

**Minutes**  
Kinston City Council  
City Hall · 207 East King Street  
Monday, January 6, 2020 at 5:30 pm

**REGULAR MEETING**

Mayor Don Hardy called the City Council meeting to order at 5:33 pm.

Councilmember Antonio Hardy led the prayer followed by the Pledge of Allegiance.

Those present: Councilmembers Robert Swinson, Sammy Aiken, Kristal Suggs, Antonio Hardy, Mayor Pro Tem Felicia Solomon and Mayor Don Hardy

**Adoption of the Agenda**

Councilmember Swinson made the motion to add Social House update to the agenda, seconded by Mayor Pro Tem Solomon. Mayor Pro Solomon made the motion to add Full Disclosure Journalism Club to presentations and recognitions, seconded by Councilmember Aiken and upon a unanimous vote [5-0] the agenda was approved.

**CITIZEN COMMENT**  
Citizens must sign in prior to the start of the meeting if they wish to address the City Council.  
Citizens should state their name and address prior to beginning their comments and may speak up to a maximum of 3 minutes.  
Citizens seeking assistance or asking questions will be contacted by a member of the Governing Body or by appropriate City Staff.

**Jeanette Choudhari** expressed her concerns related to the lack of public transportation.

**Johnny Edwards** stated his street, Cunningham Road, floods when it rains and he would like for the City to address the issue.

**Apostle Wade** thanked Tim Dilday and the Police Department for participating in a prayer walk. Ms. Wade stated they march on violence, elderly abuse and other issues.

**Keniyah Becton** thanked everyone that marched with them.

**MINUTES**

**Consider approval of the minutes of the City Council meeting held Monday, December 2, 2019.....Debra Thompson**

Councilmember Swinson made the motion, seconded by Councilmember Suggs and upon a unanimous vote [5-0] the minutes were approved.

**PRESENTATIONS AND RECOGNITIONS**

**1. Stem 4 All.....Melanie Morgan, Director of Libraries**

Melanie Morgan stated Stem 4 All implements access without restrictions to diverse collections, resources, and services for all community members in a safe environment. The program is collaboration between the Kinston-Lenoir County Public Library and Kinston Housing Authority, focused on providing increased access to STEM programming to elementary and middle school aged children at the Hack Rountree Apartment Complex. The Outreach Coordinator and Teen Librarian engage with students three times a week to provide STEM programming and homework help.

**2. Full Disclosure Journalism Club.....Rochelle Middle School**

Students from Rochelle Middle School introduced themselves and gave details about the journalism club.

Mayor Pro Tem Solomon stated the goal for the group is to visit local businesses and participate in the community. The first publication should be out sometime during the month of February.

**ACTION AGENDA**

**1. Continue the discussion for a voluntary annexation request at 1225 W New Bern Road.....Adam Short**

Adam Short, Planning Director, stated this is a continuation from the November meeting and that the City Manager would recap.

Tony Sears, City Manager, stated Mr. and Mr. Landers are both here this evening. They approached the council back at the second meeting of October, I believe, requesting the annexation hearing regarding the property that they're looking to have annexed into the city on highway 70. We brought this back in November. Councilwoman Suggs, unfortunately, had to leave that meeting due to a family emergency. Mayor, I know that you were at a different obligation and it left us with four board members. We spent about 45 minutes Mr. and Mr. Landers made their presentation as to why they believe they should get to an annexation public hearing staff made and answered questions on behalf of the council that they had, the attorney Mr. Cauley made several comments about how he felt about the situation, about where we are with the aspect of legality. I know that we spent about 45 minutes at the last meeting. So unless. The Council has any specific questions for staff. We find ourselves where I think we're close to where we need to have a vote.

Councilmember Hardy asked in regards to annexation if it was just the one building at 1225 W New Bern Road.

Mr. Sears advised that was correct just one parcel.

Mayor Pro Tem Solomon stated the building was not part of a subdivision.

Mr. Sears advised that was not the stance the City would take the Attorney could speak, but it is one parcel that is part of a subdivision.

Jim Cauley, City Attorney, stated Mr. Sears was correct it is one parcel within a subdivision.

Mr. Sears stated that the subdivision issue is the legality question.

Mayor Pro Tem Solomon stated the definition which was given, that was provided at the last meeting by the School of Government, made it clear that the Council would be within the legal confines of the law if the City annexed that sole property.

Mr. Cauley stated he did not agree with that, and the School of Government piece had to do with provision of utilities. The subdivision issue is a prerequisite to annexation that the statute says if you're going to annex a piece of property that is within a subdivision, you're required to annex the entire subdivision. That's a statutory prerequisite for satellite annexation. You can't annex just one parcel.

Councilmember Aiken asked if Mr. Humphrey owned the property, and if any agreement made with the Landers could be overridden by Mr. Humphrey, the actual owner, or if the agreement should be being made with Mr. Humphrey instead of Mr. Landers.

Mr. Cauley advised Mr. Landers nor would any tenant have the authority to make binding representations about the property that would have to be from the property owner.

Mayor Hardy asked how many parcels were in the subdivision.

Mr. Cauley stated the subdivision map showed four parcels.

Mayor Pro Tem stated there was a document presented at the last meeting from the County Planner stating the property was not part of a subdivision.

Mr. Cauley stated he thinks the confusion about the County Planner's comment is that this subdivision predates the County's subdivision Ordnances, and that there is another subdivision with a similar name. These issues do not make it any less a subdivision.

Mayor Pro Tem stated when the issue was first brought to Council the concerns were providing the property with fire, police, water and sewer services and the cost associated. A deed of restrictions was mentioned.

Mr. Sears advised or a waiver could be signed.

Mayor Pro Tem asked if that would make the City not responsible for providing water to 1225.

Mr. Sears stated that was correct.

Adam Short, stated at the time, the concern was not just the agreement between current ownership but subsequent ownership and how that can phase down the line.

Mayor Pro Tem Solomon asked if a Deed of Restriction would cover the City and not hold the City responsible if there was ever a transfer of ownership.

Mr. Cauley stated his concern from the beginning has been that he cannot assure that the waiver would be binding on subsequent owners or relieve the city of an obligation to provide water and sewer, similar to the problems with the Hillcrest enforceability.

Mayor Pro Tem asked if the property is annexed are we within the confines of the law.

Mr. Cauley replied no and that the reason does not have to do with the waiver of the water and sewer requirement. The reason goes back to the threshold requirement that if you annex a property within a subdivision, you are required to annex the entire subdivision. There are two different issues. The water and sewer utility issues are secondary issues. If a noncontiguous area is proposed for annexation it must meet all of the following standards, and one of those standards is half the area proposed for annexation or any portion thereof is a subdivision all of the subdivision must be included. Mr. Cauley stated this is the legal problem.

Mr. Sears stated there is only one parcel looking to be annexed and it is not legal to annex one parcel that is part of a subdivision.

Mayor Pro Tem Solomon asked if there was something in the Court House showing the property is not in a subdivision.

Mr. Cauley advised no.

Mr. Short stated from the beginning, there have been two distinct discussions. The first is clearing the hurdle of the subdivision, and the second is the sewer services, which is more of a discretionary call of the council. The legal question is the subdivision. From the beginning, it's been two different issues within the same discussion. It was asked how we got to this point, why we're even considering it is the council honored a request from Mr. Lander. He brought this forward but it's been staff recommendation that it is part of the subdivision and the City Attorney has made that clear.

Mayor Pro Tem Solomon asked if a property has been annexed in the past with a situation similar.

Mr. Cauley stated none to his knowledge, and in fact the Council did not act on a request for annexation for a property in Hillcrest. A property owned submitted a request and it never got to Council because it did not pass the legal requirements because it was in a subdivision.

Mayor Pro Tem Solomon stated since this issue got to Council it must have passed the legal threshold.

Mr. Cauley advised the issue made it to council because the tenant made the request and the council agreed to hear his concern.

Tony Sears advised Mr. Landers spoke during the public comment section and requested to be on the agenda and the council granted his request. Staff had for some time had the conversation with Mr. Landers that it wasn't believed to be legal.

Councilmember Aiken stated the process started with the planning department, unanimously approved it.

Mr. Short advised the Planning Department's approval was a conditional use permit, so that approval for a bar was separate from the annexation issue, and because the bar happens to be in the county, they're not allowed to sell liquor by the drink. That precipitated their request for annexation. Staff at no point approved any kind of annexation.

Mayor Hardy asked the City Manager what would be voted on for the item.

Mr. Sears stated the question is whether or not you want to have that public hearing. The question is why you would have a public hearing for something that is not legal.

Mayor Pro Tem Solomon asked by whose definition is it not legal.

Tony Sears stated the City Attorney advised the annexation is not legal.

Mayor Pro Tem Solomon stated the School of Government defined this as the way that it was established, was that this did not require a public hearing. The way that the way that this parcel of land was defined. The documentation submitted at that last meeting, the parcel of land would not require a public hearing.

Mr. Sears stated it definitely would require a public hearing whether the Council agrees with legality or not. If this council in this body believes it to be legal and wishes to proceed with the annexation, it is a requirement to have a public hearing to do so.

Mayor Hardy made the recommendation to move forward with a public hearing until clarification on the general statutes that actually govern whether the property is a subdivision or not is provided.

Mayor Pro Tem Solomon made the motion to hold a public hearing on annexation for 1225 W New Bern Road, seconded by Councilmember Aiken and upon a **MAJORITY** vote (Councilmember Swinson voted no) the motion passed.

Mayor Pro Tem Solomon made the motion to open a public hearing for the annexation at 1225 W New Bern Road, seconded by Councilmember Aiken and upon a unanimous vote [5-0] Mayor Hardy declared the public hearing open.

**Rodney Landers Jr.**, spoke in favor of the annexation, and reminded council of the details that had been presented at previous meetings. He stated he received a conditional use permit, and it

does have to be vetted through the process in order to get to this point. The planning board took a look at it, and the board did unanimously vote, it then came to you guys.

**Rodney Lander**, tenant at 1225 W New Bern Road, spoke in favor of the annexation. Mr. Landers also presented details that were provided at previous meetings. He stated the property was not in a subdivision, and that the City is not responsible for proving water and sewer to the property. Mr. Landers stated no proof has been presented showing the property is in a subdivision.

Councilmember Swinson asked if the bar could operate and just not sell liquor by the drink.

Mr. Cauley advised that statement was correct, and that there was a lot of confusion in the presentations made by the Landers between the CUP process and the annexation process. The CUP was approved and the annexation process came after the permit was granted. The issues are two completely different issues and have different processes. Mr. Cauley stated the Landers read factual statements that were from the CUP process that were being used to persuade the Council to annex and the statement should be separate as they have nothing to do with each other.

Mr. Cauley stated book 656 page 231 at the Register of Deeds shows the property is in a subdivision. He also stated the County's Attorney provided a letter stating the County's Planner statement that 1225 W New Bern Road is not in a subdivision was incorrect.

**Demetrice Mills** stated as a resident of Kinston the biggest thing that we need to do is economic development. If we keep stopping economic development we're not going anywhere. Mr. Mills asked if the key here is annexation or we don't want you to have a bar. And that is something that we have to think about and going forward also. If this is what the law states I think everybody would follow that.

**Kenyari Fields** stated I'm speaking on behalf of the annexation and the Lander's family, they have first dedicated a lot of time to my mentor program. Chris has a lawn care service he comes out and teaches my young boys how to start their own businesses, how to edge up and things like that. Yes off subject, but I'm showing you what these people are. They are business owners and they're black and they're trying to do things in our community to help it grow along with everybody else. When you are speaking of buying by the bottle or buying by the cup, you think of the new ordinances that we have downtown. You stand outside and drink you can ride around on golf carts and drink. You could do all those things and drinks and those people get down there and they'd be able to open their establishments just like that. No problems, no setbacks, no nothing, but every time I'm at this meeting, I see people that look like me having problems. It's not fair if they're legal. I mean, we voted you in to do the right things and we expect that tonight. Those that are hired in that are not doing it we need to get them gone. Get us some people that are about the mission of moving our city forward together. I visited a Mexican restaurant on Highway 70. They sell liquor because I took a shot, and it was a part of a subdivision behind Bojangles and that family's been there for six months thriving, so why can't the Landers Thrive?

Councilmember Suggs stated I like to make sure that we are doing what we're supposed to do and what we need to do and that we're seeking out our resources and we're relying on our staff. That is a paid staff of the city of Kinston. We have an attorney and we are supposed to make sure that we are adhering to the advisement of our attorney because that's who we're paying to represent us. Nevertheless, I'm very supportive of our community growing building and doing things to promote economic development. I am probably one of the biggest advocates for us and I will support us in any way that I possibly can. I am sorry that it has taken this long to get to this point. I'm really bothered that we have to go through so much for us to get clarity and understanding. I still honestly feel like the position of the city is to respect the position of the people that we've hired to vet out the best interests of the community. So in fairness, I believe that if we move forward with this annexation. I feel that we do need to put some type of stipulation on the transfer of the property so that the deed and we're not going to be responsible for those utilities. I have really been researching and trying to make sure that I'm covering everything and making sure that the information provided to us is proper and right. I respect our attorney a great deal and I feel like his findings are exactly what his findings were. I respect your expertise and your knowledge and the things that you brought forward. As a person of Kinston who has been here my entire life and I'm invested and engraved in Kinston, and I want to see Kinston move just as much as anybody. I do want you to have the opportunities that you're presenting here, but I feel like as a council person who has been elected by the people, for the people to represent the people, we have to do with the best interests of the city, and I am leery, honestly, going forward with this.

After no one else wishing to speak in favor or against the annexation, the public hearing was closed.

Mayor Pro Tem Solomon made the motion to annex 1225 W New Bern Road subject to the waiver of utilities, seconded by Councilmember Aiken and upon a unanimous vote [5-0] the motion passed.

- 2. Consider acceptance of the initial bid of \$510 per parcel for 905, 907, 919, 921 & 923 McCaskill Drive and 907 & 912 Herbert Drive and authorize the City Attorney to advertise to start the upset bid process.....Adam Short**

Adam Short, Planning Director, stated a bid was received for the listed properties in the amount of \$3,570.

Councilmember Swinson made the motion, seconded by Councilmember Suggs and upon a unanimous vote [5-0] the initial bid was accepted and the City Attorney was authorized to advertise to start the upset bid process.

**3. Consider approval of a lease agreement with the Kinston-Lenoir Chamber of Commerce.....Tony Sears**

Tony Sears, City Manager, stated the lease between the City of Kinston, Lenoir County and the Chamber of Commerce had expired. The only change in the lease was item seven which will hold the City and County responsible for certain repairs to the building.

Councilmember Swinson made the motion, seconded by Mayor Pro Tem Solomon and upon a unanimous vote [5-0] the lease was approved.

**CITY MANAGER’S REPORT**

**1. Social House Vodka Update.....Tony Sears**

Jim Cauley, City Attorney, stated his office has been ready for closing for six months they are waiting on the prospective buyer to go forward with the closing.

Councilmember Swinson stated the buyer has some concerns with grass and fence being damaged by Volt Energy, City vehicles going to the back of the property, and the possibility of being able to tap into a water system that would not have any chemicals.

Mr. Cauley stated the buyer’s lawyer had expressed those concerns previously and the answers have been provided, except the water issue. Rhonda Barwick reached out to the State to get an updated answer, as the information regarding this issue was provided years ago, and has been waiting on their response. Mr. Cauley also stated he believes it may be problematic to tie into the City’s reservoir.

Mayor Hardy asked Rhonda Barwick, Public Services Director, if she had a time frame on the last time she communicated with the State on the issue. Mrs. Barwick stated it was not recently and there has been change with the State. It has been requested that the State provided a document so the City would have protection against providing water from the reservoir.

**2. Pride of Kinston Update.....Leon Steele**

Leon Steele, Pride of Kinston Director, thanked the public for all the input on social media and all that helped with the parade.

**3. Second POD Construction Schedule Update.....Rhonda Barwick**

Rhonda Barwick, Public Services Director, stated the City currently only has one point of delivery, which is very unusual for a city the size of Kinston. The substation on Louie Pollock Road is complete. The engineering department has achieved all of the easements needed, except for one. The city attorney is working on that one, but the time has come to place an order for

steel poles and to get the labor work, to get the transmission line in from the station to the Falling Creek substation across from Smithfield Foods. Project completion date is set for November 19th, which will be very exciting for Kinston.

Mayor Hardy called for a five minutes recess at 7:48 pm.

**4. Grainger Stadium Scoreboard.....Tony Sears**

Tony Sears, City Manager, stated if repairs are made on the scoreboard the company offers a one year warranty.

Justin Barrow with ANC made a presentation on the two different scoreboards offer by their company.

Deonko Brewer made a presentation on the presentation on the scoreboard Sportswear could offer Kinston.

Councilmember Aiken suggested the City look for a way to bring in revenue from the games to pay for a scoreboard in the future.

Mayor Pro Tem Solomon made the motion to repair the current scoreboard, seconded by Councilmember Swinson and upon a unanimous vote [5-0] option to repair the scoreboard passed.

**CITY ATTORNEY'S REPORT**

The City Attorney had no report.

**MAYOR AND COUNCILMEMBER REPORTS**

Councilmember Suggs thanked all involved with a fire over the weekend and thanked environmental services.

Councilmember Hardy thanked Corey Povar and his staff for helping the kids with basketball.

Councilmember Aiken asked for anyone with information regarding an attack to call the police department or crime stoppers.

Mayor Pro Tem advised shirts and sweatshirts are being sold to help increase the reward for information.

**CLOSED SESSION**

Councilmember Swinson made the motion, seconded by Councilmember Suggs and upon a unanimous vote [5-0] the Council entered into closed session pursuant to North Carolina General Statute 143-318.11(a)(3); Consultation with Attorney at 8:52 pm .

After no further discussion, Councilmember Swinson made the motion, seconded by Councilmember Hardy and upon a unanimous vote [5-0] the City Council returned to open session at 9:25 pm.

**ADJOURNMENT**

Councilmember Swinson made the motion, seconded by Councilmember Suggs and upon a unanimous vote [5-0] the City Council meeting adjourned at 9:26 pm.

Respectfully submitted,

Joanna Rose, Deputy City Clerk