

Minutes  
Kinston City Council  
Monday, April 2, 2018 at 5:30 pm

REGULAR MEETING

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

Councilmember Kristal Suggs led the prayer followed by the Pledge of Allegiance

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

Also present: Tony Sears, City Manager and James Cauley, City Attorney

**Adoption of the Agenda**

Councilmember Tyson made the motion, seconded by Councilmember Swinson and upon a unanimous vote (5-0) the agenda was adopted.

CITIZEN COMMENT

There were no citizens who wished to address the Mayor and City Council.

PRESENTATION AND RECOGNITIONS

**1. All-Star Federation ESPN Competition .....Kaylee Salavar**

Kaylee Salavar stated the Washington Elite All-Star Showstoppers will compete in the National Championship, D2 Summit, in Orlando, Florida. The team does not receive funding, and she is seeking sponsorships through financial donations. Her goal is to raise \$3,000. She will be the only athlete representing Lenoir County.

**2. Child Abuse Prevention Month Proclamation.....Colleen Kosinski  
Guardian Ad Litem District Administrator**

Mayor Hardy read and presented a proclamation for Child Abuse Prevention Awareness month.

Colleen Kosinski stated April marks Child Abuse Prevention and Volunteer Appreciation month. Guardian Ad Litem is operated through volunteers, and without them we could not do what we do on behalf of the children of Lenoir County. We have 183 volunteers and they work tirelessly to protect our most valuable resource. There is a display in the courthouse that represents the 18 children who passed away last year as a result of abuse at the hands of their caretakers. Friday we will have a health fair and diaper drive. We will have workshops throughout the month on

opioids. Since Thursday we have had eleven children entered into the system. The importance and need for volunteers is incredible. Last year in Lenoir County there were 803 reports of abuse or neglect and 548 were accepted for investigation. We only have four foster homes in Lenoir County with 50 children in foster care. We would like for the City to display a flag for the Welfare League during the month of April. Red represents strength and valor, white represents purity and innocence and the blue represents justice and the paper dolls represent all the children of our Nation with one missing which represents the children that we lose to violence and child abuse every year. Our website is [www.volunteerforgal.org](http://www.volunteerforgal.org) . We need volunteers who can give eight hours a month to contact us.

**3. NCEM Hurricane Matthew Affordable Housing Recovery Project....Adam Short Sarah Odio, UNC-SOG Development Finance Initiative**

Adam Short, Planning Director, stated Sarah Odio will present market research on behalf of the program through North Carolina Emergency Management (NCEM) for housing recovery following Hurricane Matthew.

Sarah Odio, Project Manager, stated this is to introduce DFI and talk about the public private partnership for housing. In November 2017, NCEM approached us to look at how to attract private investment to develop additional affordable housing for low and moderate income households in hurricane impacted communities. We identified properties in Kinston and in Rocky Mount. The goal is to solicit a private developer partner to build and operation the housing. Our goal is to develop a plan or building program that can meet the public interest and attract private investors. We use a four prong process that includes the public process, market analysis, site analysis and financial analysis. We ultimately recommend what the public wants. We hope that there will be an RFP release in September 2018.

Mayor Pro Tem Solomon asked what the timeline looks like for public engagement. Ms. Odio stated that will have to be decided by the City Council and the City Manager. It could be extensive or a very large public meeting, one on one stakeholder engagement.

Councilmember Tyson asked how long tax credits will be available. Ms. Odio stated we are not necessarily going to pursue those. We will have to evaluate the feasibility. The funder for the project is NCEM, so we are looking at tax credits as an option.

Councilmember Tyson asked if it will allow subsidized housing. Ms Odio stated our goal is to set the rents to be affordable at a certain Area Median Income (AMI) bracket. Rents will be restricted or a mixed income scenario, but the goal is affordable housing.

Ms. Odio stated affordable housing is rent plus utilities being no more than 30 percent of the gross household income. For an owner that would mean mortgage, property taxes, insurance and utilities. The focus for NCEM will be the rental market for Hurricane Matthew relief. The AMI is the median income for a household that is calculated by HUD annually. The categories are Extremely Low Income, Very Low Income, Low Income and Moderate (workforce) Income. Kinston has a large concentration that could be categorized as Extremely Low Income and more than you see in a lot of communities. Kinston has a very high rental rate, around 55% where the State's average is 37%. Kinston median income is around \$28,843 with an average household of

2.2, Kinston’s population is around 21,000 with 9,000 households, and 68% of the low income population is cost burdened, compared to the State’s average of 65%. 41% of Kinston’s rental households are severely cost burdened. 79% of housing structures in Kinston were built prior to 1979. 3.6% of occupied rental units are substandard.

Mayor Pro Tem Solomon asked about the income ranges. Ms. Odio stated the 30% AMI is public housing intervention. There is need across the spectrum from extremely low income to moderate income need housing. We will see what funding NCEM can provide and determine what can be targeted efficiently and effectively.

Mr. Sears stated that there is still one unknown and that is how much the State has to put into the project which will determine the number of units and the marketability.

Councilmember Aiken asked about Landlord Tenant associations throughout the state. Marcia Perritt stated Greenville, Fayetteville and Greensboro are leaders in Code Enforcement and building programs to help landlords have healthy housing.

Ms. Odio stated they will begin work with an architect on the site analysis, begin the financial feasibility analysis and the next visit will be for project program recommendations.

MINUTES

**Consider approval of the minutes of the Kinston City Council meeting held Monday, March 19, 2018.....Monique Hicks**

Councilmember Suggs made the motion, seconded by Councilmember Aiken and upon a unanimous vote (5-0) the minutes were approved.

ACTION AGENDA

- 1. Continue a Public Hearing AND consider approval of a Conditional Use Permit application from Donnis Whitfield to operate a nightclub at 317 East Gordon Street .....Adam Short**

Adam Short, Planning Director, stated this is a continued item from a previous meeting. He provided the zoning for the surrounding properties. The UDO allows for a rehearing if there have been substantial updates to an application. The applicant has indicated that he is able to provide parking on an adjacent site. The Planning Board recommended approval by a unanimous vote.

Councilmember Tyson stated due to the fact that the only reason the request was denied was due to parking, and now he has purchased an adjacent parking lot, he would recommend that the request be approved.

James Cauley, City Attorney, asked if Mr. Short has evidence of the parking being secured. Mr. Short stated he has spoken to the previous owner and the property has been secured, and we have a preliminary site plan for parking on the site.

Mr. Cauley stated the minutes from the prior public hearing should be incorporated into this public hearing so that there is a record of this permit.

***Excerpt of Minutes of Public Hearing held Monday, January 2, 2018:***

David Rief, Acting City Attorney, stated this is a quasi-judicial hearing which means it is more like a court hearing instead of the traditional rezoning request hearing. State law sets specific procedures and rules on how the board must make its decision. This board's discretion is limited. The board must base its decision upon competent, relevant and substantial evidence in the record. The quasi-judicial decision is not a popularity contest. It is a decision constrained by the standards and the ordinances and based on the facts presented. Those who speak as a witness should speak on the facts and standards, not personal preference or opinion. Participation in this hearing is limited. This meeting is open to the public and everyone is welcomed to watch. The parties withstanding have rights to participate fully. They may present evidence, call witnesses and make legal arguments. Parties are limited to the applicant, the City of Kinston and individuals who can show that they will suffer special damages. Other individuals may serve as witnesses when called by the Board. General witness testimony is limited to facts, not opinions. For certain topics the Board needs to hear opinion testimony from expert witnesses. These topics include projections about impacts on property values and projections about impacts on increased traffic. Individuals providing expert opinion must be qualified as experts and provide the factual evidence upon which they base their expert opinion. Witnesses must be sworn in or affirm their testimony. At this time the City Clerk will administer the oath to all individuals who intend to provide witness testimony. Parties to this case are entitled to an impartial Board. A Board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter or a close relationship with an affected person. The City Councilmembers confirmed that they did not have any partiality to disclose or recusal to offer.

Mr. Rief stated that the parties to this case also have rights for any ex parte communication to be disclosed. Ex parte communication is any communication about the case outside of the hearing that may include site visits as well as any communication with the parties, staff or the general public.

Councilmembers Tyson and Aiken disclosed that they have visited the site. No one objected to any Board members participation in the hearing.

Adam Short, Planning Director, stated we have a request for a conditional use permit to operate a night club at 317 East Gordon Street. The application was submitted by Donnis Whitfield on behalf of Whitfield Brothers Entertainment Group. The property is within the city limits of the City of Kinston and within our zoning jurisdiction. The property is zoned B-1 (General Business) which allows for bars with an approved conditional use permit. Based on the recent update of the Unified Development Ordinance (UDO), the requirements for a bar shall not be within 100 feet of a church and shall not be within 300 feet of any other presently licensed bar, bingo or arcade. The zoning in the areas north, south and east is B-1 and RA-6 (Residential) to the west. The Planning Board made the recommendation for approval by a unanimous vote at their special meeting on November 29, 2017. The requirements to be evaluated as part of the conditional use permit consideration for the quasi-judicial process is Section 4.5.4.5 of the UDO. The City Council shall issue a conditional use permit if it is evaluated and an application through a quasi-judicial process and determine that the establishment, maintenance and operation of the conditional use will not be detrimental or endanger the public health, safety or general welfare. The conditional use will not be injurious to the use and enjoyment of other properties in the immediate vicinity for purposes already permitted, nor diminish or impair property values within the neighborhood. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the district. The exterior, architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed, in the course of construction or in the immediate neighborhood; or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood. Adequate utilities, access roads, drainage, parking or necessary facilities have been or are being provided. Adequate measures have been or will be taken to provide egress and ingress so designed to minimize traffic congestion in public streets. The conditional use shall in all other

respects conform to all the applicable regulations of the district in which it is located. Public access will be provided in accordance with the recommendations of the City's Land Use Plan and Access Plan for the present amount of public access and public parking as it exists within the city now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern. The proposed use shall be consistent with the recommendation and policy statements as described in the adopted Land Use Plan. The four general conditions of the development will not endanger the public health or safety; will not injury the value of adjoining or abutting properties; will be in harmony with existing development and uses in the area in which it is located, and its general conformity with the Land Use Plan and other plans as adopted.

**Donnis Whitfield, Applicant**, stated they want to open this club at 317 East Gordon Street. The club has previously been open over the years, and they are bringing it back to get it on the tax base and get some jobs going. They are going to be employing about ten people on an average night, on a busy night. It is going to be upward of about fifteen people that will have employment. A security system is in place and we have a standing contract with the City of Kinston's Police Department. It has been in place for a while because we have events in the City, and we have never had any incidents. We are going to employ police officers and will have two officers any night that we are open. It is a night club and we are going to have lots of fun and give some people somewhere to go and blow off some steam. Hopefully, it will be a great venue and we will be around for many years to come.

Councilmember Tyson asked Mr. Whitfield to address parking for the facility. When he visited the facility, to him there was no on-site parking, and the only parking for that facility is on the street which dead ends at 311. Mr. Whitfield stated the parking has always been in the parking lot that belongs to the church which is the old Grocery Fair. The pastor gave the previous owners permission to use it as parking, and he thinks that will be the case with them as well.

Councilmember Tyson confirmed that Mr. Whitfield is stating that his parking will be in the parking lot of Saint Augustus AME Zion Church. He asked if Mr. Whitfield has permission from the church as of now. Mr. Whitfield stated he does not have anything written, but the previous owner, who is going to speak, will speak about her conversation with the pastor. He let every business over there park in the parking lot, even the churches.

Councilmember Tyson stated once you lose a license for a club over a period of 90 days, it starts all over, so the past history of the clubs have nothing to do on the decision now because since the other club the road is now blocked off and the church did not own the parking lot. We have to base the decision on the conditions as of tonight. Mr. Whitfield stated the previous club, Club Foxy, the road was blocked off and they definitely had permission to park there.

Councilmember Aiken stated that a club has been there for the last 40 years. Mr. Whitfield stated that is correct and they have all used that same parking lot. Councilmember Aiken stated in the past security has been out in the parking lot.

Councilmember Aiken asked the hours of operation. Mr. Whitfield stated from 10:00 pm on back. The club will not be open when the church is open. There will not be any overlap.

Councilmember Aiken stated in the past it used to be call the Cellar and other different clubs and he noticed that the security after the club was closed walked the parking lot and policed the area to see if there were any liquor bottles. That's part of the police jobs to make sure no one is in the parking lot drinking.

Mr. Whitfield stated absolutely. We have hired two police officers because you have to hire two because they have to be on the buddy system, so at the end of the night the police will be out there making sure that there are no incidents. When you are turning out a nightclub a lot of times that is when you have conflicts and things go on. The police will be there just to make sure to usher everybody to their vehicles and get them away from the building and to get them home safe and sound. Our security will be out there walking the parking lot and picking up any trash. You have to do that because that is normal operating procedures, to clean up behind yourself.

**Latisha Thomas, 4022 Copperfield Drive, New Bern, NC previously of 2310 Stallings Drive**, stated she and her partner were previous owners, and they still own the building and are leasing it. We had an agreement with the church to park there. It was our obligation to cut the front grass and to make sure all the beer bottles and cans, if any were out there [were picked up]. Being that it is an avenue for people without transportation; people walk through on a daily basis. There were times we would go there and bottles and cans would be there during our non-operational hours, and we did clean them up. We made sure that the parking lot was clean Saturday night before services Sunday. We went out every Sunday around 5:00 to make sure nothing else was left out

there when we opened Sunday afternoon. We never opened during church hours out of respect. We did visit the churches to let them know that we were there and about the security system that we had which you could see what goes on at the churches and it recorded, so the violence and criminal activity over there was limited. The years that we had it, we never had to call the police but once, and that was on a Sunday that a psychotic lady came in with a psychotic episode. We never had any issues over there at all, no violence, no fights, none of that. We did give back to the community. We did book drives, Back to School backpacks to give back to the communities. We talked to the kids about their grades, so not only was it an avenue for a nightclub and to give some people a job, it was also letting the kids know that you have to stay in school, do well on your grades and give back. We hired about five people, so we gave five people a job, but when I closed those five people lost their job, so I think with Mr. Whitfield and his team it will bring more revenue to the City of Kinston. Not only that, it will help the churches with the security and the violence and the criminal activity that may be over there.

Mayor Pro Tem Solomon asked how long the business was there. Ms. Thomas stated about a year to a year and a half, and the reason she left was because of the flood. It is a long commute from New Bern to Kinston, and then she opened another one in Havelock. As stated earlier, that building has been a club for years. When we inherited it, bought it, it had a bad name because it was called the Cellar. We changed everything in there and we did some renovations ourselves, so if you were to walk in there it wouldn't be the same way like it was in the past.

Mayor Pro Tem Solomon asked how long the building had been empty before Club Foxy. Ms. Thomas stated it was empty maybe 8 months when they [applicant] inquired about it. She was still checking on it daily, so it is a move in and ready operational place.

Mayor Hardy confirmed that Ms. Thomas stated it would bring money to the city. Ms. Thomas stated yes, it would bring money to City because you are getting people from the outside coming in and the taxes that club owners pay, local taxes and state taxes, the City would get money.

Councilmember Suggs confirmed that Ms. Thomas stated that the club operating there would be beneficial to the churches and community. Ms. Thomas stated during non-operational hours, there is a security system. Churches are not there at 10:00 at night. Most crimes are committed late at night, so it would cut back on the criminal activities and the crimes in that area because there is a security system, plus there is outside security and police officers and there are people out there during that time. No one is going to do any criminal activity during that time or any other time knowing that there is a security system there and knowing there are people in the building. We had limited people walking and limited people just browsing, looking for stuff to do because we were there and we had a security system and they know that and the hours that we were there. We had a few occasions when some of the church members came to view the place and to see it and to thank us for that.

Councilmember Aiken asked the age for admission. Ms. Thomas stated Mr. Whitfield can answer that, but for her it was 25 for ladies and 30 for men. When Jackie Spade came into town and wanted to do an event for the children of Kinston, to give back, it was 21 and up. She had no problems and did not have to call the police. They were searched and it went over smooth with no problems.

Mr. Rief stated just as a reminder to the witnesses and the Board, what happened in the past is not relevant to the decision that this Board has to make tonight. The standards that Adam Short set forth for this Board are the factors that this Board should be considering. Issues such as tax revenue and what happened in the past and who was admitted, and agreements in the past are not relevant. If we could, let's try to focus on these factors and determine whether or not they are being met with the proposed used, not the former use.

Councilmember Tyson stated he is totally focused and looking closely at what Adam Short talked about with 4.5.4.5.5, and 4.5.4.5.6 and 4.5.4.5.8, but he is really looking at 8.

Mr. Rief stated the provisions referenced are referring to issues regarding utilities, access roads, drainage, parking and necessary facilities, ingress and egress, design to minimize traffic congestion and public access.

Councilmember Swinson stated he sees Reverend Pridgen and Mr. Brown with Saint Augustus AME Zion Church, and he did not know if they wanted to address the parking issue. He asked if they have been contacted by the new owner about using their parking lot for parking since it is a one way street and there is a dead end on that street.

Mayor Hardy reminded witnesses to provide factual testimony as how this project does or does not meet the applicable standards. The Board must base its decision on evidence in the record, not personal preference or opinion.

**Robert L. Brown, 803 Arrow Drive and Chairman of the Trustee Board of Saint Augustus AME Zion Church located at 316-318 East North Street**, congratulated the Mayor and City Council on their historical achievement. He stated their Pastor, Reverend Julian C. Pridgen is an outstanding and dynamic leader and as a result of his leadership, dedication, loyalty, compassion and knowledge, the church is ranked very highly in the North Carolina Episcopal District. Each year an annual state conference is held, and next year it will be held at the church. Consequently, all the available parking spaces on Gordon Street will be needed. All of the property on the north side of Gordon Street from East Street to Independence Street belongs to the church and the block is a dead end at the railroad crossing at Gordon and Independence Street; therefore, a nightclub on Gordon Street will pose a safety problem for emergency vehicles. On behalf of the 215 members of the church, we oppose allowing a nightclub to operate on Gordon Street because there are seven churches within a radius of 2.5 blocks of the proposed club. Elderly men, women, young adults, teenagers and children attend various church programs in the evenings. Clubs usually serve alcohol and attract unsavory characters. These individuals could increase the crime rate and be a bad influence on churches and the Gate which is only two blocks from the proposed club. The proposed nightclub will only have four parking spaces on the south side of Gordon Street and on the north side of the street is the Saint Augustus Complex. He has been by the location twice and at night the area has poor lighting. The Saint Augustus church family objects to the opening of the night club at 317 East Gordon Street. We request that the Mayor, City Council and the Planning Board disapprove the Conditional Use Permit to operate a nightclub at 317 East Gordon Street. He described the churches and businesses in the block. He has been Co-Chair or Chairman since 1999 and he has not seen any document or agreement to permit a club to use the parking lot. We asked that you do not approve this particular request because it is a bad influence on the churches, inadequate parking spaces and would cause emergency vehicle problems and could cause some incidents.

Councilmember Tyson stated the City Council has to focus on 4.5.4.5.8 and that is parking. He confirmed that the owners of this facility do not have the church's permission to use the parking lot. Mr. Brown stated not to his knowledge. He is the Chairperson of the Trustee Board and they handle all contracts, agreements and he has attended meetings since 1999, and nothing has been submitted to the Trustee Board authorizing the clubs to use the parking spaces. The only agreement that he knows is the Heaven's Delight Church and Mount Zion Church, but not the club, and they will not be permitted to park on the Saint Augustus Complex parking lot, formerly Grocery Fair.

Mayor Hardy stated that the applicant and any other party have certain rights to object to witnesses' testimony and to cross examine witnesses. The Board will determine the evidence to consider how much weight to assign it.

Mr. Rief clarified that the applicant can cross examine a witness, but a witness cannot cross examine.

Mr. Whitfield asked Mr. Brown if there have been any written documents or agreements file with the previous clubs that have been at the location. Mr. Brown stated he is not aware of any written document and he has been with the church since 1978.

Councilmember Tyson stated according to the attorney and the statutes, the City Council cannot base their decision on any previous agreement. We have to base this [decision] on present agreements.

Mr. Whitfield stated he was only trying to see if Mr. Brown was aware of any agreements on file because the club has been open and they have been using the parking lot.

Mr. Brown stated he was asked to be present to speak on behalf of the church. We do not want this club to be approved, and the club would not be able to utilize the parking facilities that belong to Saint Augustus.

Mr. Whitfield stated we really need to talk to the pastor.

Tony Sears, City Manager, asked Reverend Pridgen to come forth.

Pastor Julian Pridgen was sworn-in.

Mr. Sears asked if the club owner has permission to use the parking lot.

**Julian Pridgen, 2711 Westbrooke Drive as Pastor of Saint Augustus AME Zion Church**, stated the reason Mr. Brown is speaking is because Saint Augustus is an itinerant church and Mr. Brown is the representative of the Board of Trustees for Saint Augustus AME Zion Church. The Board of Trustees attend to all of the churches property to include paying insurance, cutting the grass and everything that has to do with the church, and he is the proper person to speak on behalf of the church. And, to answer the question if the club owner has permission to use the parking lot, no. We are hoping to get out of the club business.

Mr. Whitfield stated that they are also negotiating with property owners to purchase other land in the area for parking.

Mayor Hardy stated parties withstanding have an opportunity to offer rebuttal or closing argument. As a reminder please focus remarks on legal arguments or new clarifying evidence. Please avoid mere repetition of the evidence.

Councilmember Aiken stated he is in favor of the club being open. If it becomes a nuisance then Police and ALE will do their jobs. He has spoken to people in the community and they have said that they need an outlet to let off steam or to party. People need an avenue to go and everybody is not church people. They are trying to attract people and get people to come to town.

Councilmember Tyson stated that City Council's decision has to be based on state statutes, and emotions and politics cannot take place in this decision. It has to be according to the statutes.

Councilmember Aiken stated the Planning Board voted unanimously to approve it.

Councilmember Swinson asked the minimum parking spaces required for the applicant to have adequate parking. He also confirmed that this is a new Conditional Use Permit. Mr. Short stated the Conditional Use Permit pertains to the non-conforming situations language which by the rule, 90 days without use of the property, it is relinquished. The parking requirement would be roughly 4 parking spaces per 1,000 square feet. Strictly speaking in B-1 it would be off street parking, unless the City Council waives that requirement in lieu of on street parking. The building is a little over 1,000 square feet, so it would require 4-5 spaces.

Councilmember Swinson asked if there is on street parking, would that hinder or enable response from Police and Fire to respond to a dead end.

Mr. Rief stated if the Police and Fire Chief want to provide factual testimony, they need to be sworn in. Police Chief Alonzo Jaynes and Fire Chief Don Crawford were sworn in.

Chief Jaynes stated from a Police perspective, it could delay our response, but not prevent us from responding in a law enforcement capacity.

Chief Crawford stated from a Fire perspective, it does impede our ability to perform our job any time we have a dead end street, and then if you have cars double stacked with us trying to get hoses laid and pulling lines off the truck, it does impede us quite a bit.

Councilmember Swinson asked if the trucks and emergency response would have to back in or back out. Chief Crawford stated if we had a fire we would take the hydrant at the intersection and lay into the area. The problem comes with getting our other trucks in because once you lay the supply in, and with a dead end, you can't come in from the other direction. The other trucks would have to stage out on East Street and come in by foot. The other problem it causes is pulling the attack lines of the other trucks if you have cars on each side of the street.

Councilmember Swinson asked if the Planning Board was aware of the parking situation where the church may not be willing to allow the club to use the church's parking lot. Mr. Short stated he does not believe that it was a point of discussion, but it was bought forth with the understanding that the property was in its current state.

Councilmember Swinson stated if they [Planning Board] knew this information, they probably would not have voted on this unanimously. Mr. Short stated he cannot say one way or the other.

Mr. Rief stated what the Planning Board recommends should have absolutely no bearing on this Board's decision. The decision by this Board should be completely independent of what the Planning Board thought or the reasons behind their recommendation.

Councilmember Aiken asked if the other businesses in the area be forbidden to park in the church's parking lot.

Councilmember Tyson stated that has nothing to do with this case. Legally, whatever decision we make, to be approved and sanctioned, we have to stick with the case because whoever loses can take us to court. We have to stick to the statues.

Mayor Hardy asked Mr. Rief to advise the NC General Statutes for the case. Mr. Rief stated it is the City of Kinston Unified Development Code (UDO), and it fall under section 4.5.4.5. The ones that were raised by Councilmember Tyson included subsections 5, 6 and 8.

Councilmember Tyson stated he sees two options. Option one the applicant indicated that he may purchase some additional property to have a parking lot, and it if that is the case then he recommends tabling this item. The second option is according to 4.5.4.5.8, parking is a major problem, then his recommendation would be to deny the application.

Councilmember Aiken stated there may also be an opportunity to have parking on the space on the corner where it is currently just a shell if it is torn down.

Councilmember Swinson stated that building has already been torn down.

Councilmember Tyson made the motion to deny because of the code in section 4.5.4.5.8, seconded by Councilmember Swinson and upon a MAJORITY vote, (Councilmember Aiken voted no), the request was denied.

### *End of Excerpt*

Mayor Hardy declared the public hearing open and asked if anyone wished to speak in favor of or in opposition.

Pastor Gloria Kilpatrick and Anthony White were sworn in.

**Pastor Gloria Kilpatrick, Gateway to Heaven Church, 400 East Gordon Street**, stated this club is to be opened across the street from our church. There was another club there some years ago, but it has closed. We don't want a night club there. In the past we have had some problems. We had hedge bushes we had to take up because we had a problem with people late at night. I cannot say definitely if they were at the club or not. We had problems with going in on Sunday mornings and there was trash, beer bottles, beer cans and paper where they had eaten on the steps and left their trash. There was evidence where people had been in the back and leaving items that they did not want to see. We opposed that years ago. That club was closed down and we really don't want a club there because we are afraid that we may have some of the same problems that we had in the past.

**Anthony White, Member of Gateway to Heaven Church**, stated he is the guy that volunteers to perform the lawn maintenance, pick up trash and cut the grass. In the past there have been items such as beer cans, cigarette butts, drug paraphernalia and needles, adult products like condoms on the church grounds. I cannot say that all of those items came from people at the club, but I can tell you as the guy who cleans up the yard that there is a significant decrease when there is no club there. We did things ourselves to make the situation better. We have installed a security system and it has gone off times at night when the club has been open. People have left

trash on the doorsteps. We have installed better lighting outside in the rear where we found the drug paraphernalia and removed the row of hedges where there was activity that we didn't want. I cannot tell you that club members did that, but I can tell you as the guy who volunteers to maintain the property that when there is no club, there is a significant amount of less trash.

After no further comments, the public hearing was closed.

Mr. Cauley asked if the club meets the separation requirements. Mr. Short stated yes.

Councilmember Aiken stated at the last meeting the club owner stated that he would have his security make sure that the parking lot was clean and maybe they can make sure that the church is cleaned up if the club owner is willing to do that.

Councilmember Tyson stated that due to the fact they have satisfied Section 4.5.4.5.8 which was the only issue, and he has sufficient parking, he recommends the conditional use permit be granted.

Councilmember Swinson introduced the following Order:

ORDER GRANTING A CONDITIONAL USE PERMIT  
FOR A NIGHTCLUB AT 317 EAST GORDON STREET

**WHEREAS**, following due advertisement announcing a public hearing as provided by law, the City Council for the City of Kinston, North Carolina held said public hearing March 19, 2018 and it was continued until April 2, 2018 to consider an application for a Conditional Use Permit for a Nightclub located at 317 East Gordon Street, which can be identified by NC PIN 452564439047.

The City Council, having heard all of the evidence and arguments presented and reports from City Officials pertaining to said application, makes the following:

**FINDINGS OF FACT**

1. That the proposed bar would be allowable in the General Business (B-1) zoning district with the approval of a Conditional Use Permit in accordance with the City of Kinston Unified Development Ordinance;
2. A Public Hearing before the City Council was held on March 19, 2018 and April 2, 2018 to consider the issuance of a Conditional Use Permit;
3. The Planning Board recommended approval of the request at their specially scheduled meeting held on March 12, 2018 by unanimous vote;
4. No evidence has been presented indicating that the project, if completed as proposed, will endanger public health or safety;
5. No evidence has been presented indicating the project will reduce or injure the values of adjoining or abutting properties;
6. No evidence has been presented to indicate that the project, if completed as proposed, will not be in harmony with other development and uses within the area;
7. No evidence has been presented indicating proposed use is not in general conformity with the city's land use plan and other plans officially adopted;

Based upon the foregoing FINDINGS OF FACT, the City Council makes the CONCLUSION that the proposed use does satisfy the general conditions imposed on the Council in its deliberations by the Unified Development Ordinance for issuing a Conditional Use Permit. In support of this action the Council makes the following additional CONCLUSIONS:

1. All of the general and specific conditions pursuant to the issuance of a Conditional Use Permit have been satisfied.

- 2. The Applicant can fully comply with all the specific requirements stated in the Unified Development Ordinance for the proposed use.
- 3. The development will not endanger the public health or safety.
- 4. The development will not injure the value of adjoining or abutting property.
- 5. The development will be in harmony with the existing development and uses within the area in which it is to be located.
- 6. The proposed use is in general conformity with the city’s land use plan and other plans officially adopted.

THEREFORE, because the City Council concludes that all of the general and specific conditions precedent to the issuance of a Conditional Use Permit have been satisfied, IT IS ORDERED that the application dated March 5, 2018 by Donnis Whitfield for the issuance of a Conditional Use Permit BE GRANTED, subject to technical corrections by city staff.

Mayor Pro Tem Solomon made the motion, seconded by Councilmember Tyson and upon a unanimous roll call vote (5-0) the Order was approved.

**2. Conduct a Public Hearing AND consider approval of a text amendment to Section 6.5 of the Unified Development Ordinance to allow Funeral Homes in the Industrial Business (I-B) zone.....Adam Short**

Adam Short, Planning Director, stated we have a request from Herman Best Jr. to amend the Unified Development Ordinance (UDO), Section 6.5 of the permitted use table to allow funeral homes in the Industrial Business (IB) zone by right or permitted at staff level. The IB zone is closely related to our B-1 or Shopping Center zoning. It allows for slightly more intense uses such as low scale manufacturing.

Mayor Hardy opened the public hearing and asked if anyone wished to speak in favor of or in opposition.

**Walter Poole** stated he and his wife own the parcel. His father built the building in 1987 and the property was used as Spectrum Printing Company. Since Spectrum moved out, two churches have occupied the building. This building and next door near Smithfield Way was once a manufacturing company which became S&D Coffee. On the southeast side of 258, there are car dealerships, and on the northeast East Coast Equipment, John Deere, Barnett, Hill Complex, Contract Flooring, Blizzard Mini-warehouse, Duke Energy and the Partnership for Children, on the northwest side there is a warehouse, New Life Church and Lee Mechanical, Farm Bureau Insurance, Parker Body Shop, Precision Tire and Auto and a car lot. Southwest there is Craftmaster, The Village shopping Center and Walgreen. He urged the City Council to take the Planning Board’s recommendation to approve this request.

Councilmember Aiken introduced the following Ordinance:

**AN ORDINANCE AMENDING ARTICLE 6 ZONING DISTRICTS OF THE KINSTON UNIFIED DEVELOPMENT ORDINANCE**

**Section 1:** Article 6 Zoning Districts

**AMEND** Subsection 6.5, Table of Uses and Activities

Uses	Zoning Districts I-B
Funeral Home	<b>P</b>

Mayor Pro Tem Solomon made the motion, seconded by Councilmember Tyson and upon a unanimous roll call vote (5-0) the Ordinance was approved.

**3. Conduct a Public Hearing AND consider a request from Herman Best of Trinity Memorial Funeral home to rezone 1276 Highway 258 North from RA-6 to I-B  
.....Adam Short**

Adam Short, Planning Director, stated staff received a request to rezone the property. The zonings are substantially different; however, given the existing uses in the area, IB is contiguous to all sides to the west and north. A list of potential uses has been provided. The Planning Board recommended approval by unanimous vote.

Mayor Hardy opened the public hearing and after no one spoke in favor of or in opposition, the public hearing was closed.

Councilmember Suggs introduced the following Ordinance:

**AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP  
BY THE CITY COUNCIL OF THE CITY OF KINSTON**

**WHEREAS**, the City of Kinston received a request from Trinity Memorial Funeral Home to rezone 1276 Hwy 258 North (NC PIN 450501454645) from RA-6 (Residential) to I-B (Industrial Business); and

**WHEREAS**, the Planning Board reviewed this request and voted at a special meeting on March 12, 2018 to recommend approval of the rezoning request by unanimous vote; and

**WHEREAS**, this ordinance has been reviewed and adopted in a manner consistent with NCGS 160A-383; and

**WHEREAS**, the City Council heard all evidence and arguments presented and reports from the City officials pertaining to said application; and approved the rezoning.

**THEREFORE**, the City of Kinston Official Zoning Map is hereby amended to rezone 1276 Hwy 258 North (NC PIN 450501454645) from RA-6 (Residential) to I-B (Industrial Business).

Councilmember Swinson made the motion, seconded by Mayor Pro Tem Solomon and upon a unanimous roll call vote (5-0) the Ordinance was approved.

**4. Consider approval of a Special Events Permit for the Mother Earth Brewing Ironclad Half Marathon and 5K on Saturday, October 20, 2018.....Alonzo Jaynes**

Alonzo Jaynes, Police Chief, stated he received a request for this event, and staff will provide assistance.

Councilmember Aiken asked approximately how many officers are being provided for this event. Chief Jaynes stated approximately 24 officers. Councilmember Aiken asked if the City is being reimbursed. Chief Jaynes stated they are paying for our services.

James Cauley, City Attorney, stated there is a deficiency in the Certificate of Insurance. He and Chief Jaynes have discussed it, and the request can be approved subject to the corrections.

Councilmember Tyson made the motion, seconded by Councilmember Aiken and upon a unanimous vote (5-0) the special event permit was approved subject to the correction to the Certificate of Insurance.

**5. Consider adoption of a budget ordinance to amend the Capital Project budget (E9127) for the second Point of Delivery (POD).....Donna Goodson**

Donna Goodson, Finance Director, stated on March 7, 2016, the City Council authorized the establishment of the second POD to account for the construction of a second wholesale power delivery point for the City’s electrical system. The request is that funds be transfer from the construction of the 115 KB Circuit to the construction of the breaker station in the amount of \$700,000 to cover the anticipated construction cost.

Councilmember Swinson made the motion, seconded by Mayor Pro Tem Solomon and upon a unanimous vote (5-0) the amendment was approved.

**APPOINTMENTS**

**1. Consider the reappointment of Brenda Wooley to the Kinston-Lenoir County Library Board for a second six year term beginning April 2018 through March 2024 .....Monique Hicks**

Councilmember Swinson made the motion, seconded by Councilmember Aiken and upon a unanimous vote (5-0) the reappointment was approved.

**UPDATES AND INFORMATION**

**1. Update on the Fire Department’s ISO Classification.....Don Crawford**

Don Crawford, Fire Chief, joined by some of his staff, stated we come with very good news. Last year we had discussions about the ISO survey, and we were concerned about maintaining our rating. We have worked very hard over the last ten years to drop our rating for the community. Everyone worked tirelessly on this. Captains Davis, Barss and Roddy are commended for their work with the State Inspector. We received the report back, and we were Class 3, but through a second review, they miscalculated in a few areas and it came back that we have gone into the Class 2 rating which a pretty big deal for our City. Out of 47,860 departments we are one of 487. There are 17 Class 2 departments in the State. Thank you to the City Council, the City Manager and staff. Without funding and City Council support, we would not have been able to achieve the rating. Hopefully, we will eventually receive a Class one.

Chief Crawford added that countywide, Saint Baldrick raised over \$21,000.

**2. Opportunity Zones.....Tatiana Height**

Tatiana Height, Community Development Planner, stated the purpose of this presentation is to provide an overview of a new community development tool called Opportunity Zones which was recently introduced by the federal government as part of the Tax Cuts and Jobs Act which was introduced in December 2017. We believe that Kinston is a great candidate for the tool. The goal is to encourage job creation, economic activity, housing and other community investments in low income communities by providing tax benefits to long term investors. Each state can designate up to 25% of their low income census tracts as opportunity zones. North Carolina has just over 1,000 low income census tracts that qualify which means 252 total census tracts designated as opportunity zones including up to 5% non-low income census tracts if they are contiguous with designated low income census tracts. Low income census tracts are those which have at least a 20% poverty rate or with a median income less than 80% of the area median income. Almost all census tracts in Kinston would be eligible, and we are proposing that at least two of our census tracts be included to the State. States have to make designations to the federal government, and the Governor has until April 20<sup>th</sup> to propose the census tracts that they would like to be included. Once Opportunity Zones are designated, qualified investments made will receive any of three federal tax incentives to encourage investments, including temporary tax deferrals for capital gains, step up investments and basis for capital gains, reinvestment opportunity funds or permanent exclusion from taxable long term capital gains. We will lobby the Governor’s office to include some of Kinston’s census tracts to get investments in our low income areas.

Councilmember Swinson asked if an Opportunity Zone has been identified. Ms. Height stated no, this is new and there aren’t any Opportunity Zones yet. It will probably be the end of the May before the designations will be made.

Councilmember Aiken asked if the City will apply for CDBG again this year. Adam Short, Planning Director, stated most of CDBG now go towards infrastructure projects through NC Environment and Natural Resources. We have not received additional information on Choice

Neighborhoods program, but we are waiting to hear if it is coming again. Mr. Sears added that there is a possibility that Choice Neighborhood will not be available moving forward.

**3. Update on Lawrence Heights and April 2018 Funding Cycle.....Steve Miller**

Steve Miller, Assistant Public Services Director, stated last September, we applied for funding for sewer and water improvements for the Lawrence Heights neighborhood located near Old Snow Hill Road and Highland Avenue. We have received a loan for the entire \$3.3 million with \$500,000 in principal forgiveness from the Clean Water SRF. From the Drinking Water State Reserve program which was funded by the North Carolina Bond money a couple of years ago, we have received a \$460,000 loan plus a \$460,000 grant. We did not receive any CDBG funds, and not because of our application, but the Governor took \$10 million from their \$22 million and dedicated it to hurricane relief. We have talked to CDBG, and in September they expect to have \$21million. Our project will qualify if the scoring system is the same. When we shared about our volunteers, they told us the surveys will count and are good for 18 months. Of the 224 occupied homes, 58 did not respond to the survey. If we can get additional surveys, it will help us gain more points. If City Council decides to accept the two awards, and reapply to CDBG in September for the \$2 million, it will reduce the debt service payment from \$140,000 to \$40,000 for 20 years.

Steve Miller, Assistant Public Services Director, stated there will be money in the SRF program with very little forgiveness in sewer. They have \$60 million for loans and \$1.5 million for forgiveness. Drinking water has \$30 million for loans, \$3 million for forgiveness and \$3 million in their State Reserve plan which was bond money and they are offering it again this month. We are not proposing pursuing any sewer grant funding, but we would like to apply for a water project for the Greenmeade subdivision where there is about 19,800 feet of pipe in the neighborhood with old cast iron and galvanized pipes. We have a lot of water complaints in the neighborhood and it would score very similar to Lawrence Heights. We have struggled through staffing issues in Water Operations because crews have been working on Queen Street and it has exceeded their ability to do work on any other projects. We would recommend contracting with an outside company to do the work. The estimated cost of the project is \$1.3 million, with up to \$500,000 in grants which would leave us with \$800,000 to repay over 20 years. The Water Fund has very little debt. We would have to readopt the CIP and Resolutions with a deadline at the end of April.

**CITY MANAGER’S REPORT**

Tony Sears, City Manager, reminded City Council that the three Environmental Services trucks that have been wrapped are currently parked across the street from City Hall.

Rhonda Barwick, Public Services Director, stated in our efforts to battle illegal dumping, Public Services will have a Spring Clean-Up Day on Saturday, April 14, 2018 from 9:00 to 2:00. We will place a large rollout dumpster on the former shirt factory site and encourage citizens to bring items they want to get rid of.

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**CITY ATTORNEY'S REPORT**

James Cauley, City Attorney, stated he would like to request a closed session for property acquisition and a personnel matter.

**MAYOR AND COUNCILMEMBER REPORTS**

Councilmember Tyson stated we promised the SPCA that we would put a committee together to discuss tethering. Councilmember Aiken, the City Manager and himself could meet next Wednesday to discuss it and report at the next meeting.

Councilmember Suggs stated she has been contacted by citizens who have been concerned about trash and clean up and she will share the information about the cleanup. Kinston Teens often canvas the community and help with cleanups. She encouraged groups/neighborhoods to form teams and contact Public Services for bags and vests for groups.

Councilmember Suggs advised the public that the City Council and staff are available and accessible. No one is out to get anybody, and there are procedures and protocol that need to take place. Please reach out to City Council, and we will be willing to speak with citizens.

Councilmember Aiken stated he has worked at the Lenoir County Detention Center for the past two years and he has resigned. He thanked the Sheriff Ingram and his staff. He is now available to receive more phone calls.

Mayor Hardy congratulated the Kinston Public Services Department for the Certificate of Excellence for Reliability according to the American Public Power Association.

Councilmember Aiken shared that the City Council Retreat will be held Friday, April 6<sup>th</sup> at 10.

Mayor Hardy thanked everyone for attending and Department Heads. He sees a lot of great things being done with limited staff. He encouraged citizens to continue to attend the City Council meetings.

**CLOSED SESSION**

Councilmember Swinson made the motion, seconded by Councilmember Suggs and upon a unanimous vote (5-0) the City Council entered closed session pursuant to North Carolina General Statutes 143-318.11(a)(5) & (6); Property Acquisition and Personnel Matters at 7:24 pm.

After no further discussion Councilmember Swinson made the motion, seconded by Councilmember Aiken and upon a unanimous vote (5-0) the City Council returned to open session at 8:36 pm.

RECESS
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Councilmember Swinson made the motion, seconded by Councilmember Tyson and upon a unanimous vote (5-0) the City Council meeting was recessed until Friday, April 6, 2018 at 10:00 at the Kinston Public Services Complex at 8:37 pm.

Respectfully submitted,

Monique Hicks, City Clerk