

Salisbury, North Carolina
June 17, 2019

SPECIAL MEETING

PRESENT: Mayor Al Heggins, Presiding; Mayor Pro Tem David Post; Council Members Karen Alexander, William Brian Miller, and Tamara Sheffield, City Manager W. Lane Bailey, and City Attorney J. Graham Corriher.

ABSENT: City Clerk Diane Gilmore.

Mayor Heggins and members of City Council met in a Special session at the Salisbury Civic Center located at 315 South Martin Luther King, Jr. Avenue. The meeting was called to order by Mayor Heggins at 6:00 p.m.

OPENING REMARKS

Mayor Heggins noted Council's Special Meeting is about the Confederate Monument. She reviewed the rules of procedure for the meeting. She indicated each speaker will have three minutes to speak, and she noted minutes cannot be shared with other speakers. She stated the length of the public comment period will be two hours from the time of the first speaker. Mayor Heggins encouraged all those present to be mindful of their comments and open to perspectives that might differ from their own. She noted Council will not debate the issue but intends to listen to the concerns shared by participants.

CITY ATTORNEY'S REPORT

City Attorney Graham Corriher noted he was asked by City Council to provide a legal opinion about the authority of the City as it relates to the Confederate Monument. He indicated his opinion is that the City is strictly limited in its authority to move the

monument, and he stated his opinion is based on a State law passed in 2015 and on a resolution adopted by the governing body of the City in 1908.

Mr. Corriher stated that Council only asked him to provide a legal analysis of the issue, and it has not taken any action or directed him to take action apart from providing this explanation. He added his analysis is based on what he believes the law is, not on any personal opinion about what the law should be.

Mr. Corriher indicated the Confederate Monument was commissioned by the Robert F. Hoke Chapter, United Daughters of the Confederacy (UDC) around 1901. He stated it was finally purchased in 1909, and in 1908, the UDC, in anticipation of the monument's purchase and placement, requested that the City grant to it a portion of the median on West Innes Street to be used for the monument. He noted the governing body of the City granted the request by adopting a resolution on August 6, 1908 that granted a portion of the median to the UDC to be "used perpetually" for the monument. He stated in 1927, the resolution was recorded in the Register of Deeds. Mr. Corriher commented his opinion is the rights granted to the UDC are in the nature of an easement and not a transfer of the real estate itself, and as a result, the monument sits on public property subject to the rights granted to the UDC.

Mr. Corriher pointed out in 2015, the State passed a law specifically aimed at limiting the authority to relocate monuments such as the Confederate Monument. He stated the law applies to monuments located on public property and prohibits a monument from being removed or relocated except where relocation is required either to preserve the monument, or for a construction project. He explained that where relocation is allowed, the law requires the monument to be returned to its original location within 90 days or returned to a place of similar "prominence, honor, visibility, availability, and access" within the City limits.

Mr. Corriher stated there are two applicable exceptions under the 2015 State law with the first being the law does not apply where there is an agreement between the private owner of the monument and the City that governs relocation or removal. He noted the second exception is that the law also does not apply if a building inspector or similar official determines that the monument itself poses a threat to public safety. He stated for these reasons, under State law, the City's authority to move the monument is limited.

Mr. Corriher stated the relevant State law applies where the monument is on public property and his opinion is that the monument is on public property that is owned by the City and subject to rights the City granted to the UDC. He indicated his opinion regarding City ownership of the property is based on representations made by the North Carolina Department of Transportation. He noted the State Highway Commission, the predecessor to DOT, took over Innes Street in the 1920s; however, NCDOT has indicated to the City that it never purchased right of way for West Innes Street at that location and therefore only maintains the street and does not own the street or the median.

Mr. Corriher stated that despite NCDOT's representation, it is possible that the State has always been the owner of Innes Street, such that the City never had any rights to grant to the UDC. He explained that in North Carolina there is a statutory presumption that land for which there is not a clear chain of title is owned by the State. He indicated that based on his research to date, he has not been able to establish that anyone, including the City, was ever deeded property rights to Innes Street at that location. He reiterated in that case, the State, by operation of State law, would own the median free and clear of the rights the City granted to the UDC. Mr. Corriher pointed out under either scenario the monument is located on public property, whether the City's or the State's, and the same State law applies and strictly limits the ability of either the City or the State to relocate the monument.

Mr. Corriher stated another possible outcome is that the City relinquished all of its property rights to that portion of the median by adopting the 1908 resolution where the City did not retain any interest in that portion of the median, but gave it all to the UDC. He stated in that case, State law would not apply because the monument would not be on public property but on private property. He indicated if State law does not apply, the City is limited in its ability to interfere with the rights granted to the UDC by operation of basic private property rights. He noted the City only has statutory authority to interfere with private property rights by adopting and enforcing regulations to address conditions that are detrimental to the health, safety, and welfare of the public.

Mr. Corriher summarized that under the 2015 State law, the City is prohibited from removing or relocating the monument absent an agreement with the UDC. He stated without such an agreement, the City is prohibited from relocating the monument except where relocation is required to preserve the monument or for a construction project, in which case the monument would have to be moved to a place of similar prominence in the City. He stated if the State law were to be repealed or did not apply, the City would be prohibited from interfering with the private rights granted to the UDC except where the City is required to act in the interest of public safety.

PUBLIC COMMENT

Mayor Heggins opened the floor to receive public comment. Those who expressed their concerns and support for relocating the monument were:

Emily Ford
Renee Wimbish
Nan Lund
GeoRene Jones
Mike-o Martelli
Anthony Smith
Jackie Miller
Marcus Fairley
Bob Johnson

M.T. Sidoli
Regina Dancy
Carol Palmeroy
Susan Lee
Betty Jo Hardy
Laurel Harry
Jenni Pfaff
Teresa Rowell
Whitney Peckman
Pam Blume
Michael Kirksey
Preston Wallace
Franklin Caldwell
Jill Burch

Those who expressed their concerns in regards to keeping the monument in its current location were:

Keith Fowler
Mike Sells
Wes Rhinier
Douglas Ishen
Darrell Brickman
Walter Vaughn
Doug McKinsey
Gene Shelton
Timothy Will
Lora Owen
Tim White
Ted Lora
Kay Hancock Crawford
Barbara Brown
Donna Isenberg
David Flowe
Jeff Mabrito
Emily Mabrito
Michael Stringer
Will Harrington
Becky Yancy

Citizens who spoke in regards to their concerns for other issues outside of the Confederate Monument were:

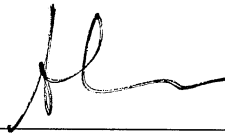
Betty Jo Hardy
Jane Smith Steinberg
Jeff Reeves

Unnamed citizen

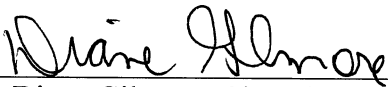
Mayor Heggins then closed the public comment session. She thanked everyone for sharing information, and she thanked those who attended but did not speak. She assured the audience that Council cares deeply and they care about preserving all history in the City and about making sure everyone is respected.

ADJOURNMENT

Motion to adjourn the meeting was made by Mayor Pro Tem Post. All Council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 8:19 p.m.



Al Heggins, Mayor



Diane Gilmore, City Clerk