

Salisbury, North Carolina  
November 17, 2009

## **REGULAR MEETING**

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

**ABSENT:** None

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

## **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.

## **RECOGNITION – COLONEL PAUL BARBEE AND THE AIR ARMY GUARD UNIT 449**

Mayor Kluttz recognized Colonel Paul Barbee and Command Sergeant Major Neal Purvis and the National Guard 449<sup>th</sup> Theater Aviation Brigade for returning from Iraq where they participated in Operation Iraqi Freedom and the global war on terrorism. She pointed out that there are three local military units based in Salisbury and this is the third group that has been deployed and returned safely. Mayor Kluttz presented Colonel Barbee and Commander Sergeant Major Purvis a Certificate of Appreciation and thanked the Brigade for their service to the country.

Colonel Barbee described the duties of the 449<sup>th</sup> Theater Aviation Brigade in Iraq and gladly reported that during their deployment the unit did not experience any loss of life. He thanked the Mayor, Council and the citizens of Salisbury for supporting their family members while their unit was deployed. He added that it makes a big difference to know that the soldiers have the support of people back home.

### **RECOGNITION – SALISBURY HIGH SCHOOL GIRLS TENNIS TEAM**

Mayor Kluttz recognized the Salisbury High School Girls Tennis Team for winning the North Carolina 2A State Championship and Ms. Hannah Lebowitz, for winning the North Carolina 2A Singles Championship. Mayor Kluttz read a Proclamation proclaiming November 17, 2009 as Salisbury High School Lady Hornets Tennis Day in Salisbury, North Carolina. She presented the framed Proclamation to the team and extended congratulations to the team.

Mayor Kluttz then presented Ms. Lebowitz with a framed Proclamation for her accomplishments.

Mayor Kluttz expressed pride for Salisbury High School representing the City so well throughout the State.

### **CONSENT AGENDA**

(a) Approval of Minutes

Approve Minutes of the Regular meetings of November 3, 2009.

Thereupon, Mr. Kennedy made a **motion** to approve the Consent Agenda as presented. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, and Ms. Kluttz voted AYE. (5-0)

### **REPORT – NAMING PARK LOCATED AT 223 NORTH MCCOY ROAD**

Ms. Gail Elder White, Parks and Recreation Director, Mr. Bill Safrit, neighborhood representative and Mr. Stephen Brown, Parks and Recreation Maintenance Manager, reported on the community meeting regarding the naming of a new park located at 223 North McCoy Road. Ms. Elder White indicated that 35 residents of the community signed a petition in favor of naming the park the Foil-Tatum Park.

Thereupon, Mr. Lewis made a **motion** to name the park located at 223 North McCoy Road the Foil-Tatum Park. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

## **MASTER PLAN – PARK LOCATED AT 223 NORTH MCCOY ROAD**

Ms. Gail Elder White, Parks and Recreation Director, Mr. Bill Safrit, neighborhood representative and Mr. Stephen Brown, Parks and Recreation Maintenance Manager, reviewed the Foil-Tatum Park Master Plan. Ms. Eder White pointed out that the property is 3.6 acres located at 223 North McCoy Road and is within the Milford Knolls and Meadowbrook communities. She added that it will be the largest neighborhood park in the system. She noted that the donation for the park was accepted by the City from Mr. Walter Tatum October 21, 2008.

Ms. Elder White displayed photographs of the property as it currently exists. She indicated that the property will be a good opportunity to create a very nice park for this neighborhood. She pointed out that neighborhood planning workshops were held at Milford Hills United Methodist Church on September 24, 2009, October 22, 2009 and November 5, 2009 and she displayed photographs of the community members at the workshops.

Ms. Elder White indicated that the major components the neighborhood wanted for the park included a walking trail, gazebo, open areas and green space, a play structure, swings and outdoor fitness equipment. She stated that the final Master Plan was presented at a neighborhood meeting on November 5, 2009. She pointed out that the final Plan was created by Mr. Stephen Brown who is a landscape architect.

Mr. Safrit thanked City Council and staff for working with the community on the park plans. He noted that the community does not have sidewalks and the park will be a wonderful place for the citizens to walk and feel safe.

Ms. Elder White stated that the City does have a State of North Carolina waiver for the Park and Recreation Trust Fund Grant and will be able to use the value of the land, which is approximately \$75,000, as the match for the development grant application.

Thereupon, Mr. Burgin made a **motion** to approve the Master Plan for the Foil-Tatum Park located at 223 North McCoy Road. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

Mayor Kluttz thanked the residents in the neighborhood for participating and thanked staff for their work.

## **ORDINANCE AMENDING CITY CODE – NUISANCES**

Mr. Joe Morris, Planning and Community Services Director, and Mr. Chris Branham, Code Enforcement Supervisor, presented Council an Ordinance to amend the City Code regarding nuisance fees. Mr. Morris stated that the request for amendment was presented to City Council at its November 3, 2009 meeting and a public hearing was scheduled for today. He pointed out that questions arose regarding the nuisance abatement procedures and oversized commercial vehicles.

Mr. Branham stated that the first question regarded the nuisance abatement fees and fee schedule. He reviewed the City Code and examples of nuisance abatements:

- Excerpt from City Code of Ordinances
  - Appendix: FEES, Section 7.08. Administration.
  - The following schedules and fees are hereby adopted and all references to these fees in the City Code of Ordinances are amended to reflect these new schedules and fees as appropriate:
    - Nuisance abatement. Mobilization fee \$125 plus \$50 for every hour or portion thereof
    - Removal of trash, overgrowth, trees, household items on the outside, demolitions or securing of buildings or any other nuisances identified by the Code of Ordinances. Mobilization fee \$200 plus \$100 for every hour or portion thereof, plus associated landfill fees
    - Second violation within 12 months by the same owner at the same location, not less than \$500
  
- Example of Nuisance Abatement
  - Owner or occupant sent notice letter to cut grass within 15 days
  - Re-visit site and property not abated by owner or occupant, City calls contractor to abate the next day
  - Contractor mows grass at \$75 per hour
  - City sends owner or occupant a bill for one hour of nuisance abatement of \$125 for the mobilization fee plus \$50 for one hour

Mr. Branham explained that if the City is required to abate the property again within a 12-month period an abatement fee of \$175 plus \$500 for the second violation is charged to the owner or occupant.

Mr. Branham stated that the second question regarded the City Code of Ordinance in relation to oversized commercial vehicles. He reviewed the Code regarding this matter:

- Excerpt from the City Code of Ordinances
  - Section 13-161. Parking of oversized vehicles, trailers.
    - “It shall be unlawful for any person to park any oversized vehicle or trailer on any street within the corporate limits of the City at any time except when engaged in loading and unloading, or when such vehicle is being used for emergency services or for temporary use at construction sites during the period of active construction.”
    - Oversized vehicle means any private passenger-carrying vehicle which is at least eighty inches in width or at least thirty feet in length
  - Land Development Ordinance, Section 10-2E
    - “Parking for RV’s, Trailers, Commercial Vehicles, and Boats: Parking for Recreational Vehicles, Trailers, Oversized Commercial

Vehicles and boats shall be restricted to the rear yards in the GR, UR, HR, and TND districts.”

- Oversized Commercial Vehicles: Oversized commercial vehicles shall include any vehicles (except pick-up trucks) or trailer that bears a commercial license plate; and,
  - Has more than two axles or four tires; or
  - Is designed to carry more than 15 passengers, including the driver; or
  - Weighs more than 10,000 pounds with or without load; or
  - Is more than nine feet in height; or
  - Is more than 22 feet in length
  - This definition includes, but is not limited to semi-trailers, tow trucks, buses, limousines, tractors, construction equipment, delivery vans, or similar vehicles.

Mr. Branham reviewed the violation procedure of the Land Development Ordinance regarding oversized commercial vehicles:

- 17.3 Penalties for Violation
  - Civil Penalty: In accordance with Section 8.5.1 of the General Code of Ordinances of the City of Salisbury the Administrator may, in addition to other remedies found in this Chapter, issue civil penalties.
    - Penalties for Violation: Any person determined to be in violation of any of the provisions of this Ordinance shall receive a civil action for a penalty of \$50 for each violation. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by a code enforcement officer. Such notification shall be either through a personal visit or by certified mail. If uncorrected after the notification, a code enforcement officer who observed the violation shall issue a citation requiring the violator to pay the above-stated penalty to the city revenue department. The owner, tenant, or occupant of any building or land or part thereof or any person who participates in or acts in concert, assists, directs, creates, or maintains any condition found to be in a violation shall be subject to the penalties and remedies herein provided.
    - Uncorrected Violations:
      - a. When a code enforcement officer finds that a previous violation has not been corrected, he shall issue another citation requiring payment of an additional civil penalty in the amount of \$100
      - b. After the second citation has been issued, no further civil citation shall be issued to the same person for the same continuing violation at the same location unless and until an additional written notice is delivered to the offender by personal service, registered mail or posting of the notice at the location of the violation if reasonable attempts to serve the notice are unsuccessful. The notice shall set forth the nature of the violation and order that corrective action be taken. The notice shall state that failure to

correct the violation within the time specified in the notice will result in the assessment of additional civil penalties and other enforcement action. If after the specified time period has expired and corrective action has not been completed, the civil penalty shall automatically activate in the amount of \$250 per day and shall continue to be accrued at the rate of \$250 per day until the violation is corrected. The code enforcement officer shall notify the violator by personal service or certified mail of the day of the civil penalty began to accrue and shall state that the penalty will continue to accrue for each day the violation remains uncorrected. Any enforcement action for injunctive relief by the city shall not stay or abate the accruing of the civil penalty, and the penalty shall continue to accrue daily until the violation is finally corrected either voluntarily or by the city as a result of a court order.

Mr. Morris noted that once an owner has been notified that the vehicle is in violation, if the owner moves the vehicle, it restarts the process before a fine can be given. He pointed out that this is a weakness in the Ordinance and added that he is unsure of how to proceed in these cases and staff may need to research how other communities address this issue. He stated that he will report back to Council and may at some point need a Council Committee to look into the issue. Mr. Morris reviewed the Chronic Violators Ordinance:

- Nuisance Abatement Enabling Legislation
  - Session Law 2009 – 19 Vegetative Nuisances
  - Session Law 2009 – 287
  - Defines a “chronic violator” as someone who has been notified for code violations three or more times during the past calendar year
  - May through September, 2009 – Salisbury notified 63 properties three or more times
  - May through September, 2009 – 114 properties were given two notices of two or more violations

Mr. Morris stated that the City is required to make at least three visits to a nuisance site which includes the initial visit, the follow-up compliance visit and the follow-up after abatement visit. He noted that this requires a lot of staff time to visit these properties. He reviewed the proposed new Ordinance:

- New Ordinance Shall Read:
  - Section 14-9. Chronic Violators
    - a. A chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice to abate at least three times under any provision of this Nuisances ordinance
    - b. Upon determination of a chronic violator and where a property is found to be in violation of this Nuisances ordinance, the city shall, without further notice in the calendar year in which the notice to abate is given, take action to remedy the violation and the expense of such action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent via certified mail

Mr. Morris requested Council conduct a public hearing and consider adopting the Ordinance.

Councilman Kennedy asked if collecting abatement fees as unpaid taxes is instituted by State Statutes. Mr. Rivers Lawther, City Attorney, stated that a nuisance abatement is filed with the county Tax Collector and is collected with ad valorem taxes as prescribed by State Statutes.

Mayor Kluttz convened a public hearing, after due notice and advertisement thereof, on the Ordinance amending the City Code – Nuisances in regard to Chronic Violators-Nuisances.

Ms. Greta Conner, Chairperson of the Sedgefield Homeowners Association and Sedgefield Neighborhood Watch, stated that she would like to address the oversize vehicle ordinance. She pointed out that the Sedgefield Acres neighborhood is plagued with this problem. She thanked Mr. Branham for his help, but the problem still remains. She indicated that oversize vehicle violators devalue property, creates an appearance problem and violate noise ordinances when the motor is allowed to run at all hours of the day and night. She asked Council to look at this problem and take immediate action.

Mr. Clyde Overcash, 217 South Lee Street, thanked Mr. Branham for the new policies which he feels are working. He added that he has received several letters himself and has asked Mr. Branham to rewrite the letters and Mr. Branham has accommodated his requests. Mr. Overcash stated that he feels the only thing that can change the problems is the interpretation and enforcement of the Ordinance. He indicated that he has received letters but has never been personally contacted by Code Enforcement staff. He suggested that if chronic violators do not have \$75 to pay for fines they will not have \$575 either and he does not think this will make a difference. He indicated that the City needs to address slumlords or drug houses.

Mr. William Maclean, 1712 Darby Place in Olde Salisbury subdivision, stated that his newly-created homeowners association is interested in being protected by nuisance laws. He noted that if the City takes prompt action it will make those who are a detriment to the community take a second look and will save taxpayer dollars.

Mr. Dan Wagoner, 321 Camelot Drive, asked what the Ordinance will do to property owners who rent since the Ordinance addresses the owner, and many times it is the renter who is the violator and not the property owner.

There being no one else present to speak, Mayor Kluttz closed the public hearing.

Mr. Morris, in response to Mr. Wagoner's question, stated that notification is based on tax records and fines are sent to property owners. He added that the current Ordinance does not have the methodology for dealing with tenants. He indicated that staff will investigate the legality of this through state laws.

Mr. Kennedy asked how much time is given before additional steps are taken if

the violator refuses to obey the Ordinance three times in one year. Mr. Branham stated that the City will send the property owner an initial letter at the first of the year notifying them of possible further nuisance abatements. If the property owner does not comply, the City will continue to impose liens and back taxes on the property that will have to be paid at some point.

Mr. Woodson stated that he feels the City should be fair to everyone and feels that an additional \$500 fine for the second offense is high.

Councilman Lewis stated that the additional \$500 fine for the second offense is in the current Ordinance and is not covered under the requested change to the Ordinance. Mr. Woodson asked if the fine has ever been enforced. Mr. Branham indicated that the fine has been enforced and has been paid in the past.

Mr. Lewis indicated that the revision to the Ordinance simply removes the step of notification prior to each abatement visit. He explained that a letter is sent to property owners notifying them that they have had three occurrences in the past year and they are on notice that if the violations continue the City will abate and the property owners will be required to pay the fine.

Mr. Branham explained that a benefit to the residents of Salisbury is that property owners will be aware of the time frame it takes to send a letter indicating a 15 day deadline and neighbors will not have to wait so long in having the problems resolved.

Mr. Lewis stated that the Neighborhood Leaders Alliance and Community Appearance Commission have been talking about these problems for years and neighborhoods are getting tired of dealing with these violations. He added that the citizens are realizing things are getting better and he contributes that to Mr. Branham and his staff.

Mr. Kennedy stated that he understands the vegetation violation but there are neighborhoods that are concerned with oversized vehicles. He noted that he would like staff to address these issues.

Councilman Burgin stated that he appreciates the position of property owners who rent, but there are legal recourses for property owners to deal with tenants who are not responsible tenants.

Thereupon, Mr. Woodson made a **motion** to adopt an Ordinance amending the Salisbury City Code in the City of Salisbury, North Carolina, specifically Chapter 14 Uses, Article 1, by adding Section 14-9 Chronic Violators. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

Mr. Kennedy thanked the neighbors for addressing other nuisances and indicated that the City will deal with these.

**AN ORDINANCE AMENDING THE SALISBURY CITY CODE OF THE CITY OF SALISBURY, NORTH CAROLINA, SPECIFICALLY CHAPTER 14 (NUISANCES)**



ARTICLE I (IN GENERAL), BY ADDING SECTION 14-9, CHRONIC VIOLATORS.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page No. 170, and is known as Ordinance 2009-60.)

**AWARD CONTRACT – OSS/BSS SOFTWARE FOR FTTH**

Broadband Services Director Michael Crowell indicated that the next three items to be considered by Council are all components of Fiber to the Home and he explained how each part fits into the system. He explained that the various components that create the FTTH system include the core network, remote video acquisition, local video acquisition, video processing, IPTV (middleware), Internet Service Provider (ISP) services, back office, management systems, voice, internet, and the access network.

Mr. Crowell noted that the back office includes the Operational System Support/Billing System Support (OSS/BSS) function. He noted that this is used to control the system and bill for services.

Mr. Crowell indicated that the first piece of the system was purchased last year and was the Enghouse Networks software. He stated following that a contract was awarded to Peregrine Systems for installation of the satellite dish and remote antennas, adding that Peregrine Systems will be responsible for building the head-end.

Mr. Crowell explained that before Council today will be three contracts, one for the middleware, core routing and firewalls, a second contract for the OSS/BSS software and then the third contract for the Gigabyte Passive Optical Network (GPON) equipment, which includes the Optical Line Terminal/Optical Network Terminal (OLT/ONT). He noted that the City had previously purchased head-end equipment from Windstream and much of this equipment will be used along with the equipment included in the contracts to be awarded today. Mr. Crowell stated that after these contracts are awarded today the remaining components will be voice, ISP services, internet transport and the home gateway boxes.

Purchasing Manager Dewey Peck indicated that the Resolution before Council is to approve a sole-source purchase from ETI Software Solutions for OSS/BSS software. He explained that General Statutes allow local governments to purchase from a sole source when a needed product is available from only one source. He noted that ETI Software Solutions is the only company that provides a software package that will integrate with the City's existing software and the new software package from Enghouse Networks. Mr. Peck stated that ETI Software Solutions has offered the proposed package for \$278,680 and he requested Council allow this purchase as a sole-source purchase.

Councilman Burgin asked if this purchase was a onetime purchase or an annual contract. Mr. Peck responded that this is a purchase contract and added that there will be maintenance associated with it. Mr. Crowell stated that the annual maintenance cost is 20% of the purchase price the first year and 25% of the purchase price for the following years. He noted that the maintenance contract also provides for a monthly video on demand service that the company will provide.

Councilman Kennedy noted that the groundbreaking for the new Customer Service Center was held today and he thinks this is an exciting time for the City.

Thereupon, Mr. Kennedy made a **motion** to adopt a Resolution authorizing the purchase of Operational Support Systems/Business Support Systems software for the City's Fiber Optic Network Program. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

**RESOLUTION AUTHORIZING THE PURCHASE OF OPERATIONAL SUPPORT SYSTEMS/BUSINESS SUPPORT SYSTEMS SOFTWARE FOR THE CITY'S FIBER OPTIC NETWORK PROGRAM.**

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No.47, and is known as Resolution 2009-31.)

**AWARD CONTRACT – IPTV SOFTWARE AND EQUIPMENT FOR FTTH**

Mr. Crowell introduced Mr. Oran Cassem, Vice-President of Television Solutions for Ericsson and noted that Ericsson is who staff proposes for the middleware and core routing. He noted that Salisbury will be the first installation of Ericsson middleware in North America, but staff has been assured that the company will stand behind its service. Mr. Crowell stated that Mr. Cassem has traveled to Salisbury from Stockholm, Sweden to address Council.

Mr. Cassem stated that he has traveled to Salisbury in order to assess the City's needs and expectations for the equipment and to make a commitment to Council that Ericsson will deliver on what it has proposed. He noted that the system has been demonstrated and he is very confident that what has been requested can be delivered. Mr. Cassem stated that Ericsson would be honored to work with the City of Salisbury and is eager to make this project a success.

Mayor Kluttz noted that each Council member had an opportunity earlier today to individually view the equipment demonstration and she is excited for citizens to see what Council has been so excited about.

Purchasing Manager Dewey Peck noted that bids were received from four vendors. He stated that the contract covers the IPTV middleware software, supporting equipment, detailed engineering and implementation, training, support and ongoing maintenance of the system. Mr. Peck indicated that staff has reviewed the bids and requests that the bid be awarded to Ericsson, who was the second lowest bidder for \$3,926,956.62.

Councilman Kennedy asked why the lowest bid was not selected. Mr. Jerry Sharp, Atlantic Engineering Group (AEG), explained that the bids were evaluated using a weighted analysis. He stated that 60% of the analysis is based on price, 20% is based on architecture and feature functionality, and the last 20% is based on industry experience

and customer references. He indicated that the four bids were evaluated and scored and based on the weighted scoring analysis, Ericsson was the top bid.

Councilman Burgin asked if this price is consistent with the business plan for Fiber to the Home. Mr. Crowell responded that this contract is within budget.

Councilman Lewis commented that a different company's equipment was demonstrated early in the FTTH process and he feels that after viewing the Ericsson demonstration today he thinks the Ericsson system represents the future of where the fiber industry is moving at a cost that is \$1 million less than the initial provider offered.

Thereupon, Mr. Kennedy made a **motion** to award a contract in the amount of \$3,926,956.62 to Ericsson Federal Inc. for the purchase of IPTV equipment and services for the City's Fiber Optic Network Program. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

### **AWARD CONTRACT – GPON EQUIPMENT FOR FTTH**

Purchasing Manager Dewey Peck addressed Council regarding the purchase of the equipment for the City's Fiber to the Home network. He noted that bids were opened October 27, 2009 and a great deal of evaluation was given to the bids received for the Gigabyte Passive Optic Network (GPON). He noted that this equipment allows for the connection of 5,000 residential and business customers and staff recommends the contract be awarded to Zhone.

Councilman Kennedy commented that the equipment allows for 5,000 residents and businesses and asked how many potential residents and business customers were in the City. Mr. Crowell responded that there are approximately 10,000 residents and 2,000 businesses in the City. He stated that the business model was based on 28% which equaled approximately 3,000 customers and he believes the City will be more successful than the business model allowed. He added that all of the plans and Request for Proposals have been based on a 5,000 customer base after three years.

Mr. Jerry Shelby, Atlantic Engineering Group (AEG) clarified that the contract is success based and money is not spent until customers are added.

Thereupon, Mr. Lewis made a **motion** to award a contract in the amount of \$2,009,705 to Zhone for the purchase of GPON equipment and services for the City's Fiber Optic Network program. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

Mayor Kluttz thanked Mr. Cassem for taking time to personally attend the Council meeting and demonstrating the equipment to each member of Council.

**RESOLUTION – AUTHORIZING DIRECTOR OF BROADBAND SERVICES TO AWARD CONTRACTS FOR THE FIBER TO THE HOME PROGRAM**

Purchasing Manager Dewey Peck addressed Council regarding a Resolution authorizing the Broadband Services Manager to award contracts associated with Fiber to the Home.

Mr. Peck explained that North Carolina General Statutes allow for contracts where the predominant aspect of the contract is a provided service to be qualified as a service contract and be exempt from State bidding requirements. He stated that the process of establishing a broadband fiber optic network requires many small contracts to be negotiated and signed by the Broadband Services Director. He requested Council allow the Broadband Services Manager to sign each of these contracts because he estimates there will be 90-150 and it would create a hindrance to bring each one back to Council. Mr. Peck added that each contract will also have his review.

Councilman Kennedy asked if there was a dollar limitation for the contracts. Mr. Peck responded that the General Statutes allow Council to place any restrictions regarding a dollar amount as it deems appropriate.

Councilman Burgin asked if there was a dollar amount that the majority of contracts would fall below. Broadband Services Director Michael Crowell responded that generally the contracts will be for programming and he does not anticipate any contract being more than \$90,000 annually.

City Manager David Treme stated that staff will supply a list containing the name of each contract, what it is for and the amount to Council. He added that along with Mr. Peck he will also review the contracts. He noted that this process moves very quickly with a great number of contracts, but a listing will be shared with Council.

Mr. Burgin asked if the contracts were all for one year. Mr. Crowell responded that some are three year. Mr. Burgin commented that he would be more comfortable limiting to one year contracts without review because if there is a problem it can be addressed. Mr. Crowell stated that most of the content providers require a three year contract.

Mayor Pro Tem Woodson commented that he feels more comfortable with Mr. Crowell and Mr. Peck reviewing the contracts.

Thereupon, Mr. Woodson made a **motion** to adopt a Resolution granting the Director of Broadband Services the authority to sign and award service contracts. Mr. Kennedy seconded the motion and reiterated that staff should keep Council in the loop. Mr. Lewis stated that Council, as the Board of Directors of the new utility, will be made aware if a contract should rise to the level that needs their attention. Mayor Klutz noted that she is concerned about efficiency and with 80 to 90 contracts it may not be efficient to wait two weeks for Council meetings. Mr. Treme noted that there is the Board of Directors which includes himself, Mr. Crowell and Mr. Sofley and the Board will review

the contracts. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

**RESOLUTION GRANTING THE DIRECTOR OF BROADBAND SERVICES THE AUTHORITY TO SIGN AND AWARD SERVICE CONTRACTS.**

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No. 48, and is known as Resolution 2009-32.)

**AWARD CONTRACT – SALISBURY FIRE DEPARTMENT**

Purchasing Manager Dewey Peck addressed Council regarding the purchase of a new fire truck for the Salisbury Fire Department.

Mr. Peck noted the Resolution before Council and explained that it is a piggy-back Resolution. He stated that the General Statutes allow local governments to purchase from contractors who have contracted to furnish the item in need to any other state or local government unit within the last 12 months. He stated that Sutphen Corporation has a unit available that meets and exceeds the City's specifications. He requested Council adopt a Resolution to allow the purchase as a piggy-back purchase in the amount of \$324,461.

Thereupon, Mr. Burgin made a **motion** to adopt a Resolution authorizing the purchase of a Sutphen Monarch Rescue Pumper for the Salisbury Fire Department. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

**RESOLUTION AUTHORIZING THE PURCHASE OF A SUTPHEN MONARCH RESCUE PUMPER FOR THE SALISBURY FIRE DEPARTMENT.**

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No. 49, and is known as Resolution 2009-33.)

**CLOSE RAILROAD CROSSING – HORAH STREET**

Ms. Wendy Brindle, Traffic Engineer, addressed Council regarding the Horah Street at-grade railroad crossing. Ms. Brindle reviewed the location of the crossing and explained that in 1996 a railroad corridor study was completed which recommended the closing of at-grade rail crossings throughout the City. She stated that since that time nine at-grade crossings have been closed and several streets have been improved to provide safer access.

Ms. Brindle stated that there are three items recommended in the study that have not yet been accomplished and one of those is closing the Horah Street crossing. She noted that in 2006 the North Carolina Department of Transportation (NCDOT) and Norfolk Southern Railroad met with staff to discuss the permanent closure. She stated

that following this they met with First Calvary Church, which is located adjacent to the crossing along with neighbors in the area. She indicated that as a result of this meeting NCDOT hired a consultant to address the concerns and study effects of closing the crossing. Ms. Brindle stated that representatives met with the church on two more occasions and workshops were held for the neighborhood. She explained that as a result of these meetings, NCDOT offered a \$42,000 incentive payment to the City to be paid by Norfolk Southern Railroad. She stated that the Church has requested that these funds be used to improve Lincoln Park and staff recommends this use.

Ms. Brindle indicated that NCDOT also offered to make improvements to the Monroe Street railroad crossing. She stated that by closing the Horah Street crossing and improving the Monroe Street crossing, Norfolk Southern Railroad believes the City will qualify as a quiet zone from Klumac Road to Henderson Street. Ms. Brindle explained that a quiet zone allows train engineers to not have to blow the horn at each crossing as is now required. She clarified that Norfolk Southern cannot give the City the quiet zone designation but they support it and the application to the Federal Rail Administration (FRA) and believe it will be approved.

Ms. Brindle indicated that action by Council today would be to start the street closing process and to set a public hearing for December 15, 2009 when NCDOT and Norfolk Southern Railroad representatives would be present to answer any questions.

Thereupon, Mr. Kennedy made a **motion** to adopt a Resolution pertaining to the proposed closing of the Horah Street at-grade railroad crossing and setting a public hearing for December 15, 2009. Mr. Woodson seconded the motion. Mr. Burgin indicated he would vote against this motion because many years ago as NCDOT began to close the at-grade crossings he promised himself he would not vote for another closing until a divided crossing was provided in the City and this has not happened. He commented that the closings inconvenience citizens and he cannot support closing the crossing without any relief for citizens to cross from one side of town to another. Mr. Burgin noted that NCDOT has closed many crossings without giving any effort to provide opportunities for crossing in other parts of the community. Councilman Lewis questioned why NCDOT would have to give the City money if closing the crossing was good idea. Mayor Kluttz stated that the closings have been in preparation for high speed rail and is a safety issue throughout the State of North Carolina. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. Mr. Burgin voted NO. (4-1)

**RESOLUTION PERTAINING TO THE PROPOSED CLOSING OF THE HORAH STREET AT-GRADE RAILROAD CROSSING AND SETTING A PUBLIC HEARING FOR DECEMBER 15, 2009.**

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No. 50, and is known as Resolution 2009-34.)

### **RESOLUTION – COTTON MILLS CORNER**

Mayor Kluttz referred to a Resolution before Council regarding a History and Art

Trail dedication to take place Saturday, November 21, 2009 at 11:30 a.m. at the corner of Fisher and Church Streets. She explained that the dedication will be for the new wall that was erected that includes tiles created by children from each school in the school system. Mayor Kluttz stated that during the dedication Council will officially dedicate the corner of Fisher and Church Streets as the Cotton Mills Corner.

Thereupon, Mr. Woodson made a **motion** to adopt a Resolution dedicating Cotton Mills Corner this Saturday at 11:30 a.m. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

## RESOLUTION DEDICATING COTTON MILLS CORNER

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No. 51, and is known as Resolution 2009-35.)

## **PUBLIC COMMENT SESSION**

Mayor Kluttz opened the floor to receive public comment.

Mr. William Peoples, 522 North Fulton Street, stated that he is angry because a bus from Calvary Baptist Church was taking passengers home from church and was caught in gunfire on a Sunday afternoon at 2:30 p.m. He stated that he is upset by this because this is a known high crime area and whatever plan might be in place is not working. He questioned why it should happen in this part of the community. He stated that he does not think one neighborhood can be left alone while others flourish and he thinks it is a sad day in Salisbury when a church bus cannot drive in broad daylight without getting bullet holes. He added that he feels we have failed as a community and until the issues are addressed there will be escalating violence. Mr. Peoples questioned how there could only be six officers on patrol on that Sunday and added that Council needs more money to put police on the street and the equipment to do their job properly. Mr. Peoples stated that the idea of the incentive offer for the railroad crossing came from him because he thinks if the crossing is closed something needs to be given to the community for their inconvenience.

Ms. Dee Dee Wright, 418 South Caldwell Street, thanked Councilman Burgin and Councilman Lewis for their service to the City. She stated that she believes the new Council members will do a good job and she thanked Council for serving the City so well.

Mr. Clyde Overcash, 217 South Lee Street, thanked Council for the public comment periods because he feels citizens are denied access to City officials. He stated that he is denied access to the City Manager's office and when he calls, he gets an answering machine. Mr. Overcash referred to the parking lot on Lee Street and stated that the curbing at the back leads to his back yard. He stated that his backyard was flooded this past week and he has contacted City staff but they have not returned his telephone calls. Mr. Overcash stated that he worked with engineering staff last year regarding the property and it was understood that water would run to his property but no resolution was

reached. He referred to the location of the City Manager's office and suggested it be moved to the first floor at City Hall. Mr. Overcash also referred to the old Zimmerman Building and stated he thought it was supposed to be returned to retail.

There being no one else to address Council, Mayor Kluttz closed the public comment.

Councilman Kennedy asked Police Chief Mark Wilhelm to respond to the criminal activity on the west side of the City.

Chief Wilhelm stated that this case has been assigned to investigation and is being actively worked. He noted that typically there are 10 officers and one supervisor assigned to each shift, but generally Sundays are the slowest days and at minimum there are six officers and one supervisor. He added that on this occasion they had at least seven on duty. He commented that this type of activity is almost unheard of on a Sunday afternoon, but rather something that might happen on a weekend night when there would be as many as 15 officers on duty.

Councilman Kennedy asked if there were houses in this area that need to be addressed. Chief Wilhelm stated that the information he has received indicates the gunfire came from the porch of one residence and two vehicles driving on the street.

Councilman Kennedy asked if the flooding issue discussed by Mr. Overcash could be addressed.

City Manager David Treme stated that today the City sent a letter to Arthur J. Gallagher, Risk Management Services with Pedulla Trucking and Excavating on Mr. Overcash's behalf. Mr. Treme noted that a claim has been filed in regards to the flooding event and the City of Salisbury, on behalf of Mr. Overcash, requested the claim process begin as soon as possible. He stated that staff felt this was the best response in regard to the flooding in the event it is associated with the parking lot construction. He noted that the City is not responsible for the total drainage in the City and the impact on private properties and he feels the City has responded for Mr. Overcash by submitting the claim.

Mr. Kennedy asked if the flooding will be abated with the completion of the parking lot. Mr. Treme stated that he thinks the flooding will be improved but there are drainage issues that existed prior to construction and are associated with the lay of the land.

Mayor Kluttz commented that in regards to the issue of access and communication, her office does not have an answering machine but is answered by a person Monday through Friday 8:30 a.m. until 5:00 p.m. She added that she thinks there is open access to all of the Council members.

## **COMMENTS FROM THE CITY MANAGER**

(a) FEMA Application – Mr. Michael Turner



City Manager David Treme stated that Mr. Michael Turner, 609 Sunset Drive has contacted the City regarding flood damage that has taken place on his property. He noted that Mr. Turner has identified a repetitive flood claims program through the Federal Emergency Management Agency (FEMA) that might buy qualified properties that experience repeated flooding. He explained that the property owner must voluntarily submit the property for acquisition and allow the structure to be removed or demolished. Mr. Treme noted that the program covers 100% of the cost of qualifying properties, however the application must be submitted by the local government. Mr. Treme indicated that Mr. Turner has requested the City submit an application for his property and the application is due December 4, 2009. He noted that with Council's permission he will evaluate the situation and gather additional information to act appropriately. He stated that the program is available to all residents of the City, but the City has not been called on in recent years to submit an application.

(b) Retirement of Police Chief Mark Wilhelm

City Manager David Treme announced that November 9, 2009 he received a notice of retirement from Police Chief Mark Wilhelm. He stated that Chief Wilhelm has been with the City for 30 years and 11 months and has been an outstanding public servant. Mr. Treme read Chief Wilhelm's retirement letter to Council which expressed his gratitude for the opportunity to serve in the City. Mr. Treme commented that Chief Wilhelm has never failed to serve in any capacity for the benefit of the entire community.

Mayor Klutz commented that it was with great sadness that she learned of Chief Wilhelm's retirement. She stated that Chief Wilhelm has been truly outstanding and is not only a great leader, but a very humble and compassionate person.

Councilman Kennedy commended Chief Wilhelm for the work he has done for the City and formally requested that the City Manager conduct a national search for the next Chief.

(b) Resolution authorizing the use of Interfund Transfers

Management Services Director John Sofley indicated that before Council is a Resolution authorizing interfund transfers. He explained that this is a Generally Accepted Accounting policy that the City has followed for several years, but with changes in accounting rules and grant requirements it was becoming visible on the financial statements.

Mr. Sofley stated that with certain grant projects the City is required to pay all of the expenses before being reimbursed. He noted that with the Housing and Urban Development (HUD) funds the City is now required to have no cash on hand before reimbursement is given. He stated that when this happens the General Fund transfers money to the Fund in question in order to pay the expenses until the funds are reimbursed and returned to the General Fund.

Mr. Sofley stated the Resolution before Council will make this policy a formal

process authorizing staff to make interfund transfers. He noted that if the fund that receives the transfer is an enterprise fund it will be required to reimburse the lending fund at the prime rate on the date the money was lent.

City Manager David Treme stated that the City's budget and audit has received certification from the Government Finance Officers Association (GFOA) and as part of the certification a recommendation was received to make this practice a formal policy in order to strengthen the City's financial reporting. He added that he believes this is a good policy and recommends Council adopt the Resolution

Thereupon, Mr. Kennedy made a **motion** to adopt a Resolution authorizing the use of interfund transfers. Mr. Lewis seconded the motion and stated that because of the size of the government and adapting to Federal reimbursement changes, this practice needs to be formalized into a policy. He commented that as a banker he thinks this is a cash flow issue and he likes the internal interest rate component that has been included. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

#### RESOLUTION AUTHORIZING THE USE OF INTERFUND TRANSFERS

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No. 52, and is known as Resolution 2009-36.)

#### **CUSTOMER SERVICE CENTER GROUNDBREAKING**

Mayor Kluttz reported that a groundbreaking was held earlier today for the City's new Customer Service Center. She noted that Council was excited to find this property on Martin Luther King, Jr. Avenue because when the street was designated as Martin Luther King, Jr. Avenue, Council made a commitment that it would work to improve the properties along the street. Mayor Kluttz stated that this facility will be a tremendous improvement for the area.

Mayor Kluttz thanked KKA Architecture, Shelco Construction, Councilman Burgin, Management Services Director John Sofley and staff members Deb Young, Dewey Peck, Clara Bost, Broadband Services Director Michael Crowell and Public Information and Communications Manager Karen Wilkinson for their assistance with the project.

Mayor Kluttz noted that Councilman Burgin and Councilman Lewis were the speakers at today's groundbreaking and she thanked them for their participation. She noted that the new facility will house the Fiber to the Home equipment, the City's Customer Service Department, Information Technology Department, Salisbury-Rowan Utilities Billing and Receipts Department and the Wellness Clinic. Mayor Kluttz noted that as citizens come to pay bills they will have access to a drive-through for the first time.

## **MAYOR'S ANNOUNCEMENTS**

(a) **Salisbury Cotton Mills Pocket Park Dedication**

Mayor Kluttz announced that the Public Art Committee will host a public dedication of the Salisbury Cotton Mills pocket park November 21, 2009 at 11:30 a.m. at the corner of Church and Fisher Streets.

(b) **3<sup>rd</sup> Annual Craft Show**

Mayor Kluttz announced that the Salisbury Parks and Recreation Department will host the 3<sup>rd</sup> Annual Craft Show Saturday, November 21, 2009 from 9:00 a.m. until 4:00 p.m. at the Salisbury Civic Center, 315 Martin Luther King, Jr. Avenue.

(c) **Holiday Caravan Parade**

Mayor Kluttz announced the Holiday Caravan parade will be held Wednesday, November 25, 2009 beginning at 2:00 p.m. in Spencer and 3:00 p.m. in Salisbury.

(d) **Holiday Nigh Out!**

Mayor Kluttz announced that Downtown Salisbury Inc. will host Holiday Night Out! Friday, November 27, 2009 from 5:00 p.m. until 9:00 p.m. in downtown Salisbury.

## **CLOSED SESSION**

Mayor Kluttz asked for a motion to go into closed session to consider acquisition of property located on Tax Map 060, Parcel 007 as allowed by NCGS 143-318.11(5) and to consider a personnel matter as allowed by NCGS 143-318.11(6).

Thereupon, Mr. Woodson made a **motion** to go into closed session as read by the Mayor. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

## **RETURN TO OPEN SESSION**

Thereupon, Mr. Woodson made a **motion** to return to open session. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

Mayor Kluttz reported that there were two items discussed in closed session and noted that no action was taken on the first item.

Mayor Kluttz stated that Council conducted City Manager David Treme's evaluation and by consensus felt he had done an outstanding job and Council had no suggestions for improvement. She stated that Council feels extremely fortunate to have someone of Mr. Treme's caliber and experience and Council gave him the highest marks possible on his evaluation.

Mayor Kluttz noted that under normal situations this evaluation would translate into a salary increase, but because of the economy employees will not receive merit increases this year. She expressed Council's appreciation for the tremendous job Mr. Treme has done this year.

### **ADJOURNMENT**

**Motion** to adjourn the meeting was made by Mr. Burgin, seconded by Mr. Lewis. All council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 6:28 p.m.

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Susan W. Kluttz, Mayor

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Myra B. Heard, City Clerk