the proceeds from the MSD tax are placed in a line item inside the Economic Development Department at this time. At some point and time, he said the City will be determining how to best utilize those. There is a corresponding expenditure equal to the MSD tax collected that has been budgeted. That is in the budget as proposed. The MSD tax collected on an annual basis is somewhere in the low \$40K range. Ms. Sellers, City Manager, said our budget for the Main Street Program was over \$200,000.

Continuation of Public Hearing to receive public input regarding the adoption of the City of Kings Mountain Comprehensive Plan and Future Land Use Plan

Kimberly Herndon, Assistant Planning Director, said this is a continuation. There was great discussion two weeks ago at the June 28, 2022 City Council Meeting. A few corrections/changes have been made. It is available online. Once it is adopted and published, the Future Land Use Map itself will become active and you will be able to zoom in on it. She said at this time, she would be happy to address questions.

Councilmember Miller asked about the Future Land Use Map, that they talked about having all the properties along King Street be designated AU and that was done. Then, at the joint Work Session with Council and Planning and Zoning, the same question was posed for properties on Cleveland Avenue, York Road/161, and Battleground/North Piedmont/216 from somewhere south of the Central Business District to somewhere just north of the interchanges for the bypasses. He doesn't know if it is necessary to delay the Comprehensive Plan and Future Land Use Plan, but has Staff looked at those properties and request? If they haven't, he would like for Staff to get back to him in the near future and they could consider an update or an amendment.

Ms. Herndon advised that Auto Urban (AU) was added up and down 161. It was reviewed on the Battleground/Piedmont Avenue area and because of some of the current uses and age of certain properties, not every property transferred over to AU. There's a core still attached with the Central Business District, that AU seemed to be too high of an intensity in use, particularly with the number of special use permits that could be requested for that area and their proximity to existing residential properties, as well as the Central Historic District.

Councilmember Miller asked if Battleground is one of the thoroughfares listed in the streets where certain uses that would require a special use permit are excluded and Ms. Herndon said yes, it is.

Mayor Neisler asked if anyone wanted to speak regarding the adoption of the City of Kings Mountain Comprehensive Plan and Future Land Use Plan.

Jimbo Thompson of Kings Mountain asked a question in reference to the Future Land Use Plan. He wanted to know if there would be future zoning placed on areas that the City thinks may become those zones. Mayor Neisler said they would still have to go through the rezoning. The Comprehensive Plan and Future Land Use Plan gives you a snapshot of what they think is going to be there in the future so it would make it easier to rezone if it is going to be a future industrial use. Ms. Herndon said that is correct. Mayor Neisler said it doesn't guarantee you will get that zoning but it helps because it has been approved by the Comprehensive Plan.

Councilmember Miller said the Comprehensive Plan is required by law. That is one of the reasons it is being done. The Comprehensive Plan is not zoning so it doesn't govern land use or restrict land use. It is required and intended to project the vision for future land use and that becomes very important legally because the State law now requires that all zoning or rezoning decisions that are made in the future will be consistent with the Comprehensive Plan and Future Land Use Plan Map so it is important to do the best job we can to try and project what we think are reasonable and likely future uses. That is the best vision at the moment and that has to be consistent with zoning decisions that are made. If we wind up in a position where we are making zoning decisions that are inconsistent with this plan, that gives the applicant or other parties that may feel they are grieved, a very strong claim in court against the City, if we are not acting consistent with the plans we've adopted as to what we believe are the future vision for growth. They should look very similar but the Comprehensive Plan and Future Land Use Plan, the uses that are projected as being possible in the future, they don't change the underlying zoning and they don't make it easier or harder if the future Councils that vote on zoning are trying to do things that are consistent with that plan or whatever version it takes in the future. They are trying to ask us to show the community that lives here and the development community what they think the future is going to look like, a reasonable basis for it and then make decisions consistent with that and if we don't, we will be held accountable to it.

David Stone of Kings Mountain wanted to make sure he was clear about the Comprehensive Plan. Said that he owns a tract of land that sits in the middle of an area that is marked Suburban, but over time that land is better served in some type of mixed use, which might fall under Auto Urban. If he comes to the City and asks for a rezoning, is it going to make it harder to get it rezoned to Auto Urban because the Comprehensive Plan said they thought the best use would be Suburban, when clearly the market shows the best use for the property would be a mixed-use project? Mayor Neisler stated, in his opinion, it really depends on the time, because from what he understands, the Comprehensive Plan is a living, breathing document map that can be moved the way that the City would like for it to be. If industrial doesn't come there, but your Comprehensive Plan has it there, and it should be residential, that can be done.

There was additional discussion regarding different scenarios that could come before City Council and Planning & Zoning. Kings Mountain is a community that has been stagnant for a long time and now all this opportunity is coming this way. This Comprehensive Plan is a living, breathing document and it gives us a chance to be more selective about what we want now.

Councilmember Miller offered three comments. First, in reference to the section at Battleground and 216, Ms. Herndon said there are certain special use permits that could be triggered if we were to go ahead and make those AU designations. Examples might be an Adult Book Store, Adult Video Stores, etc. and those are currently permitted in AU and have to be a certain distance from a school or a church, so it sounds like what would be good is let's make sure that we don't trigger any unwanted circumstances by making everything AU now. Second, he said the consistency statements that have to be offered when a rezoning is done and make a statement as to why or why not, that is the place where City Council would make the defense for why they are approving something that is not consistent with the Comprehensive Plan. That is the type thing that would lead to amendments for the Comprehensive Plan. Third, after reviewing with the attorneys that the consultant has access to, there were two approaches that could be done. One was to go with the more traditional use-based type of map plan which is what our Zoning is like and what we are used to or we could go with the character-based approach. It was explained to Council that for a lot of legal reasons, the character-based approach is going to give maximum flexibility with the least likelihood of litigation problems. That is why we are going down this path. The subject matter experts advised us that of the two ways we could go, this would give us the best chance to grow, change, and flex with the community. It's new and we are going to have to learn it together.

Mr. Stone said the only other thing he would say is please relook at Battleground because it is a mix of AU and SU with no rhyme or reason.

Ms. Herndon explained that SU is not Suburban. It is Semi-Urban. It's the second highest density that the City has. We currently have four zoning classifications in our UDO that are not represented in our town. One is mixed use. It is allowed in Semi-

Urban so the property Mr. Stone owns on Battleground is under the Semi-Urban and that is called a transition zone where you move from high density, which is perceived based on high traffic counts. Also, as 74 becomes an interstate, the traffic counts on Battleground may change. The Chat N Nibble areas, that is also a transition zone and if someone wanted to rezone to mixed use, the Semi-Urban part of the future Land Use Plan is where a person would ask for that rezoning. It would be appropriate in that area. Right now, the city doesn't have any property of over 11,000 that is currently zoned mixed use. That will come about as people begin to use the UDO and the Comprehensive Plan together.

Ken Pflieger, 1004 Joann Court, Kings Mountain complimented the Staff and the City for his first read of the Comprehensive Plan. There are many thoughts about the Comprehensive Plan as it relates to DDRAC and he is very excited about that. Relating to DDRAC, he would like to see a little more work go into the functionality of the group as it relates to the flex that is going to happen over time. He said there are some excellent sketches of buildings in there which convey architectural concepts to people who are not designers; however, he would like to see other items addressed such as windows and the finish of metal storefronts. He also mentioned the need to be very careful of how they define what is meant by historic building. He would also like clarification in the structure and role of DDRAC. He thinks this is an excellent start to an excellent document.

Mayor asked if there were any more questions or comments. Being none, upon Motion by Councilmember Miller, seconded by Councilmember Butler, it unanimously voted to close the Public Hearing and re-enter the Special Meeting. Councilmember Allen cast yes vote via Zoom.

SPECIAL MEETING

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Annie Thombs, it was unanimously voted to adopt **Ordinance 22-17** Appropriating Funds for Operating and Capital Expenses for the City of Kings Mountain, North Carolina for FY 2022-2023. Councilmember Allen cast yes vote via Zoom.

Finance Director Chris Costner stated that the City is partially self-insured for our medical insurance and our Worker's Compensation insurance. The Statutes differentiate between these Internal Service Funds and other operating funds, so technically the City has to adopt financial plans for those particular funds and this is done on an annual basis. The only reason these aren't consolidated and considered a part of the overall budget is because of that distinction. We have addressed these and have talked about them in Budget Work Sessions. The charges you see in these Internal Service Funds is what we are charging ourselves, as well as the employee contributions to fund and pay for these items. We have had these funds set up for over a decade, if not longer. The reason you are seeing three separate documents is procedurally we

have to treat these Internal Service Funds differently. They are a financial plan versus an annual budget ordinance.

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Mike Butler, it was unanimously voted to adopt **Ordinance 22-18** Establishing an Internal Service Fund for the Health Insurance Financial Plan 2022-2023. Councilmember Allen cast yes vote via Zoom.

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Annie Thombs, it was unanimously voted to adopt **Ordinance 22-19** Establishing an Internal Service Fund for the Workers Compensation Financial Plan 2022-2023. Councilmember Allen cast yes vote via Zoom.

Open discussion regarding the City of Kings Mountain Comprehensive Plan and Future Land Use Map.

Mayor Neisler asked if there was any more discussion regarding this item.

Upon Motion by Councilmember Tommy Hawkins, seconded by Councilmember Mike Butler, it was unanimously voted to adopt **Ordinance 22-20** Adopting the City of Kings Mountain Comprehensive Plan and Future Land Use Plan. Councilmember Allen cast yes vote via Zoom.

Discussion and possible action regarding architectural standards for DDRAC (Downtown Design Review Advisory Committee) and the reorganization of the DDRAC.

Ms. Herndon apologized for opening a can of worms. She said when these items were first submitted on the spreadsheet for possible UDO amendments, their intent was to clean up language in the existing UDO and in their haste to provide information, they removed it from context. One of the first items they received fits on page 59 and the second item was on page 157. She said there are standards for the Central Business District in the UDO and they were questioned for clarity on some of these items and they realized that verbiage from the old ordinance had been left out. If they look at today's UDO, there is no definition of the DDRAC like the old ordinance clearly explained how many members there would be and the makeup of the Board. What went on page 157 in the UDO, was the makeup of the Board and clarity on all the items above E were included in that one sentence. There was no intent to change anything from the old. It was just for clarity in this one but that began a bigger discussion. They added, as a draft, the document that they now have which is really only submitted as a text amendment, which becomes Item 15 on page 62 of the existing UDO. They are simply looking for a way to help the community address issues in downtown and they will do that at the pleasure of the Council. Basically, they have a lot of information and what they choose to do with it is up in the air. She said this item is up for future discussion.

Mayor Neisler asked if there were any questions for Ms. Herndon.

Councilmember Rhodes said that we had said the City doesn't have any historic buildings. True or False? Ms. Herndon said we have such a minor number that it may be insignificant. She said the reason they left the part about a new historic committee, was simply in case someone in town did want to take advantage of the tax credits. She said there are people who live in historic districts here in the community that for some reason in the future might want that language in there.

Councilmember Miller said there is language in the draft that talks about buildings being designated as historic based upon local considerations and it lists a few of those. He would be interested in knowing from Staff and from his colleagues, is it the intention of Staff to provide the DDRAC or some other committee with the power to locally designate buildings as historic and then subjugate those buildings to the more extensive list of requirements. Ms. Herndon said her understanding of why the DDRAC was originally formed was that we had embarked upon a Main Street Program and there needed to be a body that decided what happens with facades in downtown. Even the current UDO talks about projects that are from \$0 dollars to \$15,000 so any exterior change, no matter how simple, was to be run through the DDRAC. The DDRAC fell defunct and this is the Staff's efforts trying to figure out what DDRAC needs to exist. Yes, that body would be whether they be subjective or following a set of guidelines, who would determine whether it was acceptable or not.

Councilmember Miller stated that he really is asking if this committee would have authority to determine that a building is historic even if it is not recognized by a national or state agency. He is only focused on the authority to locally designate a building as historic, which determines which channel it goes through. Is it Staff's intention that the local body, whether DDRAC or whomever, have the authority to make that decision? Ms. Herndon stated no, not at all. Councilmember Miller said that as they work through the ultimate language, they will have to clarify that this is not a power or duty and take out anything that suggests that. Ms. Herndon said that historic was left in there in the event someone wanted to pursue that avenue. There are some tax credits that may be of benefit. She said this would not be a local body that would force or deem a property as historic. Mayor Neisler said that is how he sees it also.

Mayor Neisler then said he would like to name an Ad Hoc Committee for the DDRAC Standards to be developed and approved by Council. There are color palettes to be considered. He feels like if a property owner wants to be considered historic, that should be their prerogative to do so. He has some people that have agreed to serve. They are Kimberly Herndon, Staff member, Robbie Bolin and Leslie Plonk, one real estate agent, and possibly January Costa, Director of Kings Mountain Historical Museum. This would be a temporary committee formed which would formulate the DDRAC.

Councilmember Miller wanted to clarify that this is Mayor Neisler's recommendation to appoint an Ad Hoc Committee for the purposes of developing a policy, developing language, etc. not for the purpose of actually administering or making approval and

denial decisions, but to get us further along in the draft of language where we could actually put these things into place. Mayor Neisler said that was correct. Councilmember Miller said he would certainly support that.

For the benefit of the public, Councilmember Miller said he had shared his comments with his colleagues electronically and with Staff and it may benefit those present to hear some of these. He said our Legal Counsel has told us in the past that generally the courts operate with a much higher standard when someone wants to challenge how the city did or did not follow its own ordinances. The courts tend to not look very favorably when a city doesn't follow its own ordinances. There is more flexibility with policies and maybe less likelihood of litigation with policies. The courts provide more flexibility for legislative decisions instead of quasi-judicial decisions. The draft that is in front of them suggests making this DDRAC an actual item in our ordinance functioning at ordinance level and the draft suggests having the Board of Adjustments be the appeal body, to which a grieved applicant could seek redress and his suggestion would be to get advice from our Legal Counsel. That may wind up coming through a process from the Ad Hoc Committee about having our ordinance reference DDRAC Policy to give it that layer of separation legally, which may be beneficial to the City. Also, to let the City Council, which functions legislatively, be the redress for appeals as opposed to the Board of Adjustments for those legal reasons because legislative decisions by the Council are very seldom challenged by the court. He is also thinking there is a very high degree of subjectivity in everything they are talking about with the DDRAC. It's not necessarily arbitrary because there will be some standards and color palettes that will be arbitrary but it will be subjective. His view is the elected body changes over time with the voters, with the culture and with the community so whatever the subjective preferences are of the community at the time are probably going to be better reflected through an elected Council as opposed to four or five people that are on the Board of Adjustments, which are approved by Council. That is another reason he would suggest having Council be the Appeals Board and if possible do it as a policy if it will give us any benefit to do it. He would like to hear from Council at some time but it doesn't have to be today.

Attorney Corry agrees with Councilmember Miller that it should be reviewed by Council as opposed to the Board of Adjustments for the reasons he stated. Also, he said the proposed members should be 5, but not more than 9. As far as the committee, he said it should be stated that the Chair Person is a voting member so that alleviates some problems. You should always have an odd number; otherwise, you end up with ties. This committee should not be an advisory committee, as it will be responsible for making decisions. Attorney Corry stated that the references to Central Business District needs to be very clear that you are dealing strictly with the business district, not the historic sections.

Councilmember Miller said in the draft there were some specifications about building heights being 50 foot, fencing between parking and the public being 3 foot, etc. It is his thought that the Ad Hoc Committee seriously consider whether or not anything more than what is already specified in the UDO is required. He is hesitant to have a second layer of specifications. He would like for it to all be in one place.

Ms. Herndon said that Councilmember Miller is 100% correct in that the height restrictions, the fencing restrictions and others are already covered in the UDO, as are sign restrictions; however, the city is often criticized for transparency and she tried to include that in this so they didn't say she did everything in that document and now you are saying this because everything in the UDO does cover every property in the city limits and the ETJ.

Attorney Corry wants to make sure we are clear as to the painting of walls. You would go to the color palette. Some walls it seemed to indicate regardless that no painting could occur. Need to be sure and deal with that.

Mayor Neisler commented that in regards to DDRAC, we already know this is not to establish things to make it harder for people to develop downtown whatsoever. It's to protect the property owner. We have downtown owners who have decided they are going to do it regardless and not go through the DDRAC process. We need to have a process that specifies this so that it goes through that process and everybody in the whole downtown area is protected. It can really be a great thing for downtown owners but it's not to be non-progressive. It's something to add character.

Councilmember Allen said that he is good with everything. His comments echo what Councilmember Miller said. He doesn't think we ought to be in the business of establishing historic properties. He thinks there is a path to do that. If someone wants to do that, he doesn't think we should reinvent the wheel.

Attorney Corry wants to make sure the Ad Hoc Committee realizes #1) they will not be an advisory committee and #2) if any potential reviews come before this Council, then there should not be any consideration of membership or anything involving a Council member. He is suggesting that Council members should not be a member of this committee.

Councilmember Rhodes asked when this Ad Hoc Committee meets, is it going to be set up where everybody knows they are meeting and let other people sit in? He wants it to be something that the general consensus is that everybody can live with the policy. Mayor Neisler said that sounds good, that we can do that. We can also advertise it. He said he doesn't think that it takes Council's approval for Ad Hoc's, that he can do that.

City Manager Marilyn Sellers said she thinks this needs to be priority so the city can move these projects along. She said we should have guidelines and color palettes.

Mayor Neisler said Ms. Herndon has done a tremendous job getting this to Council in a hurry and they really appreciate that.

ADJOURNMENT

Upon Motion by Councilmember Jay Rhodes, seconded by Councilmember Tommy Hawkins, it was unanimously voted to adjourn at 7:27 p.m. Councilmember Allen cast yes vote via Zoom.

BY: 
G. Scott Neisler, Mayor

ATTEST:

Cynthia Cash, Deputy City Clerk