

Salisbury, North Carolina

January 7, 2003

## **REGULAR MEETING**

**PRESENT:** Mayor, Susan W. Kluttz, Presiding; Mayor Pro Tem, Paul B. Woodson, Jr.; Councilmen William (Bill) Burgin; Robert (Bob) Martin; William (Pete) Kennedy, City Manager, David W. Treme; City Attorney, F. Rivers Lawther, Jr., and City Clerk, Myra B. Heard.

**ABSENT:** None.

The meeting was called to order by Mayor Kluttz at 4:00 p.m. The invocation was given by Councilmember Kennedy.

## **PLEDGE OF ALLEGIANCE**

Mayor Kluttz led those present in the Pledge of Allegiance to the United States flag.

## **RECOGNITION OF VISITORS**

Mayor Kluttz recognized all visitors present.

## **PROCLAMATION**

Mayor Kluttz proclaimed the following observance:

DR. MARTIN LUTHER KING, JR. DAY January 20, 2003

## **CONSENT AGENDA**

(a) Minutes

Minutes of the Regular meeting of December 17, 2002, (which was recessed, reconvened on December 20, 2002, and adjourned.)

(b) Alley Closing - 1400 block of South Boundary Street

Council received a petition to close an alley in the 1400 block of South Boundary Street and adopt a resolution setting a public hearing for February 4, 2003.

RESOLUTION PERTAINING TO THE PROPOSED CLOSING OF A PORTION OF AN ALLEY IN THE 1400 BLOCK OF SOUTH BOUNDARY STREET.

(The above resolution is recorded in full in Resolution Book No. 11, under Chapter XII - Miscellaneous, at Page No. 1, and is known as Resolution No. 2003-1.)

(c) Unimproved Right-of-Way Closing - 400 block of Dunham Avenue

Council received a petition to close an unimproved right-of-way in the 400 block of Dunham Avenue and adopt a resolution setting a public hearing for February 4, 2003.

RESOLUTION PERTAINING TO THE PROPOSED CLOSING OF THE 400 BLOCK OF DUNHAM AVENUE.

(The above resolution is recorded in full in Resolution Book No. 11, under Chapter XII - Miscellaneous, at Page No. 2, and is known as Resolution No. 2003-2.)

Thereupon, Mr. Woodson made a **motion** to approve the Consent Agenda. Mr. Martin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

**REQUEST AND COMMENTS FROM JOHN W. DEES, II AND FOREST GLEN PROPERTY OWNERS CONCERNING A MORATORIUM ON RACETRACKS AND RELATED USES**

Mr. Glenn Ketner, Jr. of Ketner & Associates, 121 East Kerr Street, identified that he is standing in for Mr. John W. (Jay) Dees, II who is out of town. He explained that his firm represents property owners in the Forest Glen Subdivision which, he pointed out, is part of the City of Salisbury. He asked that City Council impose a moratorium on racetracks within the City's extraterritorial zoning jurisdiction so the Planning Board can consider such facilities and make appropriate recommendations to City Council after this issue has been studied.

Mr. Ketner expressed appreciation for their being placed on the agenda and told Council he realizes this is not a public hearing. He pointed out this is the only opportunity residents of Forest Glen and others in the area will have to express their views to those who pass the ordinances and govern. Mr. Ketner said only with a moratorium can they have a full and fair opportunity to be heard and participate in the planning process, which always seems to be near and dear to the heart of this Council.

Site plan review is woefully inadequate as a means to address the fundamental issue, Mr. Ketner pointed out to Council. Mr. Ketner identified that there are several representatives from neighborhoods present who would like to make brief remarks to Council.

Mayor Klutz then advised that each side would be given fifteen minutes to speak regarding this matter.

Mr. Dave Collins, 109 Ashton Lane, said he built the first house in Forest Glen about eight years ago. He told Council he is wholly opposed to this racetrack in that area. He suggested the racetrack, if they want it, should be further out from residential communities. There's plenty of county land in the industrial park that's largely unused right now, Mr. Collins said.

Mr. James C. Johnson, 229 Sudley Circle, said he owns land in Forest Glen and plans to build a permanent residence there. He said two of his partners in his business currently live there and they are all opposed to this racetrack for reasons of noise pollution, traffic pollution, and environmental impact. He said he believes the City Council and County should be interested in their efforts for appropriate planning and growth. He said it seems obvious to him that this is inappropriate.

Mr. Wayne Whitman, 218 West Glenview Drive, thanked Council for the only opportunity to express concerns about the proposed Labonte quarter midget racetrack. He said "We do not want the quarter midget racetrack in our back yard." If built near the airport, Mr. Whitman told Council, it would have a negative impact on approximately 500 families. Mr. Whitman then indicated he was quoting (Mr. Bobby) Labonte as follows: "The facility will include a one-twentieth mile track, tech buildings, a fuel building, an infield care center, restrooms, and grandstands complete with suites and concessions." There is to be a public address system and lights. He again identified he was quoting from Mr. Labonte as follows: "Plans call for seating of 500 fans." He said Monday and Tuesday nights would be important for Mr. Labonte's personal family interest as he goes to NASCAR race events most weekends. He referenced a quote from Mr. Labonte about events being scheduled Friday, Saturday, and Sunday from April through November. Mr. Whitman pointed out how much noise can be made by 500 fans at a racing event, along with the noise of the vehicles and the public address system. He pointed out the matter of the water runoff into Grants Creek, but no environmental impact study has been done. He referenced the Salisbury 2020 Plan setting goals for the City's beautification and asked why substantial investment should be made by the citizens if the investment is not protected. Last, Mr. Whitman asked, if this racetrack is so wonderful, why Mr. Bobby Labonte doesn't build it in his backyard area (in Trinity).

Mr. Tim Smith, owner of Matika Villa Mobile Home Park, Airport Road, said he was unaware of this go-cart track situation until notified. He asked to show Council a map and talked about the mobile home park being a community of affordable housing for 130 families which he and his father built in 1963. Mr. Smith noted the go-cart track would be located right beside the mobile home community. He emphasized the 130 families of the mobile home community who work and pay taxes in Rowan County and are proud of where they live. He also emphasized this is not where the go-cart facility needs to be, and spoke of Rowan County having access to the fairgrounds, where a go-cart facility is already built, and said if Mr. Labonte wants to invest, he needs to do that in county land. The subject property, Mr. Smith says, was an old landfill, and if this go-cart facility is placed there, he doesn't think anything else would go in on what is a total of 25 acres. He expressed strong opposition saying for the \$25,000.00 per year in income, it's not worth it and indicated he has estimated 600-700 families could be impacted.

Mr. Tom Smith, 355 Chandler Road, said he is not a city resident or Forest Glen resident, but wanted to share an experience he's had with a racetrack. He said he lives 8 miles outside the city limits, near Highway 150 going to Mooresville, about 1-1-1/2 miles from the now closed Millbridge Speedway. He said where he lives is very quiet and nice but was not when the speedway was in

operation. He spoke of the tremendous noise from the speedway, the racecars, the crowds, and said probably most annoying was the speaker system.

Mr. Don Pruetz, of Kings Forest, noted rich people want a convenient place for midget racing. Racetrack owners will park their airplanes at the Rowan County Airport, he noted.

Mr. Henry Buck, 210 West Glenview Drive, indicated a racetrack has an extremely high pitch noise that goes on and on. Actually the racetrack is for the wealthy, he pointed out.

Mr. Dave Collins suggested putting the racetrack further from residential communities.

Mr. Jim Bowles, of Kings Forest, noted that the City ruled there was no impact on the neighbors without asking the neighbors.

Ms. Darlene Blount, 111 Ashton Lane, spoke about sound traveling and asked Council how they would feel having the racetrack 1200 feet from their backyard.

Mr. Glenn Ketner of Ketner & Associates, pointed out that the City of Salisbury, in its Zoning Code has not dealt with a use which someone has now proposed. He did note it is a permitted use in the Rowan County Code. Mr. Ketner questioned why the County would oppose the City using the same approach it (the County) had used.

Mr. Ketner submitted that Mr. Hubert Furr, City Zoning Administrator, lacking statutory guidance on racetracks, had gone from interpreting to legislating in determining that a racetrack is a kind of "recreational facility." Mr. Ketner then noted the code doesn't define "recreational facilities", but does give reference to such recreational facilities as golf driving ranges and batting cages, but nothing on racetracks or go-cart tracks. He referenced a letter, which he said was written November 20, by Mr. Furr with Mr. Furr mentioning in the letter fairgrounds (which are allowed but only as a "Conditional Use" in A-1) and Airports (which are allowed but only as a "Conditional Use" in M-1). Maybe racetracks should be allowed as a "Conditional Use" in some zone, proposed Mr. Ketner, but also pointing out the Code does not presently do so. He further noted that Mr. Furr put absolutely no conditions or limitations on his interpretation and referenced the Comprehensive Zoning Map. He emphasized that under Mr. Furr's interpretation racetracks could go in M-1 and possibly B-4 or B-6, and he (Mr. Ketner) sees Mr. Furr's interpretation, (with the Code being denied of direction) as going beyond his authority since that authority rests with City Council.

Mr. Ketner proposed the following actions for Council to take:

- Acknowledge its authority to legislate on this matter
- Impose a moratorium on such facilities (racetracks) including the one proposed
- Refer the matter to Planning Board for consideration and a recommendation.

Mr. Ketner once again explained the Code should be clear before a facility such as the one proposed is allowed, and if so, where, how close to residential areas, hours of operation, kind of limitations on lighting, amount of noise it would create, whether there is and should be an amplified speaker system, and the amount of noise level created by one-quarter midget car.

Mr. Ketner gave examples of noise complaints Rowan County is, and has been facing. He pointed out a possible ironic twist with this proposed racetrack of offensive noise and light being generated at a County sponsored and leased facility, but with the problems being the City's to solve. He went on to ask several other questions such as whether there is any proper place for such a facility. He compared the facility being as close to Forest Glen as between City Hall and the County Courthouse. He reminded Council Forest Glen is a part of the City, which adds significantly to the tax base, and asked if this neighborhood and others along Highway 150 should be less deserving than the Historic District, Country Club, or Milford Hills.

Mr. Ketner pointed out examples of how City Council had gone to great lengths to create special districts requiring more advance planning and additional levels of approval for development and downzoned property creating non-conforming uses, and abandoned plans for an in-town soccer complex in the Country Club area. He asked if, in this instance, City Council is going to sacrifice the Highway 150 neighborhoods for financial reasons for the Country's "deal", and allow subversion of the usual process of planning and deliberation.

Mr. Ketner asked Council to impose a moratorium and to plan appropriately emphasizing Council has the authority and a responsibility to do so.

Mr. Tim Russell, Rowan County Manager, addressed Council regarding this matter. He explained this all began months ago when individuals representing an interest in constructing a quarter midget recreation facility in the Salisbury area came to visit, with Salisbury not being the only destination of interest. The individuals are some of the top Winston Cup drivers and families interested in constructing a facility, to be operated by a local non-profit chapter of the Quarter Midget Association, to be used for recreation and sanctioned quarter midget racing for age groups 5-16. This is to be the only such facility in North Carolina with the closest one presently in northern Georgia.

Sites, Mr. Russell told Council, were thoroughly reviewed and the Rowan County Airport site selected due to its size, geographic location to hotels and restaurants, proximity to major roads, and apparent suitability with current zoning. Mr. Russell indicated approval was given by Mr. Hubert Furr as clearly meeting the City's current M-1 zoning. Then, the local Tourism and Convention Authority and Economic Development Commission became involved and both bodies have passed resolutions supporting the location of this facility in the community, Mr. Russell explained.

Rowan County, owner of the property, along with Bobby Labonte Enterprises and representatives of the Quarter Midget Association, have acted fully in accord with the City of Salisbury zoning and planning regulations, Mr. Russell noted. A site plan

has been submitted and approved by the City planning staff review committee for submission to the Salisbury Planning Board and City Council, with professional engineers and contractors having been involved, according to Mr. Russell. He shared that the Council acquired the services of acoustical engineers to help control noise, and believe the review process and approval should continue.

Mr. Russell reminded Council that the City staff and Zoning Board of Adjustment (ZBA) have unanimously ruled on the suitability of this project in the M-1 district and that the courts will address the appeal of the ZBA's decision appropriately. Mr. Russell raised the question as to whether the same concern will be shown every time a potential M-1 industrial or commercial client wants to locate on the Airport area property, and if we (the community) is willing to write off this valuable area of the City's growth corridor when nothing has been submitted by anyone to support a claim of intrusion. Then, Mr. Russell asked City Council to decline the requested moratorium and allow the process to proceed.

Mr. Steve Blount, Chairman of the Rowan County Commissioners, noted several items as he spoke to Council, particularly regarding issues raised by Mr. Ketner and others:

- The Millbridge Speedway was closed because it didn't meet zoning requirements
- The City Zoning Ordinance-Group Development procedure (Section 12.06)  
is designed to protect adjacent property owners from impact of large development:  
Step One - review by a Technical Review Committee; Step Two - a public hearing and review of the site plan by Planning Board with recommendations to City Council (Planning Board can deny site plan); Step Three - public hearing and review by City Council which can "approve the request as originally submitted, approve the request with modifications suggested by the Planning Board, approve the request with their own modifications, or deny the request."
- There is no evidence of any interest to build other racing facilities in Salisbury
- Mr. Furr's opinion on this issue was based on his understanding of this (racetrack) operation
- City Council has been careful not to allow rezonings that extended commercial or industrial uses into residential neighborhoods but this is not a rezoning - the area being discussed was zoned M-1 long before Forest Glen existed.

He emphasized there were and are opportunities for Forest Glen residents to come forward, such as the ZBA hearing challenging Mr. Furr's decision to allow this use in M-1, the Superior Court proceeding to challenge the ZBA's ruling, today's City Council meeting asking for a moratorium, Planning Board's site review public hearing, and City Council site review public hearing. Mr. Blount concluded that the City's Group Development procedures provide adequate protection to surrounding property owners and allows adequate opportunity to voice concerns: a moratorium would subvert the standard procedures and avenues of appeal provided by the City zoning document and State law; the neighborhood request for a moratorium should be denied and City zoning procedures be given a chance to run their course.

Mr. Blount explained the procedure used by Mr. Joe Gamewell, an Engineer for Rowan County, in measuring sound which could come from a quarter midget racetrack. The scale used was d-BA and various sound levels were addressed and compared in a test performed on January 6, 2003 by Mr. Gamewell. The Vision 2020 Plan statements deemed applicable to this situation were addressed by Mr. Blount including Policy GRP-2 and Policy I-5.

Mr. Blount offered overall conclusions:

- this is a great opportunity for Salisbury and Rowan County
- this is a very appropriate site for this application
- the neighborhood's concerns are unfounded
- let the group development process follow its normal course

As Chairman of the Rowan County Commissioners, Mr. Blount asked City Council to:

- reject the requested moratorium
- request staff schedule the Planning Board review of the site plan as soon as possible, suggesting January 14
- City Council review the site plan for final approval as soon after January 14

as possible, maybe January 21

Mr. Blount told Council the Air National Guard and Rowan County Airport have loudspeakers and residents have not complained about those. He added that residents have not been moving away from other areas which use loudspeakers such as Livingstone College, Catawba College, and Salisbury High School.

Mr. Randy Harrell, Executive Director of the Salisbury-Rowan Economic Development Commission, presented a resolution in support of the quarter midget racetrack project.

Ms. Judy Newman, Executive Director of the Rowan County Convention & Visitors Bureau, also spoke in support of this project, especially since it is very family oriented. She pointed out that the only other such facility anywhere close by is in North Georgia. She suggested ways the neighbors' concerns could be handled such as: use of a curfew; nothing starting until noon on Sunday; and housing developments went in after the racetrack. Ms. Newman further suggested Council should take a long-range approach. She told Council revenues from a two-day event at the track would generate approximately \$78,000.00 in spending by visitors within Salisbury and Rowan County, along with approximately \$5,400.00 in sales tax. Ms. Newman closed by encouraging Council to work with the neighborhood and not impose a moratorium.

No one else was present to speak concerning this matter; therefore, Mayor Klutz closed the public comments.

Mayor Pro Tem Woodson asked what the horsepower was of the cars tested. Mr. Blount responded that the cars tested were 4 horsepower and that the normal weekly races use 4 horsepower engines. Special events may have larger cars but the racetrack course is very small, he noted. The question was asked as to how close the racetrack is to Forest Glen. Ms. Blount responded that Phase 2 and Phase 3 are about equal distance from the neighborhood but Phase 4 is very close, a couple hundred feet. Ms. Blount noted that the rear of the property is where they tune their engines. Mr. Woodson commented that Council should have been invited to go along with the County when the County tested the noise level of the cars.

Mayor Pro Tem Woodson and Councilman Burgin both stated interest in traveling to Gainesville, Georgia to listen firsthand to the noise, and to observe traffic and neighborhood impact generated by the racetrack.

Councilman Burgin told those present that Council has a good record of protecting neighborhoods, but also equally important is Council's consideration of people who own property and their right to develop their property. It is important that Council consider both sides equally, Mr. Burgin noted. Mr. Burgin said he is familiar with Mr. Joe Gamewell's work and is confident that the noise level numbers Mr. Gamewell provides are good numbers. Mr. Burgin went on to explain that we need more data to be fair to property owners, citizens, Rowan County, and the EDC, and that he would like to follow our normal process, which works 99.9 percent of the time. We should give the process a chance to work, he added. Mr. Burgin said a moratorium is not necessary at this time.

Attorney Glen Ketner told Council that if they approve a moratorium on racetracks, then he (Mr. Ketner) might recommend that Forest Glen withdraw their claim.

City Attorney Rivers Lawther said a moratorium could not be voted on today, but staff could come back with a proposed moratorium.

Councilman Kennedy noted that he is leaning towards the neighbor's side of this issue.

Mayor Klutz expressed that this issue puts her, and presumably the entire Council in a difficult position. She went on to make the following points:

- This Council is a great supporter and protector of neighborhoods, and would not make a decision that would harm a neighborhood or jeopardize the quality of life for our citizens, and noise is a quality of life issue;
- This Council also is committed to doing everything possible to improve the economy and be business-friendly;
- This Council doesn't have enough information to make a decision on this issue. Normally, Council decisions are based on recommendations from the Planning Board and from their thorough investigations.

Mayor Klutz went on to say that she agrees with Councilman Burgin, that a moratorium is not necessary at this time. She noted this matter is in the court system now, and that Council has been halted because of the court order.

After Council discussion, by consensus, Council agreed not to approve a moratorium on racetracks at this time, but to ask the Planning Board to begin a study of the appropriateness of racetracks in B-4 and M-1.

Thereupon, Mr. Burgin made a **motion** to recommend that the Planning Board begin a study of the appropriateness of racetracks in B-4 and M-1. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

**ZONING MAP AMENDMENT - Z-21-02 - BURGESS & ASSOCIATES, INC.**

Zoning Map Amendment - Z-21-02 - Burgess & Associates, Inc.

2000 block of Faith Road

The request is to rezone 1 parcel approximately 69.148 acres of property located on the west side of the 2000 block of Faith Road, from A-1 Agricultural District to RD-B Residential Development "B" District.

(a) Mr. Harold Poole, Senior Planner, informed Council that the request is to go from A-1 Agricultural to RD-B Residential Development "B". He said primarily the difference between RD-A and RD-B has to do with density with RD-B allowing 5 units per acre rather than the 11 units per acre in RD-A. Mr. Poole stated that the property proposed for rezoning consist of one large tract of land (approximately 69 acres in size) located along the west side of the 2000 block of Faith Road. The property has about 700 feet of frontage along Faith Road, but extends for more than one-half mile from the road toward Old Concord Road, he said. He said it looks about two-thirds of the way to Old Concord Road. Mr. Poole stated the property currently lies outside the Salisbury City limits in the City's extraterritorial jurisdiction. He said the property can be identified as Parcel 1, Tax Map 403 in Litaker Township. He further told Council the Planning Board's recommendation is unanimous that the property be rezoned as requested to RD-B.

(b) Mayor Klutz convened a public hearing, after due notice and advertisement thereof, on the following zoning map amendment Z-21-02, Burgess & Associates, Inc., 2000 block of Faith Road.

Those speaking **in favor** of this zoning change were: Mr. Jim Burgess, 125 Stone Ridge Drive (who is also the applicant), and Mr. Gary Kepley (representing the property owners - his mother and father).

Mr. Burgess told Council he is the builder and also represents the Kepley family as the developer for this property. He said he is requesting high density to build patio homes for a retirement type community. Mr. Burgess request Council's approval so he can go forward.

Mr. Gary Kepley told Council he is representing the family and his parents own the property. He said the property is prime location property, which is just outside the city limits. There has been a lot of consideration over the years as to what may be done with the property, he said. Mr. Kepley stated based on the proposal presented by Mr. Burgess to the family, the family feels very strongly that this is what they would like to have there. He strongly urged Council to approve the rezoning request.

No one spoke **in opposition** to the proposal.

Since no one else was present to speak for or against the above proposal, Mayor Klutz closed the public hearing.

Mr. Woodson noted the Planning Board recommended unanimously to rezone and no one came forward to oppose the rezoning.

(c) Thereupon, Mr. Woodson made a **motion** to rezone to RD-B to allow 5 units per acre. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 69 ACRES LOCATED IN THE 2000 BLOCK OF FAITH ROAD, IDENTIFIED AS PARCELS 1 ON LITAKER TOWNSHIP TAX MAP 403, FROM A-1 AGRICULTURAL DISTRICT TO RD-B RESIDENTIAL DEVELOPMENT "B" DISTRICT.

(The above ordinance is recorded in full in Ordinance Book No. 19, under Chapter XI - Zoning & Planning, at Page No. 4-5, and is known as Ordinance No. 2003-1.)

### **SPECIAL USE DISTRICT PERMIT - Z-24S-02 AND Z-25S-02**

#### **DENNIS N. BUNKER, III**

Z-24S-02 and Z-25S-02 - Dennis N. Bunker, III

117 and 119 Lilly Avenue

[Note: No change in zoning from B-RT-S Special Retail Trade Business,

with a GD-A General Development-A Overlay which was approved by City

Council for these properties in Z-19S-00 and Z-20S-00 on October 3, 2000.]

The request is for a proposed change in the conditions as follows: Reduce the front yard setback of a brick wall from 20 feet to 8 feet. In exchange, the developer has agreed to plant additional shrubbery. The type and amount of additional shrubbery is dependent on whether applicant plants ornamental (small) trees or shade (large) trees, which are required by the ordinance.

The applicant is asking for the following in condition (2): reduce his distance from Lilly Avenue from 20 feet to 8 feet but would be giving something back in condition (3) more shrubbery which should help soften the impact of the brick wall being that near the street.

#### **(a) Swearing In**

Mayor Klutz swore in the following persons to testify in this case:

Mr. Harold Poole, Senior Planner

Mr. Dennis Bunker, applicant

Mr. Mark Perry

Mr. Rodney Queen

Ms. Kathryn Bunker

Mr. Ben Baldwin

(b) Evidence Presented

Mayor Klutz then opened the public hearing.

Mr. Harold Poole, Senior Planner, informed Council that special use zoning is more complicated because properties have to be looked at lot by lot. He said with these two lots, staff can consolidate them into one hearing, but he will be talking about these individually. The properties are shown on the tax records as 117 and 119 Lilly Avenue, Mr. Poole noted. He indicated to Council that he understands there is an address on a house on the second lot that does

not reflect 119 Lilly Avenue, but according to the tax records, these are the addresses.

Mr. Poole told Council this zoning case came before Planning Board and City Council a couple years ago. He reminded Council that this is not the kind of rezoning for changing from one district to another. The zoning district is, and has been, BR-T-S with General Development Overlay and is to be retained as is, Mr. Poole noted. He stated that on a special use application, one can list permitted uses or prohibited uses. The developer chose several years ago, and has chosen now, to say BR-T uses, according to Mr. Poole. The conditions are more important in this case, he emphasized.

Mr. Poole reviewed with Council the two zoning cases separately as follows:

Z-24S-02 (117 Lilly Avenue)

Proposed Uses: B-RT uses

Proposed Conditions:

- no change in vehicular access to Lilly Avenue
- change - 6 foot brick wall located 8 feet from Lilly Avenue right-of-way  
[now reads: 20 foot setback from Lilly Avenue right-of-way] a difference of 12 feet
- staff has asked the developer (and he has concurred) to plant additional landscaping. Trees are required by the ordinance. In addition, the following proposed conditions would be: if shade trees planted, a minimum of 2 large shrubs and 20 medium or small shrubs; if ornamental trees planted, a minimum of 20 medium or small shrubs.

Z-25S-02 (119 Lilly Avenue)

Proposed Uses: B-RT uses

Proposed Conditions:

- no change in vehicular access to Lilly Avenue
- change - 6 foot brick wall located 8 feet from Lilly Avenue right-of-way  
[now reads: 20 foot setback from Lilly Avenue right-of-way]
- additional landscaping between the wall and Lilly Avenue in accordance to what the Landscape Architect suggested - if shade trees planted, a minimum of 2 large shrubs and 10 medium or small shrubs; if ornamental trees planted, a minimum of 15 medium or small shrubs

- minimum 6 foot high brick wall parallel to lot 147 which would not change.

Mr. Poole showed Council pictures of the area pointing out a house on the second lot which he indicated looks like it is not in good condition and the house on the McCracken lot next door, along with a residence across Lilly Avenue.

Those speaking **in favor** of the above proposal were:

Mr. Rodney Queen, Polo Drive, and also a Planning Board member, told Council he comes today as a citizen, his views are of his own, and not of the Planning Board. He said when this zoning case came back through the Planning Board and they heard the opposition, (this issue has been going on for quite some time), one of his concerns was they will keep coming back if you give them 12 feet. Mr. Queen stated the way to resolve that is to let the 12 foot distance they want closer to the street be approved in a site plan review.

Mr. Queen said he went to Lilly Avenue to take a look at what was really going on there to get a better perspective of what changes could be made. As a citizen, he said he has ridden by this area approaching Catawba College for years and notes it could use a face lift and needs to be cleaned up, and some more activity there. He said the people who have stepped forward from Lilly Avenue that have expressed their concerns and encroachment on the neighborhood and are strongly against it don't even live there. Some of the property is rental and some are not kept up as much as they could be, Mr. Queen noted. Other opponents live on the farther end of Lilly Avenue and don't have to see the entrance that much, he said. Mr. Queen stated that when you turn right on Lilly Avenue, and look to the right, you see the backs of the buildings, old service station, dumpster and quite often, a lot of trash. He said whether the wall is 8 feet from the street nicely landscaped or 20 feet, isn't going to make a tremendous impact one way or the other. Mr. Queen stated that the houses at 116 and 118 Lilly Avenue are the ones that really have to look at the things on the other side of the street. He said you see the house which probably should have been taken down 20 years ago does belong to the Bunkers and right next door is a rental house not rented. He said there is a lot of controversy on the mobile home park and agrees it is not attractive, but seems to be pretty well kept. But the houses backing up from Lilly Avenue don't seem well kept, so he wonders why the people from the mobile home park don't complain. Further down Lilly Avenue is a neighborhood you would want to protect, he said. But, he indicated, many of these people we would want to protect are renters, and they don't step forward.

Mr. Queen emphasized that it is not going to be any detriment one way or the other whether it is 12 feet or 20 feet. The detriment is the way it is staying right now, he noted. Mr. Queen stated it is time for the people of Lilly Avenue to step forward and support some change and activity that would be more constructive to bring back the pride and integrity to Lilly Avenue. He said until we can get that area torn down and until some of the landlords step forward and take more pride in the houses they rent, then we are going to have an area that doesn't look attractive.

Mr. Mark Perry, 131 West Bank Street, told Council he has always been interested in this small neighborhood's battles to ward off encroachments that would chip away at the viability of their closely knit community. He said he believes there are probably more owners living there than renters. Mr. Perry said there has been so many encroachments that the residents are justifiably concerned and afraid of any attempt at any change no matter how small it may seem to outsiders. He said this is the situation of the current request from the present owners of the adjoining property fronting West Innes Street and Mahaley Avenue.

Mr. Perry said when one of the several leaders of the Lilly Avenue community called him about this proposed change, he attended the recent Salisbury Planning Board meeting. He noted it was the same story again; the fear of the residents that if you give an inch, the developer will take a mile. And when will the City draw a line in the sand and say no more requests will be honored? Mr. Perry emphasized prior request have been honored, so the residents are justifiably afraid of what may happen. Mr. Perry told Council that at the request of Mr. Dennis Bunker and his family, we had a couple meetings, the second with a representative of the neighborhood to address these fears. The lack of stewardship of the present buildings and the appearance of the streetscape was raised again. The meeting was very good and all said how they felt, he told those present.

Mr. Perry said he believes Council has each received a copy of a letter that Dennis Bunker, the applicant, wrote to him (Mr. Mark Perry) and to the Lilly Avenue residents. (Note: All Council members acknowledged they have received the letter.) Mr. Perry indicated the letter was written in response to the fears of the residents of Lilly Avenue as expressed in those two meetings. The neighbors who have seen or heard about this letter seem to think it is a hopeful sign for the future development of the rest of the land, which is not subject to the current request, he said. Only one neighbor I talked with said he opposed it, but in principle only, Mr. Perry told Council. With that said, I personally think that the proposed reduction in the setback requirement from 12 to 8 feet is a small price to pay for the long-term commitment of the Bunker family to leave the rest of Lilly Avenue alone as expressed in their letter. Mr. Perry thanked Council for this opportunity to speak.

Mr. Ben Baldwin, who works with Mr. Dennis Bunker, the petitioner at Bunker Land Group, LLC, told Council he has been assisting Dennis (Mr. Bunker) on the redevelopment of the Mahaley Avenue/Innes Street corner. Mr. Baldwin read an excerpt from a letter Mr. Bunker wrote to City Council members dated July 7, 2000. He stated this letter is significant because it was written before there was an anchor tenant for the corner property. Mr. Baldwin read as follows: "I feel it is important at this time to be very clear on those points that my opinion will and will not be detrimental in my marketing efforts to redevelop the corner. Additional requirements that will be detrimental to the redevelopment process: there is only one - greater buffers than those specified in the current code. Anchors that would be interested in this corner and also have the financial credibility to spur redevelopment will require approximately 1.5 acres of land to support a 12-15,000 square foot rectangular building prototype. The amount of and shape of the land from the corner to the Chinese restaurant minimally provide the necessary size and shape. Adequate size and shape is the foundational reason we are going through the rezoning process. Owner's buffer would undermine the opportunity for optimum redevelopment. In lieu of additional buffer, I would propose a 6-foot high decorative brick wall on parcels 44 and 146 along Lilly Avenue. That area of buffer will then be approximately 10 feet wide which includes 8 feet of green space in a depth of about 2 feet for the brick wall and columns. The additional requirements that will not be detrimental to the redevelopment process: (1) no point of ingress and egress along Lilly Avenue provided that at least one point of ingress/egress is allowed on West Innes Street (2) dumpster locations to be situated no closer than 50 feet to adjoining residential (3) no more

than 4 curb cuts for the entire development (4) irrigation of planters and buffers (5) increased vegetation in sensitive areas, most likely those areas abutting residential. I understand the importance of having as much buffer as possible. It is also a desire of mine to have as much buffer, but for the corner to have the maximal opportunity for redevelopment, it has to retain necessary size and shape to appeal to the broadest range of users particularly the anchor portion of the corner. The type of user that my family would consider compatible and also have the financial creditability is also very limited. We have seriously considered only one opportunity in the last five years. Your sensitivity to these issues is critical to a successful redevelopment process."

Mr. Baldwin told Council that Mr. Bunker knew he needed every square foot of the corner to situate an anchor tenant. He said once a building footprint was imposed on the site, it became apparent to all involved that this 12 feet in question are critical to the development of this part of the property. He asked Council to vote yes for this proposal.

Ms. Kristen Shue, 508 N. Tryon Street, Charlotte, N.C., told Council that 6-7 years ago, her family started to receive calls from various tenants regarding the corner. She said they realized then they had potential to redevelop the corner if, over time, they put the following pieces into place: (1) buy the rundown building at the corner of Innes Street and Lilly Avenue (2) buy out leases and let leases expire (3) close the service station, pull tanks and deal with environmental issues (4) interview tenant prospects for suitable uses (5) work with economy and interest rates (6) spend considerable energy keeping the existing tenant base comfortable during these uncertain times (7) relocate one tenant (8) continue to work on partial rezoning of this corner for an acceptable site plan. Ms. Shue said all these activities have required significant resources of time and money. The development process, the work, and the riskiest part has not yet begun, she said. Ms. Shue noted 7 of the 8 hurdles mentioned have been completed and their opportunity is now. Ms. Shue asked Council's help on this one outstanding matter and to vote yes, as the tenant needs the 12 feet of commercial land on Lilly Avenue.

Ms. Kathryn Bunker, wife of Dennis Bunker, petitioner for this proposal, told Council that for the past 5 years she has attended every neighborhood meeting, every Planning Board meeting, and every Council meeting concerning this corner. She said she has listened, taken notes, and as a real estate professional, she has assisted Dennis (Mr. Bunker) in site planning this corner. Ms. Bunker emphasized to Council that they have respectfully listened to the concerns of the Lilly Avenue neighbors and believe their plan reflects all of their concerns. She noted their plan also addresses the 2020 Vision Plan. Ms. Bunker said it is the first piece of a future mixed use development. It proposes sidewalks around the perimeter to accommodate pedestrian traffic, it provides pedestrian connectivity, not vehicular traffic to Lilly Avenue, and it provides buffers and interior green space, she told Council. Ms. Bunker noted there are no buffers or green space at the present time. She said there will be 9700 square feet of buffers in the new development which is an average of 11 feet of buffer around the entire site. Additionally, there will be a 6-foot brick wall built along Lilly Avenue and the adjacent McCracken property, Ms. Bunker said. There will be 30-35 additional bushes and trees planted along Lilly Avenue in exchange for the use of the 12 feet of land in questions, she stated. Ms. Bunker told Council that all these buffers and interior green space will be irrigated. She said they are combating urban sprawl and controlling traffic by reducing an entire corner of curb cuts to 2 points of ingress and egress.

Ms. Bunker stated that they, along with 192 people who signed a petition in favor of redeveloping this corner in 2000 believe that a new development will preserve the Lilly Avenue residences. She pleaded with Council not to let this opportunity slip away from them again. Ms. Bunker asked Council to visualize what a beautifully landscaped brick wall will look like, one that follows Lilly Avenue from the corner to the end of the property line. She also asked Council to visualize a brick wall that follows the street for a short distance and then for no clear purpose juts 12 feet into much, much needed commercial land. Ms. Bunker said it is her opinion that not only would it be visually unappealing, it serves no purpose but to be excessively punitive to the development. She emphasized that the land in this area has been used for commercial purposes for many years. Ms. Bunker asked Council how this extra 12-foot setback preserves the neighborhood and the adjacent rental house more than the normally required 8-foot setback that will be landscaped, irrigated, and have a brick wall in addition to the other things the plan is already providing.

Ms. Bunker respectfully requests that Council vote yes to this proposal while they still have the opportunity before them. Good opportunities don't come along often, she noted. She stated they intend to do a good job here and the merits of the plan deserve your cooperation, as it will benefit the City, the Mahaley Avenue neighborhood at large, as well as the Lilly Avenue residents.

Mr. Dennis Bunker, petitioner for this proposal, said he lives in Charlotte but is a native Salisburian who lived here 26 years and has been a taxpayer for 31 (years). He told Council that Mr. Poole very adequately described what he is trying to accomplish today. Simply stated, they need 12 feet of land in this area to accommodate a development opportunity, he said. He said in exchange for the 12 feet, they have agreed to plant a nursery's worth of landscaping in addition to what is already required by the City of Salisbury's Landscape Ordinance.

Mr. Bunker stated that the tenant is Walgreen's Drug Store, which is one of the strongest drug store operation and a top five retailer in this country. He said Walgreen's has approved the site for the store and they have agreed to material business terms of a lease. Mr. Bunker stated such a strong retailer can revitalize the neighborhood. He noted this neighborhood needs revitalizing. Mr. Bunker stated it will take an exceptional site plan by the City of Salisbury and Walgreen's to work out an outstanding lease issue. Walgreen's has agreed to reduce the size of their store from 105' x 138' to 105' x 130' and sacrifice 5 parking spaces at their front door in order to better situate this building on this site, Mr. Bunker stated.

Mr. Bunker showed Council pictures of the proposal and pointed out how the 20 foot buffer, as opposed to 8 foot required by code, would negatively impact this site for this tenant. Mr. Bunker told Council that if they are successful today, to file a site plan for approval on January 15 and have a new store opened hopefully by November 1, 2003. He said the City of Salisbury benefits, that the tax base will probably triple for this parcel alone, and Lilly Avenue will get a more aesthetically pleasing and safer entrance to their street, Catawba College and the greater neighborhood will get a nice new shopping amenity, and his family will get the satisfaction of delivering a much needed redevelopment to this corner. Finally, Mr. Bunker said the rental house next door owned by the McCracken family, who has fought for and won benefits from a buffering plan that this property does not currently enjoy. This consists of a very expensive 6 foot high solid brick wall and 20 feet of green space, and extensive plantings in this sensitive area, he said. He said he does not see buffers this extensive in Salisbury and he hopes this will be a model for future development.

Mr. Bunker told Council he held neighborhood meetings on December 2 and December 30. He has also talked with many interested individuals, he said. Mr. Bunker thanked Mr. Mark Perry for his statesmanship for bringing the two sides closer together. Significant strides have been made, he said. Mr. Bunker reminded Council of his commitments: protect the neighbors, act in their best interest, and not to further intrude down Lilly Avenue into the residential area. Mr. Bunker said he will not ask Council to dishonor that pledge, nor will he. He said the area of land has been used for commercial purposes for a long time and he is not asking for any more residential land to be used for commercial purposes. Mr. Bunker said he would appreciate Council's support.

Mayor Kluttz asked if anyone else would like to speak in favor, or to oppose, including anyone not yet sworn in, at this time. No one else responded, so Mayor Kluttz closed the public hearing.

Mayor Pro Tem Woodson stated he went to the property on Lilly Avenue to make sure where the brick walls were to go and that the McCracken property wasn't interfered with. He said he felt good about the 6-foot wall buffering the property and Lilly Avenue. Mr. Woodson said he also looked at the 8 feet versus the 20 feet and felt this wasn't detrimental. Public comment to him is running about 10 to 2 in favor, including Mr. Ed Heilig, who had been somewhat skeptical, some contractors who have houses there, and people from Nassau Apartments are in support, noted Mr. Woodson. This will make the corner look good and be nice for the citizens to patronize. He further noted he thought a cut through to walk up to the Walgreen property would be good, but the residents didn't want it, so he will not argue for that presently, Mr. Woodson told those present. He expressed support for the proposal.

Councilman Burgin said the Bunker's have worked hard and diligently trying to present this adjustment to the neighborhood. He said, in his own opinion, this will have nothing but a positive effect on Lilly Avenue and he would like to see this matter put to rest. Mr. Burgin expressed support for this change.

Mayor Kluttz agreed and applauded the Bunker family who have worked very hard and done an excellent job.

Mr. Harold Poole told Council the Planning Board vote was a 5-5 tie. There was more opposition at the Planning Board meeting, he said. Mr. Poole told Council that Mr. Bunker has done a great job in having neighborhood meetings and getting the neighbors to understand. Mr. Perry has also done a great job in bringing people together on this, he said. This is not always the case on zoning cases, Mr. Poole noted.

Mr. Poole told Council if they were in favor, they would need to take 4 votes. The first two votes would have to do with Z-24S-02 (117 Lilly Avenue). The first motion would have to do with amending the list of conditions to change the front yard setback from 20 feet to 8 feet with additional landscaping as specified previously and was on the application. Otherwise all uses and conditions as approved in Z-19S-00 on October 3, 2000 shall continue to apply and any other laws of the City of Salisbury, Mr. Poole stated.

(c) Decision - Z-24S-02

Thereupon, Mr. Woodson made a **motion** to amend the conditions in Z-24S-02. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Kluttz voted AYE. (5-0)

AN ORDINANCE APPROVING A SPECIAL USE DISTRICT ALLOWING SPECIAL USES AND CONDITIONS TO PROPERTY LOCATED AT 117 LILLY AVENUE, IDENTIFIED AS PARCEL 44 ON SALISBURY TOWNSHIP TAX MAP 21.

(The above ordinance is recorded in full in Ordinance Book No. 19, under Chapter XI - Zoning & Planning, at Page No. 6, and is known as Ordinance No. 2003-2.)

Mr. Poole explained the second part has to do with issuing a revised Special Use District Permit based on the approved uses and conditions. The following Findings of Fact are:

- (a) the uses and conditions proposed will not materially endanger the public health or safety if located where proposed and determined according to plan, AND
- (b) the uses and conditions proposed will be required to meet all preexisting conditions and specifications, AND
- (c) the uses and conditions proposed will not substantially injure the value of adjoining or abutting properties, AND
- (d) the location and character of the uses proposed for the site, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the adopted Salisbury Vision 2020 Comprehensive Plan and other plans for the development of the Salisbury area as adopted by the City Council.

(d) Special Use District Permit

Thereupon, Mr. Burgin made a **motion** that the Council in its Findings of Fact have concurred with a,b,c, and d. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE GRANTING A SPECIAL USE DISTRICT PERMIT IN ACCORDANCE WITH THE SPECIAL USE DISTRICT ALONG WITH ITS SPECIAL USES AND CONDITIONS AS DESCRIBED IN ORDINANCE NUMBER 2003-2.

(The above ordinance is recorded in full in Ordinance Book No. 19, under Chapter XI - Zoning & Planning, at Page No. 7, and is known as Ordinance No. 2003-3.)

(e) Decision - Z-25S-02

Mr. Poole told Council that Z-25S-02, 119 Lilly Avenue, would amend the list of conditions in Z-25S-02 to change the side yard setback from 20 feet to 8 feet with additional landscaping that has been specified. Otherwise all uses and conditions as approved on Z-20S-00 shall continue to apply, he said.

Thereupon, Mr. Woodson made a **motion** to amend the list of conditions in Z-25S-02 with side yard setback of 20 feet to 8 feet and the additional landscaping. Mr. Martin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE APPROVING A SPECIAL USE DISTRICT ALLOWING SPECIAL USES AND CONDITIONS TO PROPERTY LOCATED AT 119 LILLY AVENUE, IDENTIFIED AS PARCEL 146 ON SALISBURY TOWNSHIP TAX MAP 21.

(The above ordinance is recorded in full in Ordinance Book No. 19, under Chapter XI - Zoning & Planning, at Page No. 8, and is known as Ordinance No. 2003-4.)

Mr. Poole read the following Findings of Fact related to Z-25S-02 as follows:

- (a) the uses and conditions proposed will not materially endanger the public health or safety if located where proposed and determined according to plan, AND
- (b) the uses and conditions proposed will be required to meet all preexisting conditions and specifications, AND
- (c) the uses and conditions proposed will not substantially injure the value of adjoining or abutting properties, AND
- (d) the location and character of the uses proposed for the site, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the adopted Salisbury Vision 2020 Comprehensive Plan and other plans for the development of the Salisbury area as adopted by the City Council.

(f) Special Use District Permit

Thereupon, Mr. Burgin made a **motion** that the Council in its Findings of Fact of a,b,c, and d have been met. Mr. Martin seconded the motion. Messrs Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE GRANTING A SPECIAL USE DISTRICT PERMIT IN ACCORDANCE WITH THE SPECIAL USE DISTRICT ALONG WITH ITS SPECIAL USES AND CONDITIONS AS DESCRIBED IN ORDINANCE NUMBER 2003-4.

(The above ordinance is recorded in full in Ordinance Book No. 19, under Chapter XI - Zoning & Planning, at Page No. 9, and is known as Ordinance No. 2003-5.)

**UPDATE FROM STAFF REGARDING FEMA CLEANUP**

Mr. Steve Weatherford, Street Division Manager, told Council since the ice storm of December 4, 2002, City crews, along with other Public Services crews, collected over 1,000 truckloads of limbs. He said the City and County went in together and took bids for the limb collection and grinding process. On December 27, TAG Grinding Services, Inc. started working in the City of Salisbury streets and neighborhoods, Mr. Weatherford reported. To date, that crew has collected over 100,000 cubic yards of limbs from our City streets and right-of-ways. He said at the same time, TAG is grinding that material as they bring it in and have almost made a complete pass through Salisbury. TAG is going to advertise in the SALISBURY POST of a second collection

beginning Monday, January 13, Mr. Weatherford said. Staff has given TAG a list of locations where piles may have been put back out or at dead end streets, he said. Hopefully, the City may see the end of this process soon because it has impacted our streets and other services greatly, he noted, and indicated that the City is back on schedule with the leaf collection. Mr. Weatherford indicated staff has also put out 30 tons of asphalt in order to catch up on the potholes caused by the storm. Mr. Weatherford told Council the City will be reimbursed 100 percent through FEMA for the debris collection.

Mayor Klutz congratulated Mr. Weatherford and his department for a wonderful job. Salisbury was one of the hardest hit cities in the area of North and South Carolina, she said.

City Manager Treme informed Council that a bid was received on December 13, 2002, for the removal, reduction, and disposal of ice storm disaster debris in the amount of \$4.49 per cubic yard for debris and \$1.50 per cubic yard for debris grinding. Mr. Treme requested Council's approval of this contract bid number 12-13-2002 with TAG Grinding Services, Inc.

Thereupon, Mr. Woodson made a **motion** to award a contract to TAG Grinding Services, Inc. for the removal, reduction, and disposal of ice storm disaster debris. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

Councilman Kennedy asked Mr. Treme if TAG hired subcontractors to help pick up the debris. Mr. Treme replied yes they did. Mr. Kennedy asked how the subcontractors were paid. Mr. Treme replied the City paid the contractor and he then paid his subcontractors.

### **REPORT REGARDING EPA REGIONAL SUSTAINABILITY PROJECT**

Mr. Joe Morris, Urban Resource Planner, introduced to Council, Mr. Al Sharp, Executive Director and Ms. Rebecca Yarbrough, Program Administrator with Centralina Council of Governments (COG), who gave a presentation on the EPA Regional Sustainability Project. Mr. Morris told Council that the City of Charlotte and Mecklenburg County have been working with 15 municipalities and 11 counties in North and South Carolina to promote regional environmental planning efforts.

Mr. Sharp told Council that COG has provided staff assistance to the City of Charlotte and Mecklenburg County for the Sustainability Project over the last two years. The project ended on October 30, 2002, with the visit of the EPA administrator Whitman and at that time it was considered a success in terms of making elected officials and citizens aware of the concerns in environmental planning, he said. COG is involved in a number of regional initiatives, one was the sustainability project. There are a number of regional issues which COG is involved with now such as the clean city program, water supply and quantity, brown fields and textile road projects, re-utilizing abandoned mills and factories no longer in use, and a sequel to the Sustainability Project - Sustainable Environment for Quality of Life (SEQL), Mr. Sharp stated. He said on October 30, the EPA administrator said the Environmental Protection Agency would continue to support a regional initiative as it was started in the Sustainability Project if local governments could come to the table and deal with the issues of environmental planning so that they could predict and make the environmental impact of our growth more manageable.

Mr. Sharp emphasized that SEQL is a continuation and expansion of the region's 2002 EPA sustainability project and would include a 15 county region and 81 local governments in North and South Carolina. He said it is an integrated environmental initiative involving local government and stakeholders throughout the region. It is also a potential national model of regional cooperation, he said. Mr. Sharp provided a videotape for use by Council members explaining SEQL.

Mr. Sharp told Council that over the decade there has been more than 25 percent population growth increase overall in the 15 county areas. Rowan County is about 18 percent growth over the decade. Mr. Sharp told Council that the vehicle miles traveled more than doubled the rate of population growth. We are driving more and this has a serious impact in terms of environmental quality in the region, he said. He said the average commuting time has dramatically increased in the last decade. This also has degraded air quality. Mr. Sharp noted that in 2002 there were 63 days in the North Carolina part of the region where there were either orange or red ozone days. He said this can have an impact on respiratory illnesses. The bottom line is that if this area is judged to be non-attainment in the new 8-hour ozone standard, then \$6 billion of highway funds are at risk, Mr. Sharp noted.

Mr. Sharp reminded Council the federal government, with the exception of EPA supporting these regional efforts, has a punitive role. Their role is to remind local and regional governments of what is supposed to be done to meet the quality standards. The initiation and positive force comes from local governments, Mr. Sharp reminded Council. He pointed out there is a clear disconnection between land use and transportation planning, but the City of Salisbury is doing well with this. Mr. Sharp mentioned the recent water supply issues, and probably there will be these issues in the long term. With population growth, there becomes lack of open space which impacts air and water matters.

Mr. Sharp told Council that while we have population growth there is significant loss of open space, which is important in terms of air, water quality, and planning issues. North and South Carolina are converting rural areas into some other use out of open space and they are the 6<sup>th</sup> most rapid in the country, he stated.

Mr. Sharp told Council that Salisbury has addressed a number of these issues:

- o adopted and implemented an urban growth boundary
- o actively involved in preserving its historic areas and redeveloping

historic buildings and structures

- established water and sewer extension policies that delineate how  
and where utilities are to be extended
- manages an area transit system.

Mr. Sharp told Council that Salisbury is the first community within the region to ask for a progress report. He said this is another example of how Salisbury is leading the way.

Ms. Rebecca Yarbrough told Council Phase I action items adopted were: Air Quality, Water Quality, and Smart Growth. She asked, "Where does Salisbury go from here?" Salisbury has a history of leadership in terms of looking at policy orientation that supports coordinated planning, and integrated planning which means planning that looks at the linkage between land use, transportation, water quality, and air quality, Ms. Yarbrough stated. The next step would be to analyze those commitment items and look at their applicability to Salisbury; in terms of feasibility of how it fits with Salisbury's long term plans, Vision 2020 Plan, and what types of changes would need to be put into place to implement each of these commitment action items, Ms. Yarbrough stated. In many cases, Salisbury will find they are already doing a lot of these things to one degree or another, she noted. Ms. Yarbrough said COG would encourage the City to look at how these could be strengthened. The third step would be to establish Salisbury's local priorities for implementation, adopting those action items, and then implementing those items, Ms. Yarbrough said. She said SEQL will provide support and technical assistance to jurisdictions with implementation of these 25 items. Another part of SEQL that is important is that Salisbury will share its local successes with the rest of the region, she noted.

Ms. Yarbrough invited Salisbury to join with the regional effort for Sustainable Environment for Quality of Life (SEQL). She said as this project starts, they hope to receive notification of award from EPA later this month to provide staff support, model ordinances, etc. and provide information on best practices nationwide. EPA has also been helpful in promising technical assistance in getting specific programs, she said. A series of sub-regional meetings will be held. Ms. Yarbrough told Council COG will be asking Salisbury what the City considers success. What information does the City need to know in order to know if these policies are doing what the City wants them to do?, Ms. Yarbrough asked. A very important element of SEQL is documenting what is going on and the impact, she said. Mr. Sharp told Council this is the only way COG will be able to demonstrate to EPA that local governments have taken the initiative and can provide quality of air, water, or planning efforts.

Mayor Klutz thanked Ms. Sharp and Ms. Yarbrough for their presentation. She stated that Council has just appointed a Vision 2020 Implementation Task Force to implement our program and she asked Council's approval for this EPA Project to be studied by them and their recommendations brought back to Council. Mayor Klutz said she would also like to see Salisbury coordinate efforts within our county to host a meeting for Rowan County and its municipalities to hear this presentation. Mr. Sharp told Council they would be happy to work with the City on this endeavor.

Thereupon, Mr. Woodson made a **motion** to pass the resolution in support of the EPA Regional Sustainability Project. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

A RESOLUTION IN SUPPORT OF THE EPA REGIONAL SUSTAINABILITY PROJECT.

(The above resolution is recorded in full in Resolution Book No. 11, under Chapter XII - Miscellaneous, at Page No. 3, and is known as Resolution No. 2003-3.)

### **CONSIDER LEGISLATION SUPPORTING THE CLEAR CUTTING OF TREES WITHIN THE SALISBURY PLANNING JURISDICTION**

Mr. Joe Morris, Urban Resource Planner, informed Council that a couple months ago residents of Milford Hills Subdivision reported that a parcel of property adjacent to their property was clear-cut. The neighbors were concerned about the condition of the site, the way the clear-cutting was conducted, access to the site, and the impact on wildlife, he said. He said Council asked staff to look at what type of regulatory authority the City might have in addressing and mitigating those concerns.

Mr. Morris told Council staff did some preliminary investigation relative to clear-cutting ordinances and found that, as a City, we lack the legislative authority to actually adopt any kind of regulations affecting clear-cutting operations. However, staff found out that several communities in our state (Cary, Garner, Morrisville, Knightdale, Fuquay-Varina, Spencer) pulled together in the past session of the General Assembly to develop a local bill related to the regulation of clear-cutting, he said. These communities obtained the enabling legislation necessary to develop the types of regulations related to public notification, buffering, site security, stump removal and debris disposal, he said.

Mr. Morris asked Council's approval of a resolution in support of enabling legislation to regulate the clear cutting of trees within the Salisbury planning jurisdiction. This information would be made available to our legislative delegation representing Salisbury/Rowan County in the next session of the General Assembly, Mr. Morris stated. He said a study will be done with the Tree Board and the Salisbury Planning Board to address these issues. Mr. Morris told Council he has talked with Representative Lorene Coates who indicated to him that she was directly involved in tagging Spencer onto the enabling legislation that Spencer received and that she would be happy to do this also for the City of Salisbury at the appropriate time.

Thereupon, Mr. Burgin made a **motion**, as we as a Board, voice support for having the ability to control clear-cutting within our jurisdiction. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

A RESOLUTION IN SUPPORT OF ENABLING LEGISLATION TO REGULATE THE CLEAR CUTTING OF TREES WITHIN THE SALISBURY PLANNING JURISDICTION.

(The above resolution is recorded in full in Resolution Book No. 11, under Chapter XII - Miscellaneous, at Page No. 4, and is known as Resolution No. 2003-4.)

### **APPOINT A REPRESENTATIVE FOR THE MPO (METROPOLITAN PLANNING ORGANIZATION)**

Mr. Dan Mikkelson, Director of Land Management & Development and City Engineer, reminded Council that in October, 2002, a presentation was given to Council from the Cabarrus-South Rowan Metropolitan Planning Organization (MPO) where they discussed the expansion of the MPO to a two county MPO. Council did endorse that expansion subject to negotiation of a Memorandum of Understanding (MOU) as to how Salisbury would participate and the appropriate fees, he said. The MPO has invited Salisbury to begin attending those meetings as a voting member during the interim while Salisbury's MOU and fees are being negotiated, Mr. Mikkelson noted. He said each participating governmental entity gets to send both staff members and an elected official. The staff members meet with the Technical Coordinating Committee (TCC) and the elected official meets with the Technical Advisory Committee (TAC). The elected official carries the City's vote, Mr. Mikkelson informed Council. Mr. Mikkelson serves as the staff representative. Council needs to appoint a voting representative to the MPO, he said. Meetings are held the 3<sup>rd</sup> Wednesday of each month.

Thereupon, Mr. Kennedy made a **motion** to appoint Councilman Burgin to be Salisbury's representative to the MPO. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Kluttz voted AYE. (5-0)

### **AUTHORIZE THE MAYOR TO EXECUTE AN AGREEMENT WITH THE NORTH CAROLINA WILDLIFE RESOURCES COMMISSION FOR STOCKING FISH IN THE SALISBURY COMMUNITY PARK LAKE**

Mr. Kenney Roberts, Recreation Program Manager, informed Council that the stocking of fish is a statewide program titled Community Fishing Program and also includes the placement of solar-powered fish feeders, as well as artificial attractors or artificial fish habitats. Through the Wildlife Commission, there is technical assistance they can provide with the regard to the water quality issues and the fisheries management principles, he said. Mr. Roberts said currently there are over 20 city and county parks and recreation agencies around the state that participate in this program. He said he has been working with the Wildlife Commission for over a year and actually has some fish stocked in the lake. Mr. Roberts said the primary purpose of the program is to create citizens interest in recreational fishing, long-term participation. The most effective way to do this is to provide a quality resource to fish with plenty of fish to catch.

Mr. Roberts told Council that the Management Plan and Memorandum of Agreement states that the Wildlife Commission will provide the following components of the plan and agreement:

- o provide technical assistance on accomplishing the management plan
- o provide the personnel in the placement and maintenance of the feeders
- o deliver and stock 600-800 catchable channel catfish on a monthly basis from April-September of each year
- o order and deliver 600 lbs. of fish feed monthly
- o provide signage with regard to their regulations as well as any

the City may have

- o will provide 75 percent of the cost for this program.

Mr. Roberts told Council the City will provide the following:

- o permit fishing based on the Wildlife Commission regulations
- o follow the Commission recommendations on the fisheries management plan
- o provide for construction and/or maintenance of access trails to lake
- o provide 25% of the cost of the program.

Mr. Roberts told Council it has been determined that the lake will not be open until the beginning of June, 2003. Mr. Roberts said that the first week of June is National Fishing Week. The plan is to have the grand opening of the lake beginning with a kids fishing derby on June 7, 2003.

Mr. Roberts told Council staff has reviewed the proposed plan and Memorandum of Agreement and feel it's a sound fisheries management plan.

Councilman Burgin asked if the 25 percent commitment is in money. Mr. Roberts replied, "That's correct." Mr. Burgin asked how much that would be. Mr. Roberts replied that it is \$400.00 this fiscal year, then approximately \$1,000.00 - \$1,200.00 per year.

Thereupon, Mr. Woodson made a **motion** to authorize the Mayor to execute an agreement with the Wildlife Resources Commission for stocking of the fish. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Kluttz voted AYE. (5-0)

### **BUDGET ORDINANCE AMENDMENT 2002-2003 - APPROPRIATE DONATIONS FOR K-9 SUPPLIES**

Ms. Barbara Fuller, Fiscal Analyst, informed Council that the Salisbury Police Department has received donations from the community in the amount of \$490.00 to be used to purchase rain gear for the handlers of the K-9's.

Thereupon, Mr. Woodson made a **motion** to appropriate the donation for K-9 supplies. Mr. Martin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING THE 2002-2003 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA, TO APPROPRIATE DONATIONS FOR K-9 SUPPLIES.

(The above ordinance is recorded in full in Ordinance Book No. 19, under Chapter II - Administrative, at Page No. 2, and is known as Ordinance No. 2003-6.)

## **REPORT FROM CITY MANAGER**

### **(a) Crime Control Summit**

City Manager Treme suggested to Council that the Crime Control Summit will be held Thursday, February 13, 2003, from 4:00 p.m. - 6:00 p.m., at City Hall.

### **(b) City Council Retreat**

City Manager Treme reminded Council of the City Council Retreat, February 20-21, 2003, at the Catawba College Center for the Environment.

### **(c) Interim Police Chief**

City Manager Treme informed Council that Deputy Chief Mark Wilhlem, has been named Interim Police Chief for a period of up to 6 months.

### **(d) Alcoa Power Generating, Inc. (APGI)**

City Manager Treme reminded Council that he (Mr. Treme) was appointed by Council to be the contact person for the City with APGI. In the process of reviewing Alcoa's re-licensing, Mr. Treme said he would like to make the following recommendations to Council:

- o Alcoa commit to a course of fair dealing with Salisbury that includes at a minimum the following specific actions:
  - acknowledge Salisbury's vested land and water rights pursuant to North Carolina Law relating to the control, appropriation, use, and distribution of water from municipal or other uses
  - acknowledge the easement that Alcoa granted to Salisbury in 1969 was contrary to Alcoa representations not required by the perk license and therefore unnecessary and valueless to the City which already owned, and still owns, an easement that authorizes the City to install and maintain water intake facilities
  - acknowledge that Salisbury's property rights includes sufficient rights for Salisbury to construct and operate a new pump station with intake structure and inlet pipe without Alcoa conveying any project land or water rights
  - acknowledge that Salisbury is not required by perk license or otherwise to pay Alcoa for water withdrawals
  - to commit to honoring the 1927 agreement between Salisbury and Alcoa
  - to record an appropriate instrument that corrects a recorded Alcoa

document that falsely asserts Alcoa ownership of City owned submerged lands

- clearly and accurately identify the past and ongoing negative impacts of Alcoa's operation and management of the Perk project on the City's municipal water supply, source infrastructure, operations, and compensate the City for those negative impacts.

Mr. Treme told Council that our water intake facilities have been located at the confluence of the Yadkin and South Yadkin River since 1917 and this was several years prior to the enactment of the Federal Power Act, 10 years prior to the construction of High Rock Dam, and more than 40 years prior to the issuance of the Perk License. He also stated that contrary to the assertions of Alcoa, the City's intakes are harmed and not in any way benefited by the existence of High Rock Dam. Mr. Treme said the City receives no storage benefit from the High Rock Lake and the sediment that is a result of the dam downstream hampers and hurts our intake, treatment, transmission, and our whole operations. He told Council the City has asked Alcoa to take a good look at that and see what compensation may come our way as a result of that. Mr. Treme said the City would like Alcoa to honor and recognize the rights the City of Salisbury has on the Yadkin River. Salisbury signed an agreement with Rowan County in 2000 that we would be the water supplier for the greater portion of Rowan County, Mr. Treme noted. Mr. Treme told Council that Alcoa's re-licensing period may be an opportunity for the City of Salisbury to settle some of these issues that have been identified, and that Alcoa will be a good neighbor and good corporate citizen.

### **MAYOR ANNOUNCEMENTS**

(a) Martin Luther King, Jr. Breakfast

Mayor Kluttz reminded Council of the Martin Luther King, Jr. breakfast, January 20, 2003, from 6:30 a.m. - 8:00 a.m., at the Civic Center.

(b) North Carolina Metropolitan Coalition

Mayor Kluttz and City Manager Treme will attend the North Carolina Metropolitan Coalition, January 8-9 in Greensboro, N.C.

(c) Boards & Commission

Mayor Kluttz told Council that at the next three Council meetings, the chairman of each of the various Boards & Commissions will make reports to Council. (This is in lieu of previous luncheons for Boards & Commissions.)

### **ADJOURNMENT**

**Motion** to adjourn the meeting was made by Mr. Kennedy, seconded by Mr. Burgin. All Council members agreed unanimously to adjourn. The meeting was adjourned at 7:11 p.m.

Mayor

City Clerk