

**HAMLET CITY COUNCIL REGULAR MONTHLY MEETING  
HAMLET CITY HALL COUNCIL CHAMBERS  
201 MAIN STREET, HAMLET, NC 28345  
TUESDAY, APRIL 8, 2014 – 7:00 PM**

**MINUTES**

***Governing Body Present:***

Mayor	William Bayless
Mayor Pro Tem	Johnathan Buie
Council Member	Pat Preslar
Council Member	Tony Clewis
Council Member	Jesse McQueen
Council Member	Eddie Martin

***Staff Present:***

City Attorney	TC Morphis
City Clerk	Tammy Kirkley
Finance Officer	Jill Dickens
Police Chief	Amery Griffin
Fire Chief	David Knight
WTP Supt.	Robert Brown
Zoning	Gail Strickland
Public Works	Billy Stubbs
Park & Rec	Mitch Bowman
IT	Zach Garner

***Others Present:***

Amanda Moss-RCDJ, Linda Bayless, Kim & David Lindsey, Celia Altman, Rosalyn & Tommy Cooper, Amy & Chad Guinn, Abbie Covington, Jim Graham, Patricia LeGrand, Charles Knight, Bert Unger, Don Norton, Dale McInnis, Andy Cagle, Charles Payne, David Fuller, Steve Rabb, Laura Daskal, Brianna David, Bernice Owens, Bobbie Williams, Cathy Kirkley, Terri Clewis, Peggy Payne, Michael Patrick, Robbyn Sumpter, Beth Brown

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**Call to Order.** Mayor Bayless called the meeting to order.

**Invocation.** Pastor Mike Patrick offered the invocation.

**Adoption of Agenda.** Motions were made by Council Members McQueen and Buie to amend the Agenda to include Item 13A for the Approval of Budget Amendments. The vote passed 5-0.

**Adoption of Minutes.** Motions were offered by Council Members Buie and McQueen to adopt the March 11, 2014 regular and executive session minutes. The vote passed 5-0.

**Comments from Attendees.**

**Tommy Cooper** of Hamlet presented council with his concerns as to the direction the city is heading. He asked council to stop looking in the past and look to the future. Mr. Cooper gave his appreciation to the

governing body for the service they do and noted that they were elected by the people to serve all of the people; however noted there seem to be hidden agendas when he reads the local journal.

He gave his concerns with the requests to look into the purchase of the A&P Bldg. and the city manager's contract and the costs of doing same as the professional services have increased about 900 percent. Mr. Cooper ended with giving his thoughts on the letter that was given to the employees by the government.

**Jim Graham**, President of the Hamlet Depot & Museums Board presented council. He reported that the Museum Manager Miranda Chavis is doing a great job and said that was one of the best things the city did was to hire Miss Chavis. Mr. Graham said the position was a part of the grant and said because of her they have built a good relationship with the other museum in Hamlet.

**Resolution of Appreciation 2014-03. 50<sup>th</sup> Anniversary of Richmond Community College.**

Dr. Dale McInnis, President of RCC and Andy Cagle from RCC were in attendance. Mayor Bayless read aloud the resolution of recognition for the consideration of the public and presented same to Dr. McInnis. Councilman Preslar congratulated the college on its leadership, vision and growth.

**Adoption of Resolution 2014-04.**

The mayor explained the need for Resolution 2014-04 as it relates to the Wall's Pump Station Improvements & Force Main Replacement Project, which is part of a grant application. Council Members Preslar and Clewis motioned to approve the grant application and resolution. The vote was 5-0 in favor.

**Adoption of Resolution 2014-05.**

The Mayor explained and read aloud the resolution for the consideration of the public. The resolution relates to NCDENR and Hamlet's adoption of the 2012 Local Water Supply Plan. Council Members Clewis and McQueen motioned to approve the resolution. The vote passed 5-0.

**Approval of Tax Releases.**

The releases were approved by motions of Council Members Buie and Clewis. All in favor 5-0.

**Comments of Manager.**

The Mayor reported that the City Manager will not be here tonight.

**Comments of Council.**

**Tony Clewis** thanked Mr. Cooper for coming out tonight and thanked everyone attending. He thanked the employees for all they are doing for the city.

**Mayor's Comments.**

The Mayor boosted the Annual Book Sale to be hosted by the Friends of Hamlet Library and gave the dates, times and location. They are accepting donated books for the event. He also reported the Hamlet Public Library will have an Easter Egg Hunt on Thursday, April 17 from 3-4:30 pm at the library.

**Staff's Comments.**

Mitch Bowman reported that baseball registration ends this Friday.

Tammy Kirkley announced that the NCDOT Roadside Spring Littersweep will take place from Saturday, April 26 thru Saturday May 10. She encouraged participation.

Mrs. Kirkley then introduced Zach Garner, the Information Technology Technician for the city. Mayor Bayless reported that Mr. Garner comes to the city from Southern Software and welcomed him.

**Motion to go into Closed Session.**

At approximately 7:23 pm, motions to go into closed session per NCGS§ 143.318.11 (a) (3) to discuss matters within the attorney-client privilege were made by Council Members Buie and Martin. The vote passed 5-0.

**Open Session.**

At approximately 8:40 pm open session reconvened. Council Members Buie and Martin made the motions. The vote passed 5-0.

The Mayor reported on the two items that were discussed.

**Update on the A&P Bldg. Purchase.** A resolution was read into the minutes to ratify the sale of the property. Council Member McQueen motioned to accept the resolution 2014-06 (2013 error should read 2014). Change in motion to accept the resolution with the amendment of the error. Council Member Buie seconded the motion. Vote passed 5-0. The attorney stated that the city has valid title to the property but said it specifically needs to be a contract in writing to include a preaudit statement on it for the city. Resolution 2014-06 addressing those issues. He stated there were no issues with the title.

Mayor Bayless reported that the other item that came up was with the city manager's contract. Council requested from Mr. Morphis and his firm to look into the validity of the contract. He asked for a report.

Mr. Morphis said he has looked at the contract and in some ways it is very typical of manager's contracts and in some ways it's very unusual and said many managers in NC now have contracts. His law partner, Mr. Michael Brough was involved in the case that established that a manager who remains an "at will" employee of the town can have a severance package, so there is nothing unusual about that part. He said this contract requires that, were the manager terminated for any reason other than the several exceptions, such as other than gross negligence, indictment or conviction of a felony, that the city will have to pay a full year of benefits to the manager; he said this is for any other reason, such as for exercising your "at will" rights. Also there is no term, typically a manager's contract is for a specified period of years, say 2 yrs, 5 yrs, etc., and it's not in the contract and this is effective for as long as the manager remains employed with the town.

Mr. Morphis stated as far as he can tell the elements of the contract are there to make it properly formed, he noted there is consideration- both parties agree to it and such. Mr. Morphis said it is his opinion and in speaking with Mr. Brough on the matter, they think there are three reasons that would support, if it were the will and the majority of the board, voiding the contract. He stated the way he was asked to look at this is "would the town have to pay a severance package if the manager were terminated" and Mr. Morphis stated that he makes no recommendation on that. He said if the manager's employment were terminated, there is a strong basis to not pay the severance package. First, there is a strong argument could be made to the court that the terms of this contract are not reasonable, although that has never been looked at specifically by a court, he does not know what a court would do; likewise there could be an argument that it is against public policy; again, this is a unique case and they don't know how the court would rule. Finally, there is no pre-audit certificate, and they think that is a significant issue in this case. Mr. Morphis again said he doesn't know how a court would rule, but he thinks there is legal basis for invalidating the severance provisions of the contract if that is the will of the board.

Councilman Preslar noted that this is uncharted waters that this could be a case study/case law that we would have to fight if we chose to go that route. Mr. Morphis said there are about three cases that deal with severance packages for managers but he has never seen a case that specifically addresses this issue, and if it were litigated, it's something the Court of Appeals would have to decide.

Councilman McQueen asked the attorney if he has ever seen a contract like this one, Mr. Morphis said he has never seen a contract with these terms before; he said managers' contracts are very common, but he hasn't seen one to not have a term. He reported that having it so that essentially being terminated for anything as long as the person is employed, that is unusual as well.

Mr. Martin stated considering the information that Mr. Morphis has stated on the validity of the contract, it is the attorney's opinion that a strong case can be made concerning this contract that it is invalid and unenforceable, and one of the main reasons was there is no definite term. The courts have held that in absence of a definite term that either party may terminate the contract at any time. He said the court could find that the severance package in this case is unreasonable. Mr. Martin went on to say the contract that was given to the city manager by the former council did not have a line on the contract for the former city attorney to sign, and the attorney did not sign the contract as to its form. He said the absence of a city attorney's signature does not affect the validity of the contract but it does raise questions, especially since the former attorney stated that he did not write the contract, the former attorney omitted, failed or refused to sign the contract. Mr. Martin stated this contract does not have an executed pre-audit certificate. He said according to law, the contract shall include on its face the certificate stating that the contract has been pre-audited. He said there are several other reasons Mr. Morphis indicated in his opinion as to why this contract is invalid.

Councilman Martin motioned that the council vote to void the contract between the city manager and the City of Hamlet, effective immediately. Councilman Buie made the second to the motion. Mr. Morphis added for clarification, that this does not affect the manager's employment status and Mr. Buie and Martin agreed that this does not affect the employment, that it is just the contract.

Mr. Buie stated that he did not vote for this contract, he didn't feel like one was needed, he said the manager's employment with the City of Hamlet was enough. Mr. Buie stated that the manager is going to retain her employment and said she's not going anywhere. He doesn't like the idea of a contract. Mr. Buie stated that he has had a lot of citizens asking questions about this contract. He said he is here for the people that he represents and has to answer to them. Councilman Buie said this has to do with the contract, not the manager's employment, and his second to the motion was to void the contract.

Councilman Preslar said in lieu of past litigation that Councilman McQueen brought against the city, and said he is unsure of the status, he asked that Mr. McQueen recues from voting on this issue because of a conflict of interest, he said it's not a monetary conflict of interest, it's nothing to do with any personal gain that he will get from this, but it's more of an ethics and a moral abstention from voting on the matter. He feels at some point down the road if the manager is terminated that this can be used against them in a court of law with a jury of peers with the previous action by Councilman McQueen. Mr. Preslar said he is in no way saying anything detrimental to Mr. McQueen with what he did with past litigation. Mr. Preslar feels it would be a good idea that Mr. McQueen recues from voting and he wants to go on record as such. He also wanted to go on record that he was in favor of the contract and the contract was for 18-20 years of service to this town, and noted several of the manager's achievements over the past years. Mr. Preslar confirmed there was no term on the contract; he said it was from year to year, and said it was a one year term- one year of severance and one year of benefits and that's why no term was put on it. He went on record as saying he did vote to award a contract because of the manager's performance and for what she's done for this town. He said it's a shame the manager's not here tonight to defend herself and council should be ashamed.

Mr. Morphis said regarding Mr. Preslar's motion that Mr. McQueen recues himself, GS 160A-75, only gives two exceptions for when a member who is present may recues and he noted the exceptions. He said from what he knows about the previous litigation, it would not fit either of those exceptions.

Mr. Preslar said he is aware of that and said if it is looked at from a jury of peers and if it is introduced, it's going to be an ethical and moral issue if it makes it into the courtroom setting. Mr. Preslar said he understands municipal wise, there is no financial gain.

Mr. McQueen inquired of the attorney that as he understands it, statutorily he has to vote; Mr. Morphis confirmed that is correct and said if Mr. McQueen did not vote on this, because he is present and hasn't been excused from voting, it would be counted as an affirmative vote.

Mr. Clewis asked Mr. Morphis if Mr. McQueen could abstain and the attorney stated it would be an affirmative vote. Mr. Clewis asked even though he asked council if he could refrain. Mr. Morphis said under GS 160A-75, it would count as an affirmative vote. Mr. Clewis agreed with Mr. Preslar and said, he knows the underlying issues going on and this is almost like a headhunt of the city manager; Mr. Clewis agrees that Mr. McQueen should recues but said that's McQueen's decision and the city attorney says he cannot. Mr. McQueen then said he can abstain but if he did it would be as a yes vote.

Mr. Preslar went on record as saying these individuals have said this has nothing to do with the city manager's employment and he expects that unless she does something to be terminated. He clarified this is doing away with the protection that a loyal employee. He said he wished he had a statement that would reduce his liability if she does choose legal action against council.

Mayor Bayless called for a vote in favor of voiding the contract and the vote passed 3-2, with Council Members Preslar and Clewis opposing the vote. For clarification, there was a raise of hands confirming the "ayes" and "nos" of council's vote regarding the motion.

**Consideration of Budget Amendments.** The presented budget amendments were presented as follows:  
General Fund Revenues: Total Increase \$159,600, Total Decrease 0, Net Increase \$159,600  
General Fund Expenditures: Total Increase \$246,785, Total Decrease (\$87,185), Net Increase \$159,600  
Enterprise Fund Revenues: Total Increase \$12,600, Total Decrease 0, Net Increase \$12,600  
Enterprise Fund Expenditures: Total Increase \$72,180, Total Decrease (\$59,580), Net Increase \$12,600  
Councilman McQueen and Buie motioned to adopt the presented budget amendments. The vote passed 5-0.

The Mayor then reported that the city manager has requested to take a leave and in her absence, Council is appointing Tammy Kirkley as the Interim City Manager while the manager is out. It was noted that assistance is welcomed by the manager to Mrs. Kirkley and she can reach out to outside agencies for assistance if needed. Councilman McQueen and Martin voted to appoint Tammy Kirkley as Interim Manager in the manager's absence. The vote passed 5-0.

**Comments of Council.**

**Johnathan Buie** noted several teens have had tragic accidents recently which resulted in fatality and asked for a moment of silence in memory of the victims and their families. He wanted the manager to know he wishes her a speedy recovery.

**Tony Clewis** replied to the earlier comment concerning the attorney's fees posed by Mr. Cooper. He said last year the attorney's fees were roughly \$10,000 for the year for the previous attorney and he was opposed to getting rid of him. Mr. Clewis said the costs for the two issues reported on tonight within the last 30 days cost \$2,400 from Mr. Morphis' firm.

**Jesse McQueen** noted that you get what you pay for and Mr. Morphis has cleared up these issues that could have possibly gotten us into trouble at a later date. He thanked Mr. Morphis for his hard work.

**Pat Preslar** noted his certainty of the high quality of work from Mr. Morphis' firm and added that we were getting good representation before as well. He then referenced the funds for the Field of Dreams project; the \$18,000 that was spent towards building a concession stand at the Jack Breeden Field with \$17,500 in a matching grant. Mr. Preslar said he simply wanted a cost report on what the project fund was and what it was spent on. He said in future endeavors if nonprofits ask for any money, he wants a complete project report and a scope of work before the city spends any money.

Mr. Morphis said it would be reasonable to come up with some guidelines or policy for the city for giving out money to projects. Mr. Buie noted that the former mayor stated in open meeting that this matter was settled and a resolution was met. Mr. Morphis informed council that they can set guidelines with how the money is given out. Mr. Preslar said he will drop the issue for now. Mr. Martin suggested tabling the matter until council can get more information on it.

Councilman Clewis inquired if individual council members may communicate with the town attorney with questions. The mayor confirmed that the mayor and the manager will be the ones communicating with the city attorney.

Chad Quinn inquired if he could speak about the public's thoughts on the contract. The Mayor stated that section of the meeting was over; however, he noted some of his personal thoughts on the vote of the contract. He welcomed Mr. Quinn to come back to the next monthly meeting.

Mayor Bayless reported that Miranda Chavis came up with some great ideas to help get financing for the Opera House, which she presented during the Planning Session.

**Adjournment.**

Around 9:13 pm Council Members Clewis and Buie motioned to adjourn the meeting. The vote passed 5-0.

Respectfully submitted,

  
Tammy Kirkley, City Clerk

