

Salisbury, North Carolina

March 19, 2002

The City Council of the City of Salisbury met in regular session in the Council Room of the Municipal Building on Tuesday, March 19, 2002, at 4:00 p.m., with the following members being present and absent:

PRESENT: Mayor, Susan W. Klutz, Mayor Pro Tem, Paul Woodson, Jr.,  
Councilmen William (Bill) Burgin, Robert (Bob) Martin, and  
William (Pete) Kennedy.

ABSENT: None

The meeting was called to order by Mayor Klutz, and the invocation was given by Councilmember Martin.

Staff members present were:

David W. Treme - City Manager

Swannetta B. Fink - City Clerk

Sam Brady - Fire Chief

Chris Herring - Police Chief

Rivers Lawther - City Attorney

Dan Mikkelson - City Engineer/Interim Director,

Land Management & Development

Foster Owen - Assistant City Manager

John Sofley - Finance Director

John Vest - Director of Utilities

Gail Elder White - Director, Parks & Recreation

#### **RECOGNITION OF VISITORS**

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Mayor Klutz recognized all visitors present.

## **PROCLAMATIONS**

Mayor Klutz proclaimed the following observances:

ARBOR DAY March 17, 2002

CHILD ABUSE AWARENESS

AND PREVENTION MONTH April, 2002

## **RECOGNIZE KYLE WHISENANT - WINNER OF ROWAN-SALISBURY SCHOOLS 2002 SPELLING BEE**

Mayor Klutz recognized Mr. Kyle Whisenant, 8<sup>th</sup> grader at Knox Middle School, who was the winner of the Rowan-Salisbury 2002 Spelling Bee. She then presented Kyle a Certificate of Appreciation and recognized his parents, Jaytan and David Whisenant.

## **STATUS REPORT ON ASSOCIATED ASPHALT, INC.**

Ms. Jessica Marlies, Environmental Attorney with the law firm of BROOKS, PIERCE, MCLENDON, HUMPHREY, and LEONARD, and Mr. Richard Kelly, Risk Manager for the City of Salisbury, gave Council a status report concerning the Associated Asphalt, Inc. plant located on Jake Alexander Boulevard.

Mr. Kelly informed Council that to date, there have been a total of 431 complaints submitted for Associated Asphalt and APAC. Since January 7, 2002, there have been a total of 81 complaints. During that period of time, he has made 39 personal inspections at the two sites; issued 4 civil citations to Associated Asphalt and 2 civil citations to APAC. He also has put the Department of Environment and Natural Resources (DENR) on report on three of those occasions since they only want to be notified only if there is in excess of three complaints, and he (Mr. Kelly) does an inspection and finds it to be of a strong nature. DENR has responded as well. DENR issued 1 citation which was put in the form of a report and submitted to the Raleigh office. Mr. Kelly indicated, to his knowledge, this has not been served on Associated Asphalt. They, (DENR) did one inspection on which they concurred with his findings, Mr. Kelly told Council. DENR did not feel that the other 2 inspections, the odors were not strong enough to warrant a citation, he said. The complaints have been relatively fewer than they were in the past, but this has been attributed to the lack of rail cars on the tracks there, he noted. This is the lowest point in their paving season, he said. Whereas, 18 rail cars typically can be heated and off-loaded, they have had only 30 rail cars in the last two months at the site, Mr. Kelly stated.

Ms. Marlies informed Council that she spoke with DENR today and DENR informed her that the report is expected in early April. The health assessment to accompany the report has been delayed, Ms. Marlies reported. The City of Salisbury has written to DENR and has challenged the re-issuance of the Associated Asphalt, Inc. permit. The permit is set to expire in April and they will need a new permit to continue operations. Associated wrote to DENR under an informal renewal process, which is permitted in the North Carolina Administrative Code in some situations. The City has lodged the following five (5) objections:

(1) the facility has to submit a letter to DENR from the City stating the facility is in compliance with all zoning regulations of the City. Prior to issuance of the last permit, a letter was submitted based on the understanding that they were in compliance with M-2 zoning. Since that time, citations have been issued based on M-2 zoning; they have been challenged by Associated Asphalt successfully in court based on their assertion that they are not a

manufacturing facility and do not have to comply with the requirements of a manufacturing facility in Salisbury's M-2 District. As a non-manufacturing facility and which does not fall under other permitted classifications of M-2 zoning district, the City has concluded in its letter to DENR, that this facility is not permitted to operate in its current location. The City has withdrawn its prior statement that this facility meets the City's zoning ordinances and instead states that it appears to the City at this time, that Associated Asphalt is in violation of the City of Salisbury zoning ordinances and cannot continue to operate in its current location.

(2) The City has lodged a procedural objection to the informal permit renewal process. This process is considered appropriate only if there have not

been significant changes at the facility. It is clear from the informal renewal application that there have been significant modifications at the facility -

namely the removal of the carbon absorption system and installation of ecosorb. The use of the informal renewal process is inappropriate for this location.

(3) City has stated Associated Asphalt is, in the City's opinion, in violation of

specific limitations and conditions of its permit. Condition #5 of Associated's permit states "as required by 15 ANCAC2D.0522, control and prohibition of

odor submissions, the permittee shall not cause, allow, or permit any source

to be operated without employing suitable measures for the control of nuisance odors." Complaints have gone from over 330 to 431 and numerous citations

have been issued. It is inappropriate to re-issue a permit when the permittee

is in clear and perpetual violation of the existing permit.

(4) The re-issuance of the permit would contradict the internal records and observations of DENR through the air quality monitoring that has taken place and DENR's involvement. DENR has observed that the capacity of the carbon absorption system is limited and under normal circumstances the carbon bed absorber would reach saturation in several weeks of use. A return carbon absorption for some sources will require frequent changing of carbon beds. The permit Associated is seeking to renew does not have sufficient control of the carbon absorption system according to DENR's own assessment, and they need

to add permit restrictions and limitation that require that system to be maintained.

(5) The City has objected to a long term re-issuance of the permit at this time because we are awaiting the results of the DENR report. The City's position is that DENR needs to get that report finalized and out to the public before meaningful comment can take place on the re-issuance of the permit.

Ms. Marlies told Council that she has asked DENR not to re-issue the permit at this time based on the above 5 issues. DENR has withdrawn the temporary permit which did allow the ecosorb system to be used and Associated is required to put the carbon

absorbers back on. Associated got a 30 day extension to that and they have promised they will have the carbon back on by the end of this month. She indicated we hope this gives the citizens some relief; however, regardless of Associated putting the carbon back on, they have opposed the re-issuance of the permit.

Mayor Pro Tem Woodson noted he had read that Boone was also having the same type of problems.

## **CONSENT AGENDA**

### (a) Minutes

Minutes of the regular meeting of March 5, 2002.

### (b) Group Development Site Plan

Approve Group Development Site Plan for G-5-02 - Palmetto Motels, Inc., 321 Bendix Drive.

Thereupon, Mr. Kennedy **moved** to adopt the Consent Agenda as read. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0)

## **ANNEXATION REPORT**

Mr. Bill Duston, of Centralina Council of Governments (COG) briefly reviewed with Council the Annexation Report. He highlighted the following areas:

- annexation area land use map - boundaries of Statesville Boulevard through the center with railroad tracks being the southern boundary; a number of subdivisions to the north of Statesville Boulevard that are included in the proposed annexation area.

- 483 parcels - two types of lots for annexation (subsection C and subsection D lots) Subsection C - lots developed for urban purposes - 480 lots - 81% (389) were actually developed as defined by statute; 91 lots undeveloped. Subsection D - lots that aren't developed for urban purposes - 3 lots in the southeast corner.

- Annexation Qualifications: area adjacent and contiguous to municipal boundaries at the time annexation proceedings began; at least 1/8 abuts City's primary corporate limits; no part of annexation area lies within the corporate limits of another incorporated municipality; use recorded property lines and streets as boundaries; 60% of lots be

developed; 60% of residential and undeveloped acreage must be three acres in size; Subsection D lots require 60% of its boundary to be adjacent to the existing primary corporate limits or area developed for urban purposes. These areas cannot constitute more than 25% of the annexation area.

- Services the City will provide along with cost:

Fire protection - \$13,925;

Police protection - \$89,148;

Solid Waste Collection - \$34,185;

Street Rights of Way and Vacant Lot Maintenance - \$400;

Traffic Operations - \$3,567;

Street Maintenance - \$43,719;

Street Lighting - \$1,920;

Storm Drainage - up to \$25,000 per year grant funding;

Parks and Recreation - 15 facilities available; and

Zoning Enforcement.

- Projected Impact of proposed annexation:

- Estimated additional annual revenue - \$572,336

- Estimated additional annual expenditures - \$385,472

- Other estimated start-Up Costs - \$174,028

- Water/Sewer Service - 21,400 linear feet of water line: estimated cost: \$1,275,507;

32,000 linear feet of sewer line: estimated cost: \$2,537,690;

City will issue revenue bonds for financing of construction: \$250,000

issuance cost. The total estimated start-up cost for water and sewer

extension is \$4,063,197. The City plans to finance this by revenue bonds.

Lines are to be completed within 2 years after the date of annexation.

The proposed annexation date is June 30, 2003.

- Rural Fire Department Impact Statement is to be furnished at a later date from the Franklin Township Fire Department.

Councilman Burgin asked what would happen if these lines are not completed within the two year timeframe. Mr. Duston replied that the City would have violated a state statute. Mr. Duston emphasized the state is very specific regarding this matter.

Thereupon, Mr. Kennedy **moved** to approve the Annexation Report. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0)

## **2002-2003 BUDGET REQUESTS - SPECIAL COMMUNITY EFFORTS GROUPS**

Mayor Klutz informed Council that requests for funding would be received from "special community efforts groups" concerning their FY2002-2003 Budget.

Mr. John Henderlite, Jr., City Appointee to the Salisbury-Rowan Economic Development Commission and Mr. Randy Harrell, Executive Director of EDC, made a FY-2002-2003 Budget request to Council, in the amount of \$46,670.00 for operations plus an additional \$7,000.00 for the office in the Gateway Building, for a total budget request of \$53,670.00. Mr. Harrell reminded Council the EDC had not asked for any additional money in the last 5 years other than last year when they moved into the Gateway Building.

Mr. Richard Morefield, President of the United Arts Council Board and Ms. Monica Wray, Acting Executive Director, made a FY-2002-2003 Budget request to Council, in the amount of \$45,000.00, which will support seven (7) arts organizations and the United Arts Council office.

Ms. Suzanne Carter Storch, Executive Director of Rowan Information & Referral, made a FY-2002-2003 Budget request to Council, in the amount of \$6,087.00 which is half their facility cost and \$546.00, a one-time relocation expense, for a total of \$6,633.00.

Mayor Klutz reminded Council that copies of other agencies requesting funding are at their places: Downtown Salisbury, Inc., Rufty-Holmes Senior Center, Rowan County Literacy Council, Inc., Rowan Museum, and Horizons Unlimited. Mayor Klutz thanked everyone for their requests and what each one does for the community. She noted the City will do their very best to help.

## **ZONING MAP AMENDMENT - Z-2-02 - ROYAL HOMES CONSTRUCTION & DEVELOPMENT, INC.**

Z-2-02 - Royal Homes Construction & Development, Inc.

Sunset Drive near South Main Street (US-29)

The request is to rezone approximately 36,590 square feet of property located Sunset Drive near South Main Street, from RD-A Residential Development 'A' to B-RT Retail Trade Business.

(a) Mr. Patrick Kennerly, Planner, informed Council that this is the first of two zoning cases that are somewhat related in that they are both small portions of the same larger parcel of land. The overall property is approximately 23 acres and each zoning request is smaller than 1 acre in size. The current zoning of the larger piece of property is RD-A. The subject property is located along Sunset Drive which is directly behind the existing shopping center facing South Main Street. The developers are proposing that the corner of the property would serve as some sort of neighborhood amenity such as daycare facility, post office, coffee shop, etc. The property owners are requesting the rezoning to B-RT to allow for a retail component at the entrance to the neighborhood they are proposing to build. The site plan has not yet been approved but it is at the Planning Board level, Mr. Kennerly noted. He indicated most issues are resolved and the site plan should be coming to Council soon. He further indicated staff does not have any reservations on Council taking action today. Planning Board recommendation is 9-3 in favor of approving the rezoning request.

(b) Mayor Klutz convened a public hearing, after due notice and advertisement thereof, on the following zoning map amendment Z-2-02 Royal Homes Construction & Development, Inc., Sunset Drive near South Main Street.

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

Mr. Reza Djali, who represents Royal Homes Construction & Development Company, told Council their intention for the development of this lot is proposing a new traditional community which will provide a retail/light usage retail for the community.

The area will house a daycare center along with a general store which will serve the community. He stated this is a very integral part of the development.

Mr. Mark Lewis, 136 Rugby Road, told Council these are his customers, and also told Council the conversations started over a year ago while the 2020 Plan was being developed. Mr. Lewis said he took the developers to Huntersville to show them a neo traditional community. He said the developers got excited and employed LandDesign of Charlotte to do a site plan for them. The developers are trying to build a neo traditional neighborhood that conforms with Salisbury 2020 Plan and within our existing ordinances. To achieve a walkable community we must mix residential;commercial; and retail uses, Mr. Lewis stated. This, and in the next rezoning are 2 parcels that will be identified with this community explicitly, Mr. Lewis explained. They will be facing this community, most likely not Sunset Drive, said Mr. Lewis, but to the internal community itself. Because of these reasons, Mr. Lewis requested that Council approve these rezonings. Calling it (Sunset Drive) substandard is not really true, but it is not very wide, explained Mr. Lewis, and it doesn't have curb and gutter. The neighbors are concerned about a substandard road, the timing of the traffic signal from Jake Alexander Blvd. to Main Street, and that maybe there should be two turn lanes on South Main Street instead of one, Mr. Lewis stated. Dan Mikkelson has identified these and hopefully is working on them, according to Mr. Lewis.

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

Councilmember Burgin added that we are in a transition period between what our zoning ordinance allows us to do and what we hope they will allow us to do more cleanly. We may have to work with the developer such as this to allow B-RT in order to provide some of those integrated services in the community until we can do better with our ordinance. Mr. Burgin told the other Council members he feels OK about this rezoning and Mr. Woodson agreed.

(c) Thereupon, Mr. Woodson made a **motion** to rezone from RD-A to B-RT Retail Trade. Mr. Burgin 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 30,400 SQUARE FEET WITH ABOUT 190 FEET ON THE SOUTHWEST SIDE OF SUNSET DRIVE NEAR SOUTH MAIN STREET IDENTIFIED AS A PORTION OF PARCEL 195 ON SALISBURY TOWNSHIP TAX MAP 61, FROM RD-A RESIDENTIAL DEVELOPMENT 'A' DISTRICT TO B-RT RETAIL TRADE BUSINESS DISTRICT.

(The above ordinance is recorded in full in Ordinance Book No. 18, under Chapter XI - Zoning & Planning, at Page No. 39, and is known as Ordinance No. 2002-19.)

### **ZONING MAP AMENDMENT - Z-3-02 - ROYAL HOMES CONSTRUCTION & DEVELOPMENT, INC.**

Z-3-02 - Royal Homes Construction & Development, Inc.

off South Main Street between Sunset Drive and Rowan Mills Road

The request is to rezone approximately 30,492 square feet of property located 200 feet off the west side of South Main Street between Sunset Drive and Rowan Mills Road from RD-A Residential Development 'A' to B-6 General Business.

(a) Mr. Patrick Kennerly, Planner, informed Council that this is the second part of the request by Royal Homes Construction and Development, Inc. The property lies a couple hundred feet away from the first piece of property (Z-2-02). This is also less than 1 acre in size. The current zoning is RD-A and the request is for B-6 General Business which would match the zoning of the properties along South Main Street. Love Mobile Home Sales and Tino Tile and Marble directly in front of the property. The proposed site plan which was briefly mentioned earlier shows this particular area being used for storage buildings, mini warehouses, primarily to serve the residents of this neighborhood. Access to the property would be through the neighborhood itself rather than coming off South Main Street. Planning Board recommendation is to approve the request - 10-2. Mr. Kennerly advised those Planning Board members opposed indicated the area would be better used as a special use district.

(b) Mayor Klutz convened a public hearing, after due notice and advertisement thereof, on the following zoning map amendment

Z-3-02, Royal Homes Construction & Development, Inc., off South Main Street between Sunset Drive and Rowan Mills Road.

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

Mr. Reza Djali, property owner, told Council the purpose of rezoning the property to B-6 is to provide a storage facility for the residents who will be living in the community. Storage is very limited for the homeowners in the community and he would like to provide that service to them, Mr. Djali explained.

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

Councilmember Burgin noted again we are trying to work around our existing ordinance. The line they have created aligns with the B-6's. Even if they do something else with it, it is not a problem.

(c) Thereupon, Mr. Burgin made a **motion** to accept the zoning as recommended by the Planning Board from RD-A to B-6. Mr. Woodson 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 31,000 SQUARE FEET LOCATED ABOUT 200 FEET OFF OF SOUTH MAIN STREET BETWEEN SUNSET DRIVE AND ROWAN MILLS ROAD, IDENTIFIED AS A PORTION OF PARCEL 195 ON SALISBURY TOWNSHIP TAX MAP 61, FROM RD-A RESIDENTIAL DEVELOPMENT 'A' DISTRICT TO B-6 GENERAL BUSINESS DISTRICT.

(The above ordinance is recorded in full in Ordinance Book No. 18, under Chapter XI - Zoning & Planning, at Page No. 40, and is known as Ordinance No. 2002-20.)

#### **2002-2003 COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM BUDGETS - FIRST READING**

Mr. John Brooks, Community Development Consultant, reviewed with Council the first reading of the 2002-2003 Community Development Block Grant and HOME Program Budgets. Following are participants proposed to be funded for FY2002-2003 as follows:

#### **CDBG**

Acquisition/Rehab/Resale \$218,000.00

Emergency Rehabilitation 60,000.00

Jersey City Community Center 75,000.00

#### Public Services

Rowan Helping Ministries \$25,000.00

Family Crisis Council 17,000.00

Rowan Community Care Clinic 10,000.00

Salisbury Youth Employment 10,000.00

Community Youth Garden 5,000.00

\$ 67,000.00

Program Administration \$105,000.00

Total CDBG Funds \$525,000.00

#### **HOME**

Acquisition/Resale \$ 35,200.00

Housing Rehabilitation 20,000.00

Homeownership Assistance 60,000.00



Program Administration 10,800.00

Total HOME Funds \$126,000.00

Total Community Development Funds \$651,000.00

#### **SOURCES OF INCOME**

CDBG \$375,000.00

Program Income 150,000.00

HOME 126,000.00

Total \$651,000.00

Thereupon, Mr. Kennedy **moved** to approve the first reading. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Kluttz voted AYE. (5-0)

#### **ALLEY CLOSING - 100 BLOCK OF WEST KERR STREET**

(a) Mr. Dan Mikkelson, City Engineer, showed Council overheads of the location of the alley considered for closing in the 100 block of West Kerr Street. This area has always been used for vehicular access although it wasn't necessarily limited to the 8 foot wide strip, (there was a common area that received business access) he noted. Mr. Mikkelson reviewed with Council the process for closing an alley. It is regulated by state statutes; a public hearing must be held by Council; and as a result of the public hearing must be able to make the following two findings: (1) closing the alley would not be contrary to the public interest, and (2) that no individual shall be deprived of "reasonable means of ingress or egress to his property." Mr. Mikkelson said City staff thinks the first finding will be met. Mr. Mikkelson noted what is reasonable and what makes Council comfortable are not well defined by the statutes. This is left to City Council's discretion and in most cases there is not much argument about it, he said. In this particular case, the petitioner, Rowan County, has been having ongoing conversations with two of the adjacent property owners, Mr. Mikkelson said. In the past, these two property owners have had access to this alley. The two property owners have some concerns. Rowan County owns property on both sides of the alley, and they have submitted to City Council and the Historic Preservation Commission, a site plan showing a parking lot to be developed on that entire property. The site plan has been approved contingent upon the alley closing, Mr. Mikkelson noted. It is the County's intention to develop that parking lot as approved, Mr. Mikkelson told Council. However, if the parking lot remains as it is today, it would force Rowan County to redesign and they would not be able to install the parking lot as it has currently been approved. They would have to redesign it and the lines of the alley would be treated as property. Our zoning ordinance would require landscape and setback requirements because of the property lines, he said. If the alley gets closed, the existing design could continue unchanged.

(b) Mayor Kluttz convened a public hearing, after due notice and advertisement thereof, on the proposed closing of an alley in the 100 block of West Kerr Street.

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

Mr. Steve Blount, Chairman of the Rowan County Commissioners, reminded Council of the parking problems in the North Main Street area, especially around the Justice Center, are things of legend. The County is trying to solve those problems by creating a parking lot, he said. They have worked through what they feel are fair and reasonable efforts to accommodate everyone that is affected by this alley closing, according to Mr. Blount. Copies of the proposed agreement have been given to the City for review, he advised. The County thinks this is a good thing for the people of Salisbury and Rowan County and hope Council will agree that this alley can be closed, concluded Mr. Blount.

Mr. John Holshouser, Attorney representing Rowan County, told Council he thought this was going to be pretty much a nice thing for everybody, and still believes it is. When this alleyway was created some 100 years ago, it was a narrow 8 foot alley with a little turnaround area, he said. Unfortunately, Mr. Holshouser noted, there is a power pole which sits in the center of the alley and the survey shows that. If the alley were left open today and defined as a right of way for the people who have the back lots, they couldn't use it, and they've never used it because they've always gone in the vacant area to the back, according to Mr. Holshouser. It has always been the County's intention to assure access for Mr. & Mrs. Weinhold, George Hundley, and Darrell Hancock, Mr. Holshouser told Council. Mr. Holshouser said he had drafted an agreement that gives the property owners blanket access anywhere over the County parking lot they wanted to travel. It's in recordable form; their access is guaranteed; and they (the County) basically wanted it to work, he stated. Mr. Holshouser said he is still confused as to why it is not working. He expressed that hopefully City Council will give this consideration, and ended by saying he believes Rowan County intends to do all the right thing.

Those speaking **against** the above proposal were:

Mr. George Hundley, 1383 East Colonial Drive, told Council that there are four taxpayers who own property on that alley and he is one of those four. All four are here today in opposition to this. You've heard Mr. Blount and Mr. Holshouser talk about what a benefit this is and paint them as obstructionist. He noted that they have probably contacted some of the Council members. Mr. Hundley noted that as a neighbor of the County, he has yet to hear from a member of the County Commission. None of them have been a good neighbor on this, he said. Mr. Hundley said he is here as a property owner and not as an attorney. He said he is angry because the County has given them a proposal that says blanket access over any of this until they need where they are going and then we will find another place. Trust us. That is not a legally enforceable easement. The courts will not enforce it. They would be responsible if the County comes in later and says "No, we don't want you to travel over that, we want to build a parking garage", which they have said publicly is ultimately what they want to do there. The County wants to obstruct that alley. They are telling us to trust them, why should we trust them? He said the County has approached this alley with all the tact and grace and diplomacy of an 800 lb. gorilla. The County came out there when they thought that they did not have to recognize our rights and started bulldozing. Mr. Hundley said he had to clear the alley himself and indicated that they have always used that alley, but may have been slightly off to the side in accommodation to their neighbors. Mr. Hundley said ten years ago he and Darrell Hancock purchased the building, moving 50 yards across the street, because that was a prime piece of downtown office space, the best, in their opinion, location partly because of their access on Main Street, largely because of the direct access to the County building, for law offices. Mr. Hundley and his employees have used this alley everyday; they are dependent on the alley and it is critical to their purchase of the property and use of the property, he indicated. He stressed he is angry because the County Commissioners have not come and talked with him, acted as if they had no right to the alley until they asserted their right in the alley, and consistently from day one they have treated them with absolute contempt. The County has not established what they needed to establish to close the alley. Mr. Hundley said they have told the County that they wanted a legally defined access, a metes and bounds access that the courts say they can defend in court the next time they act like an 800 lb. gorilla. Mr. Hundley said, "You do that; we'll join in the petition, but they haven't done it."

Mr. Darrell Hancock, 416 West Horah Street, said he practices law with Mr. George Hundley and is co-owner of a building which is served by the alley. He told Council that he does not feel that the proposed closing meets the legal requirements for the State of North Carolina. Mr. Hancock said he has practiced law for 24 years and his legal opinion counts for something. Mr. Hancock asked Council to request City Attorney Rivers Lawther opinion of the document. Mr. Hancock said while he was on City Council, he did not think Council considered alley closings where all the petitioners did not join in. It has always been a harmonious situation for the benefit of everyone, he stated. This is not the case here, he said, and he endorses everything Mr. Hundley has said. Mr. Hancock asked Council to consider their rights as taxpayers to get to their building and continue to use the alley until the County comes forward with a metes and bounds description so they will know how they are to get to their building with the alley closed.

Mr. Don Weinhold, 701 S. Fulton Street, told Council one thing he is concerned about is we all feel like we know where this is going. It eventually will be a high rise parking area, he said. Until that time, they give us access through the area that will be available, marked off into parking spaces, he stated. The Framing Gallery that is using the alley has trucks delivering to them, he told Council. We don't have 18 wheelers coming to the back of the store but every one of them are bigger-pretty good size. Mr. Weinhold expressed concern that he can't see how a fair size truck can enter onto those marked off areas with cars parked there, can zigzag to get to 320, 318, and 316 N. Main Street. If there is a fender-bender involved due to this alley being closed, who is responsible for it, he wanted to know. He said he is concerned because there is delivery to the back of the building. Mr. Weinhold asked Council to consider this. Mr. Weinhold stated he has not seen the drawings Mr. Deal has referred to. He said there is always the possibility of an accident when there could be an alleyway directly to the back of the building.

When those opposed completed their statements, Mayor Klutz recognized Mr. Ken Deal who wanted to make several comments concerning this matter.

Mr. Ken Deal, employee with Rowan County, told Council he doesn't want to get into an argument with his neighbors, but there has been a meeting and these issues have been discussed to some extent. The parking lot drawings show a straight entrance that is better than what they have got now to the back of his property. The County intentionally lost 3-4 parking places to give the neighbors access to their property which is much wider than the 8 feet they have now, he stated. Mr. Deal noted he does not recall being asked for a specific deeded easement, but thought they gave them better than a specific deeded easement. The plan may be for a high risk parking deck at one time, but if it is, he believes that the Crawford Building would be removed and they would still have access to their property. It would never be the County's intent not to give them access to their property, he said. The County is simply trying to provide the much needed 94 parking spaces downtown. Mr. Deal indicted he has been working on this issue for over a year and it has been a challenge with the many obstacles with the many obstacles presented. The County is certainly willing to give them the easement across there which they feel is extremely liberal, he said.

No one else was present to speak for or against the proposal. Mayor Klutz closed the public hearing.

Mayor Kluttz asked to hear from City Attorney Rivers Lawther. Mr. Lawther noted that Mr. Hancock has practiced law for 24 years and his opinion counts a lot. Anytime he wants to make his presentation to a court, it certainly would be studied, reviewed, and considered, he stated. The property owners still have access on Main Street. If the alley is closed you are closing access they have, and have been using, and you close it completely, Mr. Lawther advised. The finding would have to be that this doesn't unreasonably impair their access to what they have been doing, he stated. The County is working on trying to do something and is obviously not there yet, Mr. Lawther observed. You may want to continue the public hearing until the next meeting, he suggested.

Councilmember Burgin asked Mr. Lawther if he had seen the easement. Mr. Lawther said he had seen the easement and it is basically what they said it is and they can get in until there's a highrise. Councilmember Burgin said he had no question in his mind that we need the parking downtown, especially for the function of the Justice Center. Perhaps a Council Committee could come to some resolution to insure the access across the parking lot, Mr. Burgin suggested. We need to define it in a way that the owners of the property are comfortable and the County can accomplish getting parking spaces that we need. Mayor Pro Tem Woodson agreed with Mr. Burgin.

(c) Mayor Kluttz, with consensus of the Council, appointed Mayor Pro Tem Woodson and Councilmember Burgin to a Council Committee to study and meet with the parties concerned regarding the alley closing in the 100 block of West Kerr Street and report back at the next meeting with a recommendation. Mayor Kluttz said on behalf of the City Council, they would like to see everyone agree before action is taken on this matter.

#### **AUDIT CONTRACT FOR FISCAL YEAR ENDING JUNE 30, 2002**

Mr. Wade Furches, Accounting Manager, made a recommendation to Council for audit services for the current fiscal year ending June 30, 2002. Last year a four-year agreement was awarded to McGladrey & Pullen, LLP, Greensboro, N.C. This is the second year of the four-year agreement. The fee proposed is \$25,700.00 which is in accordance with their proposal submitted last year.

Thereupon, Mr. Burgin made a **motion** to accept the proposal for the contract for \$25,700.00. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Kluttz voted AYE. (5-0)

#### **SIDEWALK AMENITIES PACKAGE**

Mayor Pro Tem Woodson and Councilmember Burgin served on the Council Committee to review the Sidewalk Amenities Package. Mr. Woodson noted they had their second meeting and the SALISBURY POST Publisher was in attendance. Mr. Woodson reported he and Mr. Burgin had agreed to recommend wine shops. The only thing that was changed was the newspaper racks. The committee recommends that the people and vendors keep their newspaper racks painted, free of dirt and grease, and well maintained, which should have nothing to do with First Amendment issues. These racks would be removed if not used in 60 days.

Mayor Pro Tem Woodson also noted that the committee agreed the closing time would be 9:00 p.m. Monday - Friday and 11:00 p.m. on Saturday and Sunday. The downtown merchants were also polled on the time issue before the committee made a decision, Mr. Woodson stated.

The following changes were made in the Sidewalk Amenities Package:

- wine shops - 500 sq. ft. of wine bottles, 400 sq. ft. dedicated, definition of eating establishment met, time of operation to 9:00 p.m. Monday - Friday and to 11:00 p.m. Saturday - Sunday.
- newspaper racks - vendors keep newspaper racks painted, free of dirt and grease,

and well maintained, taken down if not used in 60 days.

Thereupon, Mr. Woodson made a **motion** to pass it (Sidewalk Amenities Package) as written. Mr. Martin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING CHAPTER 22, STREETS AND SIDEWALKS, ARTICLE II, OBSTRUCTIONS AND EXCAVATIONS, OF THE CODE OF THE CITY OF SALISBURY, NORTH CAROLINA, REVISING SECTION 22-42, PLACING GOODS OR MERCHANDISE ON SIDEWALK, AND ESTABLISHING NEW SECTIONS 22-46, SIDEWALK DINING, 22-47 SIDEWALK FURNITURE NOT PLACED BY CITY, 22-48 NEWSPAPER VENDING RACKS, AND 22-49 SIDEWALK ENTERTAINMENT.

(The above ordinance is recorded in full in Ordinance Book No. 18, under Chapter XV - Miscellaneous, at Page Nos. 31-38, and is known as Ordinance No. 2002-21.)

## **BOARDS AND COMMISSIONS**

### Community Appearance Commission

Upon motion of Mr. Burgin, seconded by Mr. Kennedy, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following reappointments and appointments were made to the Community Appearance Commission:

Mr. James Donaldson (reappointment)

Mr. Preston Sale ( reappointment)

Mr. Bruce Wilson (reappointment)

Mr. Johnny Safrit (appointment)

### Historic Preservation Commission

Upon motion of Mr. Woodson, seconded by Mr. Kennedy, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following appointment was made to the Historic Preservation Commission:

Mr. Gray Stout (appointment)

Upon motion of Mr. Kennedy, seconded by Mr. Woodson, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following appointment was made to the Historic Preservation Commission:

Mr. Dick Huffman (appointment)

Upon motion of Mr. Burgin, seconded by Mr. Woodson, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following reappointments were made to the Historic Preservation Commission:

Ms. Jo Ann Campbell (reappointment)

Mr. Charles Paul (reappointment)

### Human Relations Council

Upon motion of Mr. Woodson, seconded by Mr. Martin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following appointment was made to the Human Relations Council:

Ms. Alvena C. Heggins (appointment)

Upon motion of Mr. Kennedy, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following appointment was made to the Human Relations Council:

Mr. Chris Chaney (appointment)

### Hurley Park Advisory Board

Upon motion of Mr. Kennedy, seconded by Mr. Woodson, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following reappointments were made to the Hurley Park Advisory Board:

Ms. Lib Taylor (reappointment)

Ms. Elaine China (reappointment)

Ms. Rosalie Laughlin (reappointment)

### Parks & Recreation Advisory Board

Upon motion of Mr. Kennedy, seconded by Mr. Woodson, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following reappointment was made to the Parks & Recreation Advisory Board:

Ms. Sal Alfieri (reappointment)

Upon motion of Mr. Woodson, seconded by Mr. Martin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following appointment was made to the Parks & Recreation Advisory Board:

Dr. Wayne Wooten (appointment)

Upon motion of Mr. Burgin, seconded by Mr. Kennedy, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz, the following appointment was made to the Parks & Recreation Advisory Board:

Ms. Amy Ritchie (appointment)

### Greenway Committee

Upon motion of Mr. Martin, seconded by Mr. Woodson, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting

AYE, the following reappointments were made to the Greenway Committee:

Ms. Amy Smith (reappointment)

Mr. Robert Allen (reappointment)

Dr. John Wear, Jr. (reappointment)

#### Planning Board

Upon motion of Mr. Kennedy, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following reappointments were made to the Planning Board:

Mr. Ken Mowery (reappointment)

Mr. Sean Reid (reappointment)

Upon motion of Mr. Kennedy, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following appointments were made to the Planning Board:

Ms. Sandy Reitz (appointment)

Rev. Jerry Wilkes (appointment)

#### Tree Board

Upon motion of Mr. Burgin, seconded by Mr. Kennedy, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following appointment was made to the Tree Board:

Ms. Della Carlton (appointment)

Upon motion of Mr. Kennedy, seconded by Mr. Martin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the following reappointments were made to the Tree Board:

Ms. Ruby Miller (reappointment)

Ms. Liz Goodman (reappointment)

Mr. Percy Smith (reappointment)

### **REPORT FROM CITY MANAGER**

#### (a) Planning Board Recommendations

Council received the Planning Board recommendations as information only.

#### (b) Alley Closing - 100 Block of East 15<sup>th</sup> Street

City Manager Treme informed Council that a petition was received after the Agenda went out to close an alley in the 100 Block of East 15<sup>th</sup> Street. The only action to be taken today is for Council to receive the request and adopt a resolution setting a public hearing for April 16, 2002, he stated.

Thereupon, Mr. Woodson made a **motion** to adopt the resolution (and set the public hearing for April 16, 2002), from Manager Treme. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0)

#### RESOLUTION PERTAINING TO THE PROPOSED CLOSING OF AN ALLEY IN THE 100 BLOCK OF EAST 15<sup>TH</sup> STREET.

(The above resolution is recorded in full in Resolution Book No. 10, under Chapter XII - Miscellaneous, at Page No. 145, and is known as Resolution No. 2002-10.)

#### (c) Revenue Bonds

Mr. John Sofley, Finance Director, reminded Council that at the last meeting, a resolution was adopted authorizing staff to proceed and named authorized representatives and other findings. Since that meeting, the Local Government Commission (LGC) has informed the City that LGC has a new rule that they also want Salisbury to implement. The new rule is that with revenue bonds they want the Council to actually designate a maximum amount that the City will issue and a maximum interest rate the bond issue will be sold at, Mr. Sofley stated. This is a new requirement that had not been in place and LGC failed to share this with the City or our bond council. Staff recommends approval of a resolution setting a maximum amount to be issued in the amount of \$24,500,000.00 and a true interest cost not to exceed 5.8%.

Councilmember Burgin expressed concern about getting locked into the "not to exceed 5.8%" interest rate.

Thereupon, Mr. Burgin made a **motion** and **read:** RESOLUTION SUPPLEMENTING FUNDING RESOLUTION OF MARCH 5, 2002 FINDINGS. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0)

#### RESOLUTION SUPPLEMENTING FUNDING RESOLUTION OF MARCH 5, 2002 FINDINGS.

(The above resolution is recorded in full in Resolution Book No. 10, under Chapter XII - Miscellaneous, at Page No. 146, and is know as Resolution No. 2002-11.)

#### (d) South Rowan Water Line Project

Mr. John Sofley, Finance Director, reminded Council that on the South Rowan Water Line Project, initially the City was going to finance this with the revenue bond issue. As this was discussed with Rowan County, they chose to finance the project themselves, he noted. Mr. Sofley presented to Council an Addendum 2 Memorandum of Understanding that revises the MOU to reflect the fact that Rowan County will, in fact, be financing the lines and pump stations that are going to be constructed and they will retain ownership for ten (10) years as a lien because they are having a bank finance that. At the end of the ten years, the City will retain ownership of it. In the meantime, the City gets to own, operate and gain the revenue off that line, he stated. This is a requirement that Rowan County has to have to complete their financing. Mr. Treme agreed that he does not have a problem with this plan.

Thereupon, Mr. Burgin made a **motion** that we adopt Addendum 2 to the South Rowan Water Extension Project Memorandum of Understanding. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE.

Councilmember Kennedy informed Council that he attended the National League of Cities meeting in Washington, D.C. recently. Some of the issues discussed were:

- protecting the homeland
- Defend America, a Department of Defense program
- Community Development Block Grant Funding - stressed asking Congress not to cut this funding
- Federal Stormwater Management mandates - asked to provide funding to cities - update flood maps
- Supreme Court decisions and how they impact our cities

### **INTERIM LAND MANAGEMENT & DEVELOPMENT DIRECTOR**

City Manager Treme announced that he has appointed Dan Mikkelson, our City Engineer, the Interim Land Management & Development Director. Mr. Larry Chilton's last day was Friday, March 15, 2002. Mayor Klutz expressed appreciation to Mr. Chilton for what he has done for the City.

### **ADJOURNMENT**

Upon **motion** of Mr. Woodson, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the meeting was adjourned at 6:20 p.m.

Mayor

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City Clerk

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