

**MINUTES OF THE BOARD OF ALDERMEN  
TOWN OF KERNERSVILLE, N.C.  
REGULAR MEETING 7:00 P.M.      OCTOBER 1, 2013**

The Board of Aldermen of the Town of Kernersville met in regular session at 7:00 p.m. on the above date in the Municipal Council Chambers at the Municipal Building at 134 East Mountain Street.

**Present:** Mayor Dawn H. Morgan, Mayor Pro Tem Dana Caudill Jones, Aldermen Keith Hooker, Tracey Shifflette, Irving Neal and Neal Stockton.

**Absent:** None.

**Staff Present:** Curtis L. Swisher, Town Manager; John G. Wolfe, Town Attorney; Dale F. Martin, Town Clerk; Jeff Hatling, Community Development Director; Scott Cunningham, Chief of Police; Franz Ader, Finance Director; Terry Crouse, Fire Rescue Chief; Doran Maltba, Public Services Director; Ray Smith, Human Resources Director; Gray Cassell, Chief Information Officer; and Ernie Page, Parks & Recreation Director.

- CALL TO ORDER
- INVOCATION BY REVEREND JEFF PATTERSON, MAIN STREET UNITED METHODIST CHURCH
- PLEDGE OF ALLEGIANCE

Mayor Dawn Morgan called the meeting to order and the Reverend Jeff Patterson of Main Street United Methodist Church delivered the invocation.

The following Young Marines led the Pledge of Allegiance: Pfc Cody Leonard, Pvt. Matthew Smith, Pvt. Calab Littleton, Pvt. Devyn Tyner, Pfc. Alex Moore, and Corp. Mark Herbst.

Mayor Morgan presented a Red Ribbon Proclamation to the Young Marines designating October 21<sup>st</sup> through October 31<sup>st</sup> as Red Ribbon Week.

<b>PUBLIC HEARINGS</b>
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**1a. PUBLIC HEARING:** Christoper R. Capellini, P. E. for Bohler Engineering, for properties located at 1035 Beesons Field Drive being all of PIN# 6875-42-5796 containing a total of 7.20 acres more or less. Petitioner requests a Special Use District rezoning from NSB-S (Neighborhood Shopping Center Business-Special Use District) to NSB-S (Neighborhood Shopping Center Business-Special Use District). *Requested Use: Multiple Uses Requested*  
**Zoning Docket K-582.A1**

Mr. Jeff Hatling, Community Development Director presented the Planning Board report for this rezoning request. He noted the site boundaries and surrounding uses and presented a map of the layout of the project and architecture design of the building. He presented the bufferyard

proposed at Glennstone and Greenlawn. He presented the Planning Board recommendation to approve the rezoning and the site plan with amended conditions as follows:

30. The HVAC roof units shall be screened from all sides. The height of the screening shall be at a minimum of height of the HVAC units. The screening façade material shall be the same material used in the wall façade.
31. No tractor-trailer delivery shall take place before 5:00 AM nor after 10:00 PM to the rear loading area of the grocery store.

Mr. Hatling explained that with further review of the roof top screening, Staff is concerned that the potential additional screening or large parapet wall, as recommended by the Planning Board, would add intrusive building bulk to the rear of the store. He presented illustrations of the back of the building. Staff recommends a replacement condition:

A Type III 15' Bufferyard shall be placed on top of the berm adjacent to the Glennstone subdivision. The planting shall include deciduous trees planted 50' on center; evergreens 5.5' on center; and the required supplemental shrubs planted linear along the bufferyard.

Mr. Hatling also offered the following alternative condition to the limitation on the hours of operations: No limits on hours of operation but use the berms and bufferyard plantings which were done for the industrial zoning district next to Manorwood residential subdivision.

Mr. Hatling noted the traffic concerns at Beesons Field Road and that Staff is working with the Winston-Salem MPO on specific design requirements.

Mayor Morgan declared the Public Hearing Open.

#### **In Favor:**

**Amanda Mann, 434 Fayetteville, St., Raleigh, NC** – spoke on behalf of WalMart. She thanked everyone for the opportunity to address the Board on this issue. She stated they have diligently worked with the Planning Staff to address the concerns of the neighbors. She asked for approval of this request as recommended by the Staff. She made herself available for questions.

Mayor Morgan asked for the proposed hours of operations. Ms. Mann stated that they intend to have a 24 hour operation.

#### **Opposed:**

**Teresa Hazlett, 1125 Day Lilly Ct, Kernersville, NC** – stated that she lives three houses from this site. She presented pictures of what will be seen from her home. Ms. Hazlett stated that nobody has addressed the problem with traffic out of their driveways and the problem making a left out of their neighborhood. She then spoke of the pollution and noise that will be generated.

Ms. Hazlett stated that this is not a good area for a store this size and that no one is looking at the impact it will have on their neighborhood. She stated that she does not want to hear these trucks coming in and out of the site at all hours of the day and night. She stated that it will be the neighbors that will have to enforce the hours for deliveries. She expected an increase in the

crime rate for this area and expressed a safety concern for the children and grandchildren living in the neighborhood.

Mayor Morgan asked for an update on the road improvements proposed for the area to address the traffic issues. Mr. Hatling explained the proposed improvements to Union Cross Road and the restricted movements in and out of the site.

**Sam Ruggieri, 1102 Daylilly Ct., Kernersville, NC** – expressed his concern for the noise generated during the delivery times. He noted that the neighbors were told to expect 3 or 4 tractor trailers per week with approximately 20 small trucks and that works out to about 3 or 4 trucks a day. He stated that apparently the Bi-Lo store was a larger store and he didn't understand why the proposed store is able to get by without any restrictions being located near this residential area.

**Angel Cartagena, 1025 Beesons Field Ct., Kernersville, NC** – stated that his concerns are different from the other neighbors and are not directly related to the building. He expressed his concern for his children and the other children in the neighborhood and the speeding traffic through this neighborhood. People use this as a cut through out to the main road. He noted a suggestion for speed bumps with the narrow road, however he would rather have a physical barrier in place. He stated that the Police Department has been out there but they can't sit there all the time. He asked that something be done to control and slow the traffic.

**Alberto Aguiler, 1113 Daylilly Ct, Kernersville, NC** – expressed a concern for vehicles trying to make a left turn on to Sedge Garden Road. Drivers are making a U-turn and going through the center. He noted that we can't stop the development, but the neighbors are asking for some consideration on the traffic situation and to limit the delivery times. He projected that the crime rate will increase in the community and that speeding in the neighborhood is crucial.

Mayor Morgan asked the Town Manager to address the issue of speeding in the neighborhood. Mr. Swisher sympathized with the neighbors and explained that we have this same situation in other areas of the Town. He noted the previous discussion with neighbors on Old Orchard Road and the traffic enforcement measures taken. The outcome of that discussion was to ask the homeowners to pay ½ of the cost of any traffic controlling devices and that all of the neighbors sign a petition in favor of these devices.

The Board, Staff and Petitioner held a lengthy discussion on the "road diet" concept, speed humps, the proposed crosswalk, and the use of bulb outs or islands. The road improvements are to be constructed when the building starts and are to be completed before a Certificate of Occupancy is issued.

**Donnie Beusse, 207 Greenlawn Dr., Kernersville, NC** – stated that the Cypress trees being used as part of the buffer are on his property. He stated that he is opposed to the hours of operations being all night long. He supported the Planning Board's restrictions. He stated that the first four houses have the bedrooms facing this property and wanted to make sure that we are able to sleep at night.

**Stephanie Heuer, 1090 Daylilly Ct, Kernersville, NC** – stated that she understands that Wal-mart will be built; however expressed her concern for the traffic in the area. She recommended a

4-way stop at Coltrane Drive. She understands that change happens and expected that it will get worse when turning left on to Sedge Garden Road and appreciates any consideration to controlling the traffic concerns.

Mayor Morgan asked if the Petitioner would like to offer a rebuttal.

**Amanda Mann** stated that her client is concerned with the restriction on delivery hours and noted the impact this would have on their business and drivers. She stated that adverse weather conditions or other emergency situations would be a problem with stocking the store.

**Chris Capellini, 800 West Hill St., Charlotte, NC** – stated that they have been sensitive to the noise and pollution issues discussed. He added that the buffers and plantings will be designed to minimize the effect on the neighborhood. He stated that if restrictions are placed on the site, Wal-mart staff would enforce compliance with the delivery hours. He reminded the Board that this store contains less square feet than what was approved and would generate less traffic.

**Sam Ruggieri** pointed out that there are issues with this site and could not understand why Wal-mart would need to make deliveries at 2 AM.

**Teresa Hazlett** stated that the neighbors want to get along with Wal-mart but are concerned about what we are going to see out our windows and to not allow 24 hour deliveries. This is not what we bargained for when we moved to this neighborhood. We have already lost value in our homes. We ask the Board to be respectful with delivery hours and not allow them at all hours.

Mayor Morgan asked about enforcement when emergencies happen and if the Zoning Officer would be responsible for enforcing the delivery times during regular operations. Mr. Hatling stated that this is a UDO consideration and the Zoning Officer is responsible for enforcement. Once a complaint has been filed, a process is followed. This will be difficult to enforce.

The Board discussed the time allowed for deliveries and the delivery times for other “grocery” stores as this is a grocery store and not a full service Wal-mart like the one located on S. Main Street.

**Alberto Aguiler** spoke again about the number of deliveries to the other grocery stores in Town. He pointed out that these stores are not located adjacent to a residential neighborhood.

Being no additional speakers, Mayor Morgan closed the Public Hearing.

Alderman Neal pointed out that this site was previously approved for a Bi-Lo and was larger than the proposed Wal-mart. He stated that there are existing traffic issues that are being addressed by NCDOT. He then explained how the logistics of the delivery trucks are handled citing his years of experience in this industry. He pointed out that the stores on S. Main St. are away from homes and not a problem like the one we have here. He voiced his concern for the neighbors and added that he has no problem with requiring restrictions on this site.

Ms. Mann pointed out that the original recommendation was for 5 AM to 10 PM, however; was changed by the Planning Board to 6 AM. Mr. Hatling noted that the previous plan contained a restriction on delivery before 7:00 AM.

Ms. Mann then asked for consideration of waiving those restrictions during emergency situations.

Alderman Neal expressed his concern with the noise and traffic in this area and supports restrictions on deliveries. He asked the petitioner if the restrictions will be a deal breaker for this project. He stated that he would like to see a Walmart Grocery store here but it has to be sensitive to the residents that live around this site.

Mayor Morgan asked for Doran Maltba, Public Services Director to provide the times for the Town's trash pickup. Mr. Maltba stated that residential areas are serviced after 7:00 AM and in most of the commercial areas the Town starts pickups around 6 AM. He added that he can't speak for the private haulers we have in Town. He added that we do have some areas such as Walmart and Chick-Fil-A on S. Main Street that are picked up as early as 4:00 AM.

The Board then discussed various traffic calming devices such as flashing lights, bulb outs and speed humps. The Board asked if the residents have discussed which type of device they would like in the neighborhood.

**Angel Cartegena** stated that the neighbors have discussed speed bumps and a 2-way stop at Coltrane and Beesons and a calming device near Walmart. He stated that they have not done the research and appreciates anything that will help the situation.

The Board continued to discuss the appropriate traffic calming devices for this area and the proposed crosswalk. It was noted that Walmart expects to pay for the speed humps but other devices off site would be the responsibility of the neighborhood or the Town. Alderman Neal asked the developer if they are willing to accept the conditions as amended.

Ms. Mann asked for a recess to discuss the time restrictions with Walmart representatives.

The Board and Staff discussed briefly the bufferyards and existing trees.

Ms. Mann asked for clarification purposes if only tractor trailer deliveries are under the restrictions but all other small delivery trucks are allowed at any time. Alderman Neal stated that this would be correct.

Ms. Mann asked if in the event of a power outage, the time restriction would be lifted until such time as power is restored so that trucks could restock the store before business starts.

Mayor Pro Tem Dana Caudill Jones asked Staff to propose language regarding the power outage that could be adopted. Mr. Hatling suggested something to the affect that no tractor-trailer delivery shall take place before a certain time nor after 10:00 p.m., except during a period of electrical power outage to the site at which time the time limit will be lifted until power is restored. Ms. Mann indicated that this would be acceptable.

The Board continued to discuss the crosswalk and bulb outs. Staff indicated that DOT requirements would have to be met as this would be a DOT street.

Mr. Swisher then reminded the developer and audience that a Bi-Lo store has already been approved on this site with no bulb out requirement or a berm and with delivery hours after 7 AM.

A discussion was held regarding the berm and plantings for the HVAC screening. It was noted that there is an existing berm and trees on this site and the Developer stated that they would be increasing the height of the berm in some areas with additional trees to adequately provide screening for the HVAC.

Mayor Morgan then called for a recess at 8:40 PM. The meeting was reconvened at 8:52 PM.

Mayor Morgan explained that special use zoning allows for the flexibility to establish conditions based on the current situation. She stated that the developer must understand and agree to the conditions, the Town can't force them to comply.

The Board continued to discuss the conditions in regard to the delivery time restriction and the power outage issue. Ms. Mann stated that there are many different ways to draft something however, their main concern is that in the event there was a power outage that they can get trucks in to restock the shelves for their customers. She believes language to that affect would work.

Mayor Morgan asked if the developer agrees to the crosswalk and bulb-out proposed. Chris Capellini stated that this project has a price tag which has grown due to the additional asphalt and concrete however, we will have to evaluate the situation to see if this works. The Board and Staff continued to discuss the conditions and the Planning Board's recommendation regarding the time restrictions and bufferyards.

Mr. Swisher again reminded everyone that a Bi-Lo store has already been approved on this site with no bulb out requirement or a berm and with delivery hours after 7 AM.

#### **1b. Consideration of an ordinance rezoning said property.**

Mayor Pro Tem Dana Caudill Jones made a **Motion** to amend the Unified Development Ordinance of the Town by rezoning the property in case K-582.A1 from NSB-S to NSB-S. The said rezoning type being consistent with the Town's Comprehensive Plan and Kernersville Development Plan and further being both reasonable and in the public interest due to the following facts:

1. The proposed Neighborhood Market assists in implementing the Land Use Plan to create the area as a neighborhood commercial node.
2. Special Use District rezoning is being used to assist in integrating land use transition from commercial to residential, with enhanced landscaping, architectural design and road diet on Beesons Field Drive.

Motion to include Site Plan Conditions 1-30 and the following additions:

No tractor trailers delivery will take place before 6 a.m. or after 10 p.m. to the rear area of the grocery store, except during a period of electrical power outage to the site at which time the time limit will be lifted until power is restored; the buffer type 111 buffer yard trees to be placed on

top of the berm with no additional screening for HVAC system and shall include the bulb out as proposed.

Alderman Tracey Shifflette seconded the motion.

A brief discussion was held regarding the conditions of the bulb-outs and crosswalk in exchange for lifting the time restrictions. It was noted that no exchanges would be discussed.

The vote was all for and motion carried.

Mr. Hatling stated that if the developer does not accept the conditions as approved then the zoning reverts back to the original zoning.

Alderman Stockton stated that regarding the speeding issue in the neighborhood, he asked if the Police Department could increase enforcement in the area. Chief Cunningham reassured the Board and audience that the speed radar trailer will be placed out there to slow traffic down. He also stated that bulb-outs will help the situation as well.

#### **Town Ordinance**

**Zoning Petition of Christopher R. Capellini, P. E. for Bohler Engineering  
Zoning Docket K-582.A1**

**ORDINANCE NO. O-2013-21  
AN ORDINANCE AMENDING THE  
KERNERSVILLE ZONING ORDINANCE AND THE  
OFFICIAL ZONING MAP OF THE  
TOWN OF KERNERSVILLE, NC**

**BE IT ORDAINED** by the Board of Aldermen of the Town of Kernersville as follows:

**SECTION 1.** The Kernersville Zoning Map be amended by changing from NSB-S (Neighborhood Shopping Center Business-Special Use District) to NSB-S (Neighborhood Shopping Center Business-Special Use District) for property located at 1035 Beesons Field Drive, being all of PIN# 6875-42-5796 containing a total of 7.20 acres more or less as recorded in the Office of the Register of Deeds, Forsyth County, North Carolina and being further described as follows:

**BEING KNOWN AND DESIGNATED** as 1035 Beesons Field Drive, being all of PIN# 6875-42-5796 containing a total of 7.20 acres more or less as recorded in the Office of the Register of Deeds, Forsyth County, North Carolina.

**SECTION 2.** This Ordinance shall be effective from and after its adoption.

**Adopted this the 1st day of October, 2013.**

**SPECIAL USE DISTRICT PERMIT**

Issued by

## Board of Aldermen of the Town of Kernersville

The Board of Aldermen of the Town of Kernersville has issued a Special Use District Permit for the site shown on the site plan map included in this zoning petition of Christopher R. Capellini, P. E. for Bohler Engineering. The site shall be developed in accordance with the plan approved by the Board and bearing the inscription: "Attachment A, Special Use Permit" for *Walmart* approved by the Board of Aldermen the 1st day of October, 2013 and signed, provided the property is developed in accordance with requirements of the zoning district of NSB-S (Neighborhood Shopping Center Business-Special Use District) *Arts and Crafts Studio; Banking and Financial Services; Car Wash; Child Day Care Center; Church or Religious Institution, Neighborhood; Convenience Store; Food or Drug Store; Furniture and Home; Furnishing Store; General Merchandise Store; Government Offices; Hardware Store; Medical and Surgical Offices; Museum or Art Gallery; Nursery, Lawn and Garden Supply Store Retail; Offices, Miscellaneous; Police or Fire Station; Professional Office; Recreation Services, Indoor; Recreation Facility, Public; Restaurant (without drive-through service); Restaurant (with drive-through service) limited to one; Retail Store, Specialty or Miscellaneous; School, Athletics; Services, Personal; Utilities; Veterinary Services*

**SITE PLAN:** Approval with the following conditions:

### **Building Design**

1. The building elevations shown in Exhibit "A" shall be the building design of the grocery store. The design includes a distinctive cornice with a variety of heights; building base architectural features to break up the wall; provides a pedestrian scale to the walls; and the middle of the wall incorporates a variety of rhythmic recurrence with facade variation incorporating pull-out brick work and material changes.
2. The attached shops and out-parcel shall follow the architectural design elements of historical "store fronts" design as described in the Central Kernersville Overlay District section (c) Building Standards.

### **Site Plan**

3. All streetyards and buffers shall be completed or bonded prior to the first Certificate of Occupancy or request for electricity, whichever comes first. The landscape plans shall be submitted at the time of the building permit submittal.
4. All screening for dumpsters and other outside storage areas shall be of the same material and design as the structure it serves.
5. Fuel pumps and drive-through may only be placed either to the side and/or rear of the building it serves.

### **Bufferyards**

6. A Type III Bufferyard shall be required along the northern property line and the planting shall meet the Type III 15' Bufferyard standard. The planting design shall include deciduous trees planted 50' on center; evergreen 5.5' on center; and the supplemental shrubs shall be planted linear along the bufferyard.
7. The bufferyard along Glennstone shall contain the berm as shown on the site plan and "Cross Section B-B", and shown in Exhibit B. The bufferyard starting at Beesons Field Road shall be approximately 6' and gradually increase to approximately 12' at the eastern side of the bufferyard. The height of the berm shall be as measured from the adjacent delivery driveway.
8. The bufferyard along Green Lawn subdivision shall contain an 8' opaque fence as shown on

the site plan and “Cross Section C-C” and shown in Exhibit C. The bottom of the 8’ opaque fence shall be 5’ above the adjacent delivery driveway area.

9. Bufferyards shall be maintained and not be allowed to be naturalized.
10. A Type III 15’ Bufferyard shall be placed on top of the berm adjacent to the Glennston subdivision. The planting shall include deciduous trees planted 50’ on center; evergreens 5.5’ on center; and the required supplemental shrubs planted linear along the bufferyard.

### **Streetyard**

11. The required streetyard along the public and private streets shall contain supplemental plantings consisting of large maturing deciduous trees planted 25’ on center.
12. The water quality pond, if the majority of it is fronting Sedge Garden, shall have a fountain and perimeter plantings. Beyond the water quality pond the frontage along public and private streets shall include at a minimum 22’ streetyard and 3’ berm.
13. Street yard along Union Cross Road and Sedge Garden shall be a minimum 22’ streetyard with a 3’ berm shall be developed, unless the parking is to the side or rear of the building.
14. In addition to the required streetyard along Beesons Field Drive, supplemental plantings consisting of large maturing deciduous trees planted 25’ on center, and a 30% increase in shrubs. The additional shrubs shall be used in the four bulb-out areas.
15. In addition to the required streetyard along the private access street, supplemental plantings consisting of large maturing deciduous trees planted 25’ on center or one per island, and a 15% increase in shrubs. The additional shrubs shall be used in the two bulb-out areas.

### **Interior Landscaping**

16. The interior planted trees must be large variety, unless two medium varieties are substituted.

### **Signage**

17. The proposed monument signage shall not exceed zoning overlay height maximum height of 8’ and the NSB sign area standard of 24 square feet. The outparcel signage shall be limited to a height of 5’. The zoning overlay light standards of only directional or knock lighting shall apply.
18. Grocery store and adjacent shops may have signage along Beesons Field Road, Union Cross and Sedge Garden. The maximum number of signs per road frontage shall comply with the Unified Development Ordinance sign standards.

### **Parking**

19. All parking is required to meet the parking standards of the Unified Development Ordinance. The number of parking spaces may meet the shopping center standards for the grocery store and shop area.

### **Lighting**

20. The lighting for the project shall be designed with no significant light above horizontal and any pedestrian scale lighting will illuminate light such that the light dissipates at the roof lines of the buildings. The private lighting will be no greater than a half foot candle ten feet outside the property boundary. Pole height will be a maximum of 35 feet. Security lighting for the building will be a shield type with no wall packs allowed.
21. Neon lighting is not allowed for trim or signage.

### **Crosswalks and Sidewalks**

22. All crosswalks shown on the site plan shall be either stamped asphalt patterns or pavers.

23. Beesons Field Drive crosswalk to Mayford shall be a bulb-outs design meeting all Manual of Uniform Traffic Control Devices (MUTCD), the North Carolina Supplement to the MUTCD, current NCDOT Roadway Standard Drawings, and Kernersville Design and Construction Specifications standards for design, signage and lane marking.
24. Sidewalks shall comply with the Town of Kernersville Design and Construction Specifications and Zoning Overlay Districts.

### **Road and Infrastructure**

25. Beesons Field Drive left and right turn lane markings shall meet engineering standards.
26. Road and infrastructure plans shall be submitted and approved by the Public Service Department, Community Development Department, Engineering Department, City-County Utilities Commission, and NCDOT prior to issuance of a building permit. In no case shall a Certificate of Occupancy be issued for any building until all road and infrastructure improvements have been constructed or bonded and approved.
27. All easements as required by the Town's Design and Construction Specifications shall be shown on the final plat.
28. An engineered stormwater management plan shall be submitted to the Town Engineer for approval prior to issuance of a building permit. Any required permanent stormwater management devices shall be installed prior to issuance of any Certificate of Occupancy. All impervious surfaces within this phase of development shall be collected and properly treated in an approved stormwater best management practice; impervious surfaces shall include streets. Further, any off-site stormwater drainage, which cannot be bypassed, must also be treated in the best management practice(s). Should a watershed protection pond be a best management practice of choice as shown on the submitted plan efforts shall be made to minimize its potential classification as a high hazard dam. All other provisions of the Town's Watershed Protection Ordinance shall be met.

### **Fire and Rescue**

29. All Fire Department requirements shall be met during and after the construction process. Fire hydrant locations shall be submitted to the Fire Marshal for review and approval prior to submittal to City-County Utilities.

### **Other**

30. Bike racks shall be provided at the Retail "A" area, and Retail "B" area when built.
31. No tractor-trailer delivery shall take place before 6:00 a.m. nor after 10:00 p.m. to the rear loading area of the grocery store except during a period of electrical power outage to the site at which time the time limit will be lifted until power is restored.

## **PUBLIC SESSION**

### **2. SPEAKERS FROM THE FLOOR.**

**Louis Thibodaux, 280 Post Oak Road, Kernersville, NC** – asked for an update on the sweepstakes issue since the last meeting. He then stated that last month the Board considered a request for an extension of the time allowed to speak and pointed out that Staff does not have time limits.

Mr. Swisher stated that the Forsyth District Attorney has chosen not to enforce the sweepstakes issue. He also noted that not all of the businesses are illegal. He stated that the Town implements parking requirements and that the ones located in our jurisdiction all meet that requirement. Until the DA changes his position, we can't enforce the issue.

Mr. Swisher stated that Staff is here at the request of the Board of Alderman and therefore do not have time restrictions; however they are cognizant of the time and try to limit their presentations.

Mayor Pro Tem Dana Caudill Jones recalled the Board discussing restrictions on parking based on per machine instead of square footage. Mr. Swisher stated this was discussed but no action was taken. This would require more parking and that it can be put on a future agenda for discussion.

Mayor Morgan stated that Staff has worked hard on limiting the length of their presentations. Mr. Thibodeaux agreed that it is better than it used to be but always room for improvement. He asked that Staff stay on top of the sweepstake issue. The Town Manager assured him that Staff would monitor the General Assembly's activity.

### **3. Consideration of an Offer to Purchase Property Currently Owned by the Town of Kernersville.**

Town Manager Curtis Swisher stated that we have received a request from the adjacent property owner to purchase a small piece of Town property on E. Mountain Street. He stated that the property is mostly a gully and not usable. He explained that the upset bid process would be followed if the Board wanted to sell the property.

Mayor Pro Tem Dana Caudill Jones made a **Motion** to accept the offer of \$10,000 to purchase property owned by the Town and located on East Mountain Street, property described as Lot One. Alderman Neal Stockton seconded the motion and the vote was all for and motion carried.

### **4. Consideration of a Contract for Construction of Piney Grove Road Widening and Sidewalk.**

Mr. Curtis Swisher presented the following bids received on the Piney Grove Road widening and sidewalk project. He stated that Yates Construction Co., Inc. is the low bidder on this project. Given Yates good history with the Town, Staff recommends awarding this project to Yates Construction Co., Inc., in the amount of \$844,388.45. He then made himself available for questions.

<u>Company</u>	<u>Bid</u>
<b>Yates Construction Co., Inc.</b>	<b>\$844,388.45</b>
Triangle Grading & Paving, Inc.	\$1,123,698.18
Sharpe Brothers, a Div. of Vecellio & Grogan, Inc.	\$1,204,220.64

Alderman Irving Neal made a **Motion** to award the bid to Yates Construction Co., Inc. in the amount of \$844,388.45. Alderman Neal Stockton seconded the motion and the vote was all for and motion carried.

5. **CONSENT AGENDA:** All of the following matters are considered to be routine by the Board of Aldermen and will be enacted by one motion. There will be no separate discussion unless a Board member or citizen so requests, in which event the matter will be removed from the Consent Agenda and considered under the following item.

- C-1 Approval of Minutes for August 6, 2013 Regular Session  
Approval of Minutes for August 28, 2013 Closed Session
- C-2 Consideration of a new Lease with the Kernersville Little Theatre for the Harmon Park Building.
- C-3 Consideration of Awarding a Financing Contract for the Purchase of a Fire Ladder Truck.

**RESOLUTION NO. R-2013-24**

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT IN THE AMOUNT NOT TO EXCEED \$1,000,000.00 WITH HIGH POINT BANK TO FINANCE THE ACQUISITION OF A FIRE LADDER TRUCK FOR USE BY THE TOWN OF KERNERSVILLE, NORTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH**

BE IT RESOLVED by the governing body for the Town of Kernersville, North Carolina (the "Unit"):

Section 1. The governing body of the Unit does hereby find and determine:

- a) **The Town of Kernersville proposes the acquisition of a fire ladder truck (collectively, the "Equipment");**
- b) **After consideration, the governing body of the Unit has determined that the most advantageous manner of financing thereof is by an installment contract pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended;**
- c) **Pursuant to Section 160A-20, the Unit is authorized to finance the acquisition of personal property by installment contracts that create a security interest in the property financed to secure repayment of the financing; and**
- d) **HIGH POINT BANK has proposed that HIGH POINT BANK enter into an Installment Financing Contract with the Unit to finance the Equipment pursuant to which HIGH POINT BANK will lend the Unit an amount not to exceed \$1,000,000.00 (the "Contract") and a related Escrow Agreement between the Unit and HIGH POINT BANK (the "Escrow Agreement").**

Section 2. The governing body of the Unit hereby authorizes and directs the Town Manager to execute, acknowledge and deliver the Contract and Escrow Agreement on behalf of the Unit in such form and substance as the person executing and delivering such instruments on behalf of the Unit shall find acceptable. The Clerk is hereby authorized to affix the official seal of the Town of Kernersville to the Contract and the Escrow Agreement and attest the same.

Section 3. The proper officers of the Unit are authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Resolution and the Contract and the Escrow Agreement.

Section 4. Notwithstanding any provision of the Contract or the Escrow Agreement, no deficiency judgment may be rendered against the Unit in any action for breach of a contractual obligation under the Contract or the Escrow Agreement and the taxing power of the Unit is not and may not be pledged directly or indirectly to secure any moneys due under the Contract, the security provided under the Contract being the sole security for HIGH POINT BANK in such instance.

Section 5. The Unit covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will comply with the requirements of the Internal Revenue Code of 1986, as amended (the "Code") as required so that interest on the Unit's obligations under the Contract will not be included in the gross income of HIGH POINT BANK.

Section 6. The Unit hereby represents that it reasonably expects that it, all subordinate entities thereof and all entities issuing obligations on behalf of the Unit will issue in the aggregate less than \$10,000,000 of tax-exempt obligations, including the Contract (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during calendar year 2013. In addition, the Unit hereby designates the Contract and its obligations under the Contract as a "qualified tax-exempt obligation" for the purposes of the Code.

Section 7. This Resolution shall take effect immediately upon its passage.

Adopted this the 1<sup>st</sup> day of October, 2013.

**RESOLUTION NO. R-2013-25**  
**DECLARATION OF THE BOARD OF ALDERMEN**  
**OF THE TOWN OF KERNERSVILLE OF OFFICIAL INTENT**  
**TO REIMBURSE**

WHEREAS, this declaration (the "Declaration") is made pursuant to the requirements of United States Treasury regulations Section 1.103-18 and is intended to constitute a Declaration of Official Intent to Reimburse under such Treasury Regulations Section.

WHEREAS, the undersigned is authorized to declare the official intent of the Town of Kernersville (the "Town") with respect to the matters contained herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF KERNERSVILLE THAT:

1. Expenditures to be incurred. The Town anticipates incurring expenditures (the "Expenditures") for the purchase of a Fire Ladder Truck for use solely by the Town of Kernersville (the "Project").

2. Plan of Finance. The Town intends to finance the cost of the Project described above with the proceeds of debt to be incurred by the Town in accordance with the contract method of financing under the authority of North Carolina General Statutes Section 160A-20 as amended by Chapter 708 of the 1989 Session Laws.

3. Maximum amount to be financed. The maximum amount to be financed by the Town to complete the Project is \$1,000,000.00.

4. Declaration of Official Intent to Reimburse. The Town hereby declares its official intent to reimburse itself with the proceeds of the debt for any of the Expenditures incurred by it prior to financing of the Project.

Adopted this the 1<sup>st</sup> day of October, 2013.

Mayor Pro Tem Dana Caudill Jones made a **Motion** to approved Consent Agenda Items C2 and C-3 as presented. Alderman Keith Hooker seconded the motion and the vote was all for and motion carried.

#### **6. ITEMS REMOVED FROM CONSENT AGENDA.**

Item C-1 – Mr. Harvey Pulliam asked that this item be pulled from the consent agenda. He asked why these minutes were not included in the agenda packet. Alderman Shifflette explained that the September 3<sup>rd</sup> minutes were not complete and ready for the Board's consideration.

Mayor Pro Tem Dana Caudill Jones made a **Motion** to approve C-1 as presented. Alderman Tracey Shifflette seconded the motion and the vote was all for and motion carried.

#### **7. SPEAKERS FROM THE FLOOR.**

None presented.

#### **8. TOWN MANAGER'S REPORT AND MISCELLANEOUS.**

None presented.

#### **9. MATTERS TO BE PRESENTED BY THE TOWN ATTORNEY.**

Mayor Morgan welcomed Andrew Kelly an Associate with Wolfe & Associates. Mr. Kelly is serving as legal counsel for the Board.

#### **10. MATTERS TO BE PRESENTED BY THE MAYOR AND BOARD OF ALDERMEN.**

Mayor Morgan referred to the previous zoning case and expressed her support for special use rezoning which allows the Board to balance the concerns of neighborhoods with growth.

Mayor Morgan then invited everyone out to the Downtown Halloween event to be held on October 31<sup>st</sup> and expressed her appreciation to everyone involved in planning the event.

Alderman Hooker reminded everyone of the Exchange Club's Chicken Stew coming up on October 19<sup>th</sup>.

## 11. ADJOURNMENT.

Alderman Tracey made a **Motion** to adjourn the meeting. Alderman Irving Neal seconded the motion and the vote was all for and motion carried.

Being no further business to come before the Board, the meeting was adjourned at 9:50 PM.

  
Dawn H. Morgan, Mayor

Attest:

  
Dale F. Martin, Town Clerk

I, Dale F. Martin, Town Clerk of the Town of Kernersville, North Carolina, do hereby certify that this is a true and correct copy of the minutes of the meeting duly held on October 1, 2013.

This the 5 day of December, 2013.

  
Dale F. Martin, MMC, Town Clerk