

Salisbury, North Carolina  
July 15, 2008

## **REGULAR MEETING**

**PRESENT:** Mayor Susan W. Kluttz, Presiding; Mayor Pro Tem Paul B. Woodson, Jr., Presiding; Councilmen 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:** Councilman William (Bill) Burgin.

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

## **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.

## **PRESENTATION FROM PARKS AND RECREATION SUMMER CAMP**

Ms. Elaney Hassleman, Marketing and Community Relations Manager, and participants of the Parks and Recreation summer camp presented a short program in honor of Parks and Recreation Month. Ms. Hassleman noted that the theme for this year's Parks and Recreation month celebration is "All Things Patriotic" and campers sang patriotic songs for Council. Mayor Kluttz then read a Proclamation proclaiming

July 2008 as Parks and Recreation Month and presented a copy of the Proclamation to the campers. Mayor Kluttz thanked the camp participants for their wonderful presentation.

### **PROCLAMATION**

Mayor Kluttz proclaimed the following observance:

PARKS AND RECREATION MONTH

July 2008

### **CONSENT AGENDA**

(a) Approval of Minutes

Approve Minutes of the Regular meeting of July 1, 2008.

Thereupon, Mr. Kennedy made a **motion** to adopt the Consent Agenda as presented. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

### **SPECIAL USE PERMIT SUP-03-08 EXTREME MOTORCYCLES**

SUP-03-08 Extreme Motorcycles, 610 West Ritchie Road

(a) Swearing In

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

Mr. David Phillips  
Mr. Dirk Newsome

(b) Receive Testimony

Mr. David Phillips, Development Services Manager, indicated that the request before Council is for a special use permit to be part of the use at Extreme Motorcycles located at 610 West Ritchie Road. He noted that this is a quasi-judicial process and as part of the decision making rules, the zoning ordinance, or Land Development Ordinance (LDO), must spell out the standards for granting a special use permit. He added that the decisions making the standards cannot be developed on a case by case basis.

Mr. Phillips stated that the decision to grant or deny the special use permit or to impose conditions on the approval must be based solely on the LDO standards. He indicated that the standards must provide sufficient guidance for a decision, adding that

the applicant, neighbors, and board need to know what the ordinance requires for approval.

Mr. Phillips reviewed the production of evidence to be presented to assist Council in its decision.

Production of Evidence:

- The burden is on the applicant to present sufficient evidence to allow the board to make findings that the required standards will be met
- The burden is on an opponent to present sufficient evidence that a standard will not be met
- If insufficient evidence is presented that the required standards will be met, then the special use permit must be denied
- If uncontradicted evidence is presented that all of the standards will be met, then the special use permit must be issued
- If uncontradicted evidence is presented that even one of the general or specific standards will not be met, then the special use permit must be denied
- If there is conflicting evidence, the board decides what the facts are and decides accordingly

Mr. Phillips reviewed the standards for the decision, noting that there is one requirement that must be satisfied associated with this petition. That standard states that no such facility shall be located within 500 feet of any lot containing a school. He pointed out that there are three general standards that must be met for any special use permit. These are general and must be met regardless of the use:

1. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit
2. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area
3. The public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed

Mr. Phillips pointed out the facility on a site map and noted its location near Julian Road. He also displayed an aerial photograph of the site.

Mr. Phillips stated that the requirement which must be met is that the site is more than 500 feet from any lot containing a school. He indicated that Koontz Elementary School is located on East Ritchie Road, but is almost 2,000 feet away on the opposite side of the interstate.

Mr. Phillips displayed several ground photographs of the existing facility and noted its location beside Carolina Boat Center and a golf driving range on West Ritchie

Road. Using the site plan, Mr. Phillips pointed out the proposed location of the bar within the existing facility.

Mr. Phillips commented that this request has gone before the Planning Board, where a courtesy hearing was held. He noted that no one spoke in opposition and the Planning Board found that the property is zoned Highway Business (HB), which allows the use of bars. He noted that this is not a typical stand alone bar, such as a nightclub, but because of the LDO, staff must look at the use of the property to determine if a special use permit is required. He reiterated that there is no school within 500 feet of the site and the Planning Board felt the standard had been satisfied. Mr. Phillips indicated that in regards to the three generalized standards, Council must receive testimony from opponents or proponents to determine if this permit should be issued. He noted that their testimony should be applied to these standards to see if they are met and then Council's decision should be based upon that.

Councilman Lewis stated that the procedure implies that Council is only allowed to use testimony and not their own abilities and asked if this is correct. Mr. Phillips stated that Council is not supposed to base its decision on hearsay, but on factual evidence that is presented. City Attorney Rivers Lawther stated that Council members could visit the site and use their own judgment.

Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on proposed special use permit SUP-03-08.

Mr. Dirk Newsome stated that he is the owner of Extreme Motorcycles and that he is working towards event-type marketing and direct mail in order to bring more people in on the weekends. He stated that he thought this would be a good addition to his business plan and would allow people to come in out of the sun and relax with a cold beer. He stated that his business model is not to have a nightclub and his hours of operation will not change. Mr. Newsome stated that there will be no construction of any substantial nature inside of the business.

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

Mr. Lewis stated that he likes beer and motorcycles but something about this does not seem right. He commented that his original thought is that this is a person who is trying to bring people into town and into his business by event marketing. He stated that he assumes people will test drive motorcycles or bring them in for service and he is worried about the coexistence of a bar with a motorcycle or automobile dealership. He commented that he wonders how Council might react if Team Chevrolet wanted to serve beer in its customer lounge. Mr. Lewis stated that while this does not fit well with him, he understands that if an art festival in downtown Salisbury wants to serve beer there will be people who drive to attend the event and he is unsure of the difference. He noted that the event marketing speaks very heavily to him as to what the petitioner is trying to accomplish. He stated that the Hog Rally at Tilley Harley Davidson was a big event and

good for the City. He added that he knows that this business is a specialty business and they have to use everything they can to draw in people in order to be successful. He commented that if the business is successful then the City is successful. He stated that he has differing thoughts about this and he feels he has to rely on the fact that the Planning Board heard the same information and made a unanimous recommendation for approval. He added that he is not sure that when the Land Development Ordinance was developed, that this was the pairing of mixed uses the Committee was thinking about.

Mayor Pro Tem Woodson asked if beer would be sold or given away. Mr. Newsome stated that he currently has a promotion to give a free case of beer to anyone who buys a motorcycle. He noted that he had a "free beer" sign on the property and he felt it was one of the smartest things he could have done to get people talking. He added that he has received hundreds of telephone calls about the sign. Mr. Newsome stated that he is not a huge beer drinker but he understands that the tempo or culture that continues at his store will be controlled by him. He stated that he does not want to have a nightclub or to have people rough-housing or acting crazy or stupid. He stated that he has two kids and responsibilities and how he handles this responsibility will dictate how those who work for him handle it as well. He stated that if it begins to get out of hand he will stop it immediately. He added that this is just for adults to stop by the store and have an opportunity for snacks or a cold drink. He stated that motorcycles are different than cars and if this was a car dealership he does not think it would fit, but he feels the culture is different. Mr. Newsome stated that people do not go to car dealerships to hang out but in the motorcycle business there are people who come in weekly. He stated that he has had the same struggles as Mr. Lewis and has thought about this for a long time. He added that he feels as long as he is in control it will be fine.

Mr. Woodson noted that in the City's definitions it states that a bar or tavern is a business where alcoholic beverages are sold for consumption. He stated that he does not mind if Mr. Newsome sells a motorcycle and gives someone a case of beer. He then asked if beer can legally be given away. Mr. Phillips responded that it falls under Alcoholic Beverage Control (ABC) jurisdiction. Mr. Newsome indicated that the ABC board allowed him to give away the beer but if this permit is granted by Council he can no longer give it away. He stated that it will create a different set of guidelines that he must follow.

Mr. Woodson stated that he is concerned about someone coming in late at night and having several beers then driving their motorcycle on Interstate 85 and getting killed. Mr. Lewis commented that this is a risk with any bar or restaurant that Council approves. He added that at some point personal responsibility comes into play.

Mr. Newsome assured Council that he is not approaching this in a cavalier way and he takes this very seriously. He added that he will make sure this is done tastefully and if anything happens he will stop it immediately.

Mayor Kluttz stated that it appears that Councilman Lewis' concern is that Council has to be assured that the public health, safety, and welfare will be guaranteed.

Mr. Lewis stated that this is the only standard where anything he has had to say is applicable. He pointed out that Council can revoke the special use permit if they find there have been express negative effects related to the general safety, health, and welfare of the surrounding community. He added that he did not want someone to die for this to be the reason. He stated that to be fair to the applicant, this same risk is present anywhere alcohol is served. He commented that it was strange to him to see the free beer sign along Interstate 85. He added that the more he thought about it, he was able to put it into relation with some of the other things he has mentioned and the better he feels about it.

Councilman Kennedy stated that he feels Council is somewhat like the Planning Board and before the permit can be denied specific evidence for denial must be presented. He added that he does not feel Council has this evidence and the site is not located within 500 feet of a school.

Mr. Lewis stated that he does not feel this will hurt the surrounding property values and he feels it is in a good location. He added that if this brings more traffic down West Ritchie Road it will probably make the other businesses happy.

Mr. Kennedy stated that this is zoned Highway Business, there are other bars throughout the City, and he does not see how it can be denied. He noted that if something should happen, Council can take the special use permit away.

Mr. Woodson stated that he wants to be safe and if this should get out of control, Council will pull the permit.

Mr. Lewis stated that he wanted citizens to know that Council had the same thoughts as many who read this request and wanted to make sure that citizens knew the issues were not ignored.

(c) Findings of Fact

Councilman Lewis offered the following Findings of Fact:

1. That the applicant, Dirk Newsome, 610 West Ritchie Road, Salisbury has applied for a Special Use Permit to establish a bar at Extreme Motorcycles, 610 West Ritchie Road
2. The property in question may be identified as the address 610 West Ritchie Road or Parcels 055 and 117 as found on Rowan County Tax Map 401
3. The property is currently zoned Highway Business (HB)
4. The HB district allows the use of Bar/Tavern/Night Club with the issuance of a Special Use Permit
5. The definition of a Bar/Tavern/Night Club as defined in Chapter 18 - Definitions
6. There are no schools within 500 feet of the property

7. The recommendation of the Salisbury Planning Board was unanimous (10-0) to recommend approval of the Special Use Permit with no conditions. The vote was based on findings that all four standards for a decision were satisfied
8. Those four standards were:
  1. Being 500 feet from a school
  2. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit
  3. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area
  4. The public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed

(d) Thereupon, Mr. Lewis made a **motion** to issue a Special Use Permit for SUP-03-08 to allow on-premise alcohol sales at Extreme Motorcycles, 601 West Ritchie Road. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

#### **ORDINANCE AMENDING CITY CODE – SIDEWALK DINING**

(a) Mr. Joe Morris, Planning and Community Development Director, stated that a presentation was made to Council at its July 1, 2008 meeting regarding an amendment to the Salisbury City Code related to sidewalk dining in Downtown Salisbury. He pointed out that the request is based on the 2008-2009 City Council Outcomes and Goals stating:

- Outcome 4 – Enhance and support a creative enterprise economy which includes a positive business climate
- Outcome 10 – Improve and enhance Downtown Salisbury

Mr. Morris stated that the request is also linked to the 2002 Downtown Salisbury Master Plan Strategy that refers to Downtown Salisbury being a successful retail and dining center based on:

- Effective marketing, its strength as a retail center
- Its ability to conveniently serve employees, residents and visitors
- Its regional appeal as a specialty retail center
- Its role as a center for community activities and events

Mr. Morris pointed out that sidewalk dining was originally enacted by an Ordinance in March 2002. He added that currently there are approximately 16 restaurants in downtown Salisbury and approximately five of those engage in some form of sidewalk dining.

Mr. Morris reviewed the proposed text amendments and noted that they are proposed only for the Downtown Mixed Use (DMX) Zone:

- Increases liability insurance limits from \$500,000 to \$1,000,000 annually
- Aligns sidewalk dining with standards for “eating establishments” (Alcoholic Beverage Control standards)
- Extends hours from 9:00 p.m. to 11:00 p.m., Sunday – Thursday
- Extends hours from 11:00 p.m. to 12:00 Midnight, Friday and Saturday
- Allows sidewalk dining to extend up to 12 feet in front of an adjacent business (with written permission)
- Requires that tables and chairs be removed from the sidewalk during non-operating hours
- Technical changes for clarity

Mr. Morris noted that businesses defined by the ordinance are restaurants, wine shops and eating establishments. He explained that the ordinance will require that businesses provide a five foot unobstructed pedestrian route in front of the establishment. He displayed photographs of different sidewalk dining area scenarios.

Mr. Morris explained the process of the amended ordinance request:

- Original request for revisions was made by a property owner
- Concepts have been reviewed and endorsed by the Downtown Salisbury Inc. Board of Directors
- Text revisions reviewed by the Technical Review Committee (TRC)
- Conduct a public hearing on July 15, 2008
- Consider adoption to proposed text amendments

(b) Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on proposed amendments to Section 22-46 regarding sidewalk dining.

Mr. William Peoples, 522 North Fulton Street, asked how the ordinance would pertain to businesses on Fisher Street because Fisher Street could not provide a five foot pedestrian walkway. Mr. Morris answered that the sidewalks on Fisher Street are not adequate for sidewalk dining. He explained that a separate ordinance is currently being drafted that will address street festivals and street activities that he feels will relate to Fisher Street. He added that the ordinance before Council today applies only to sidewalks that have adequate room for dining.

Mr. Michael Young stated that he is developing property at 115 East Innes Street. He indicated that downtown Salisbury has a growing nightlife and there is a need for responsible outdoor hospitality. He indicated that he feels the requirements in the proposed ordinance are quite reasonable and that he feels the seating requirement capacity and the expanded hours are generous. He pointed out that the one part of the ordinance that he does not particularly like is the requirement that tables, chairs and other furnishings be removed every night. He noted that nice delineations for the eating areas may not be possible if they have to be removed every night. He encouraged Council to adopt the ordinance.



Mr. Randy Hemann, Downtown Salisbury, Inc. (DSI) Executive Director, stated that the DSI Board is in support of the ordinance. He pointed out that the ordinance aligns businesses closer with the ABC laws, and is a little more flexible. He noted that he hopes the 16 restaurants downtown will utilize the opportunity for sidewalk dining.

Mr. Bill Godair, 415 Scottsdale Drive, Pastor of Cornerstone Church, stated that he was recently on vacation and experienced downtown sidewalk dining in other cities. He indicated that he feels this would be perfect for Salisbury and hopes Council will approve the ordinance.

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

Mayor Kluttz stated that Council passed an ordinance in 2002 to allow sidewalk dining and noted that she was surprised that it did not create more interest like Council thought it would. She indicated that she likes the fact that this ordinance is more flexible. She added that she is proud of the downtown businesses and DSI for their work to make downtown Salisbury successful. She stated that she is in support of this ordinance.

Mayor Pro Tem Woodson stated that it seems that everywhere he visits there is sidewalk dining. He questioned the requirement to remove all furniture every night. Mr. Morris stated that the concern is based on public safety in terms of furnishings being thrown into the streets. He added that the City could try the proposed ordinance for three to six months and then consider an amendment.

Mr. Woodson stated that he feels this portion of the ordinance presents a burden to small establishments with no place for storage.

Mr. Dan Mikkelson, Director of Land Management and Development, stated that staff felt it would be good to take small steps. He added that staff is concerned because sidewalk dining uses public property and the hours of operation for the restaurants is unknown. He stated that if a business determines it will only serve on weekends, staff questioned if it is appropriate for the general public to have to deal with an encroachment on the sidewalk during the week.

Councilman Lewis stated that the ordinance could allow furnishings to be left on the sidewalk and then if it becomes an issue the ordinance could be amended. He indicated that he has observed businesses that are required to move their furnishings each night, and the furnishings are not made of high quality material. He pointed out that moving planters like the ones displayed in the photographs would be difficult. Mr. Lewis commented that one of the great things about the proposed ordinance is that there are properties in downtown Salisbury that are not very wide and with permission of adjacent property owners, the dining establishment could stretch their sidewalk dining area 12 feet on each side of the restaurant front. Mr. Lewis recommended eliminating the requirement to remove the furnishings each night and if it becomes a problem, amend the ordinance.

(c) Thereupon, Mr. Kennedy made a **motion** to adopt an Ordinance amending City Code 22-46, Sidewalk Dining, of the Salisbury City Code of the City of Salisbury, North Carolina omitting the owners removing the furniture on a daily basis. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

AN ORDINANCE AMENDING SECTION 22-46, SIDEWALK DINING, OF THE SALISBURY CITY CODE OF THE CITY OF SALISBURY, NORTH CAROLINA.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page Nos. 92-97, and is known as Ordinance No. 2008-38.)

**SECOND READING - ZONING MAP AMENDMENT – CD-5-04-08 625 CORPORATE CIRCLE**

Councilman Lewis indicated that he had a conflict of interest and requested that he be recused from CD-5-04-08 625 Corporate Circle.

Thereupon, Mr. Kennedy made a **motion** to excuse Councilman Lewis from the discussion. Mr. Woodson seconded the motion. Messrs. Kennedy and Woodson, and Ms. Kluttz voted AYE. (3-0)

Mayor Kluttz stated that this zoning map amendment request was presented to Council at its July 1, 2008 meeting but it could not be ratified on its first reading because Councilmen Burgin and Lewis were excused from the deliberation.

Councilman Kennedy stated that the City Council hereby finds and determines that adoption of an ordinance to rezone the property described herein to establish a Conditional District Overlay on HB base district is consistent with the goals, objectives, and policies of the Vision 2020 Comprehensive Plan and that adoption of the ordinance is reasonable and in the public interest. Thereupon, Mr. Kennedy made a **motion** to adopt an Ordinance amending the Land development District Map of the City of Salisbury, North Carolina, by rezoning approximately 1.19 acres, identified as Tax Map & Parcel 060-139, to establish a development of a 10,000 square foot addition to an existing indoor recreational facility; identifying the development documents; providing an effective date; and for other purposes. Mr. Woodson seconded the motion. Messrs., Kennedy and Woodson, and Ms. Kluttz voted AYE. (3-0)

AN ORDINANCE AMENDING THE LAND DEVELOPMENT DISTRICT MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 1.19 ACRES, IDENTIFIED AS TAX MAP & PARCEL 060-139, TO ESTABLISH A CONDITIONAL DISTRICT OVERLAY ON (HB) HIGHWAY BUSINESS OF A 10,000 SQUARE FOOT ADDITION TO AN EXISTING INDOOR

RECREATIONAL FACILITY; IDENTIFYING THE DEVELOPMENT DOCUMENTS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page Nos. 87-89, and is known as Ordinance No. 2008-35.)

\*It was necessary to have a second reading on the above ordinance due to the lack of an affirmative vote of two-thirds of all members of the City Council.

**PRESENTATION – SALISBURY-ROWAN COMMUNITY ACTION AGENCY INC.**

Mr. Rodney Queen, 101 Polo Drive, and Ms. Elizabeth Fields, 1009 Hawkinstown Road, Executive Director of the Salisbury-Rowan Community Action Agency Inc., addressed Council regarding the J. C. Price High School building located at 1300 West Bank Street. Mr. Queen stated that he is on the Board of Directors of the Community Action Agency and noted that Councilman Kennedy is the Community Action Agency Chairman. He reviewed the history of the Price High School building and added that he has witnessed the evolution of the school. He pointed out that the building became headquarters for the Salisbury-Rowan Community Service Council, which was basically the Head Start Program. He stated that he feels that at the time the organization was formed in the late 1960s it was a means for society to contribute money to a minority program. He added that no one ever dreamed it would become the success it is today. Mr. Queen stated that the Community Action Agency recently held a luncheon to share ideas with the community and he thanked Councilman Lewis for attending. He noted that the Community Action Agency's programs have changed the lives of many unfortunate children.

Mr. Queen indicated that he is disappointed that the Community Action Agency is headquartered in a building that is dilapidated and in such need of repair. He pointed out that the building has historical value and stated that money spent for building repairs takes money from a needy child. He stated that he feels a committee should be assigned to find a solution for the building.

Mrs. Fields stated that the Salisbury-Rowan Community Action Agency Inc. has tried to be good stewards of the J. C. Price High School building. She said the Community Action Agency works with disadvantaged youth who are not accepted in public school. She indicated that there are many visitors who tour the Price High School and noted that the school was the last place Mrs. Elizabeth Duncan Koontz taught. She pointed out that the programs they offer are wonderful, but the building itself is important to the community and she feels it is important to preserve its history. Mr. Queen recognized other Salisbury-Rowan Action Committee Board members who were also in attendance.

Mr. Bill Godair, 415 Scottsdale Drive, Pastor of Cornerstone Church, stated that he has never been more proud of a group than the Salisbury-Rowan Community Action Agency Board. He noted that every month the Board receives testimonials from individuals from all age groups who have received aid from the Community Action Agency. He pointed out that when he walks into Price High School he can feel the history. He noted that the students who graduated from the school, as well as their families, still feel great pride in the school. He stated that he feels something needs to be done to preserve the history of the building.

Mr. Jack Thomson, 530 W. Monroe Street, Director of Historic Salisbury Foundation, stated that he hosted 30 to 40 members of the Wiley Lash family for a reunion and that the group visited Price High School. He indicated that he has toured the school and was delighted to see how intact the building is. He noted that the Price High School Alumni Association has asked him about strategies to determine the long term stewardship of the property. He noted that one strategy would be to have the property listed on the National Register of Historic places. He added that this was suggested by a City survey several years ago.

Mr. Thomson stated that, regarding the condition of the Price High School building, there has been some loss of original material and some repairs were made in haste, but they do not overwhelm the original material that is still present. He indicated that the Alumni Association has committed to fund the cost of the consultants and the cost of filing the paper work to have the school listed on the National Register. He added that the National Register can be used as a tool to create a heightened sense of pride in the building, the community, and the alumni and to potentially raise funds to rehabilitate the building. He urged Council to consider the request to form a committee to save this great historic resource.

Mr. William Peoples, 522 N. Fulton Street, stated that the school means a lot to him. He added that the school is historic and not only should the City do what it can to restore it, the City should place a historic marker on it. He stated that Cincinnati, Ohio has an Underground Railroad Museum that displays a slave shack and he feels Salisbury can do things that would afford people the opportunity to look at black history in terms other than slavery, such as where they were educated.

Mr. W. Frank Jones, stated that he is a product of J. C. Price High School. He stated that the floors in the school are made of wood that cannot be found today. He asked Council to consider the proposal and suggestions that have been made.

Mayor Kluttz stated that the City owns the building and the question is what needs to be done about the property. She noted that she has toured the school and it has wonderful potential. She added that Salisbury is a City that values historic significance and she recognizes that Price High School needs to be saved. She indicated that preservation of the building will be a tremendous cost and tax dollars are not available. She stated that from the enthusiasm she heard from those who spoke, there is great potential to put together a group that could raise the money for the restoration.

Councilman Kennedy stated that he is Chairman of the Salisbury-Rowan Community Action Agency and that it has many good programs that help many people. He indicated that it is a disappointment to see the exterior of the building and he would like to see some action to make improvements.

Councilman Lewis stated that there are two issues. The first is that the building is the home for an important program and they need a quality home. He noted that the second issue deals with the fact that the building has historic significance. He stated that as stewards of the community, Council has the responsibility to preserve buildings that represent the City's heritage. He added that the City would have a difficult time paying for the entire renovation with tax dollars. He indicated that if enough stakeholders are brought together under good leadership, they can accomplish the fundraising needed for the preservation.

Mayor Pro Tem Paul Woodson stated that he feels the Price High School building is lovely but it will take a lot of effort to preserve it.

City Manager David Treme stated that in the past Council has worked well by determining what it wants to accomplish and then developing a strategy to determine the cost of a project and funding sources. He suggested a meeting with Mayor Kluttz and Mr. Kennedy to determine if a Council Committee, including the Community Action Agency, and public and private stakeholders could be brought together as a task force to develop a strategy.

Mayor Kluttz stated that the issue is the historic preservation of the building. She indicated that she is very excited to see such support and she feels a task force can be appointed to develop a strategy. She asked those interested in volunteering for the task force to contact City Clerk Myra Heard. She noted that Council will report back at the August 19, 2008 meeting.

#### **SUPPLEMENTAL UTILITY AGREEMENT – RELOCATION OF FOUR WATERLINE SEGMENTS ON HIGHWAY 70**

Mr. Jim Behmer, Interim Utilities Director, stated that the North Carolina Department of Transportation (NCDOT) has been in the process of widening several sections of Highway 70 and will bid the last section of the project in September 2008. He pointed out that the Salisbury-Statesville Emergency Water Interconnection was designed with the highway improvements in mind; however, during the final design of the roadway improvements, there have been four areas that are determined to have conflicts with the water line. He added that Salisbury-Rowan Utilities (SRU) has been working with NCDOT to minimize the conflicts but NCDOT is requesting that the City enter into a supplemental agreement so that they can begin the bidding process in September.

Mr. Pat Ivey, NCDOT District Engineer, stated that NCDOT must have this agreement in place in order to contract for the project in September. He pointed out that September is the last month in the Federal fiscal year and a delay could push it into another fiscal year and create scheduling problems. He indicated that NCDOT Board member Nancy Dunn has asked NCDOT to minimize the impact and cost of relocations to the City of Salisbury. He noted that drainage structures have created some of the current problems. He informed Council that NCDOT and Ms. Dunn are committed to working with SRU to minimize this to the extent possible.

Mr. Behmer stated that Salisbury entered into an agreement with Statesville in March 2003 for the Salisbury-Statesville Emergency Interconnection. He added that there were grants received along with support from the Governor's office for the project. He noted that the Statesville portion of the project was \$2.8 million and included a water main and booster station running into Salisbury. He explained that Salisbury's commitment included the line from Parks Road to Highway 801. He stated that SRU and NCDOT are working closely to minimize any relocation of lines and hope that the project will not exceed the projected cost of \$440,162. He noted that the road improvement is a tremendous asset in Rowan County and that the water lines will be turned over to the City of Salisbury once completed.

Mr. Treme stated that Salisbury and Statesville received an \$800,000 grant to provide the interconnection. He pointed out that Statesville spent approximately \$2.8 million and at that time Salisbury was concerned about coordinating and minimizing the relocation of utilities. He indicated that he feels the City has done a lot to minimize the impact and was more aware of the roadway impact than the drainage impact.

Mr. Treme stated that this item is not an item that needs to be paid from the FY2008-09 Budget. He pointed out that he wants to determine the final cost because it may be funded through existing capital outlay funds or it may be included in bonding issues.

Mr. Treme recommended that Council approve the supplemental agreement and allow staff to continue working with NCDOT and report back any problems.

Councilman Lewis asked what would happen if Council did not approve the agreement. Mr. Ivey responded that if the money is not allocated in this year's NCDOT budget the funds could be allocated for a different project and funding may not be available in the next fiscal year.

Mr. Lewis asked for clarification on the areas of conflict. Mr. Behmer stated that there are four different areas totaling 1,700 feet. Mr. Lewis asked if Salisbury will be responsible for relocating the lines that are not in Rowan County. Mr. Behmer stated that when Statesville received permission from NCDOT they used an encroachment agreement instead of getting five and one half miles of easements. Mr. Lewis asked why Statesville is not taking care of the conflicts. Mr. Behmer stated that Statesville was reluctant to spend \$2.8 million to begin with. Mr. Treme noted that Statesville feels they

have already spent \$2.8 million and Salisbury is getting all the benefit. Mr. Lewis commented that the rate payers will be the ones to pay the \$440,162 and they did not like the last two water bill rate increases they received. He noted that this is an example of the things that add up to necessitate a rate increase.

Mr. Treme stated that the City has met with NCDOT and they have been able to reduce the cost and he feels it can be reduced further. Mr. Behmer added that since this is an emergency interconnection line it can be isolated during construction which will reduce the per foot cost of the estimate.

Thereupon, Mr. Woodson made a **motion** to authorize the Mayor and the City Clerk to execute a Supplemental Utility Agreement with the North Carolina Department of Transportation in the amount of \$442,162 for reimbursement by Salisbury-Rowan Utilities for the relocation of four segments on the Highway 70 water line in conjunction with NCDOT Project R-2911B. Mr. Lewis seconded the motion. Messrs., Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

#### **INTERLOCAL AGREEMENT BETWEEN CITY OF SALISBURY AND ROWAN COUNTY – 2007 BYRNE JUSTICE ASSISTANCE GRANT**

Mr. Wade Furches, Finance Manager, and Deputy Police Chief Steve Whitley addressed Council regarding the United States Department of Justice, Bureau of Justice Assistance 2007 Byrne Justice Assistance Grant (JAG). Mr. Furches noted that the City has received several JAG awards and block grants in the past, however this is the first time the City has received the award jointly with Rowan County. He explained that the Bureau of Justice Assistance allocates the JAG awards using formulas based on population and crime statistics. Based on those numbers, the Bureau of Justice Assistance has awarded the City of Salisbury and Rowan County a total of \$44,000 to be divided \$28,519 to the City and \$15,481 to the County. Mr. Furches stated that although this year's award is a joint award, it is not required that the City and County work on the same projects or for the same purpose. He noted that Rowan County will be the lead agency on this award, and has filed a formal grant application. Mr. Furches explained that before the grant can be awarded there must be an Interlocal Agreement between the City of Salisbury and Rowan County stating that the City will accept the award and abide by the parameters of the Bureau of Justice Assistance.

Mayor Kluttz stated that she is happy to see the Police Department working with the Sheriff's Department, and that partnerships make things better for everyone. The Mayor also thanked those who worked to put this together and recommended that the City support the Interlocal Agreement.

Thereupon, Mr. Lewis made a **motion** to authorize the City Manager to sign an Interlocal agreement between the City of Salisbury and Rowan County regarding the 2007 Byrne Justice Assistance Grant. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

**BUDGET ORDINANCE AMENDMENT – 2007 BYRNE JUSTICE ASSISTANCE GRANT**

Mr. Wade Furches, Finance Manager, requested that Council adopt a Budget Ordinance amendment to appropriate the City's \$28,519 share of the 2007 Byrne Justice Assistance Grant.

Thereupon, Mr. Lewis made a **motion** to amend the 2008-2009 Budget Ordinance to the City of Salisbury, North Carolina to appropriate the 2007 Byrne Justice Assistance Grant. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

AN ORDINANCE AMENDING THE 2008-2009 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA TO APPROPRIATE 2007 BYRNE JUSTICE ASSISTANCE GRANT.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page No. 98, and is known as Ordinance No. 2008- 39.)

**AWARD CONTRACT – IKE'S CONSTRUCTION FOR TRACKSIDE PLATFORM AND CANOPIES AT THE SALISBURY DEPOT**

Mr. Dan Mikkelson, Land Management and Development Director, discussed proposed improvements at the Salisbury Depot and reviewed an artist's rendering of the project. He pointed out that the proposed improvements include a connecting shed, a trackside canopy for shelter from inclement weather, and a concrete platform that will run along the trackside. The platform will meet the Americans with Disability Act (ADA) accessibility guidelines. Mr. Mikkelson stated that he has been working with the North Carolina Department of Transportation and the Historic Salisbury Foundation on the project design. He noted that there is a portion of the canopy that will be on the Historic Salisbury Foundation's property and an agreement is being developed to allow construction to occur. He stated that the Agreement will also establish the City's responsibilities and noted that the City will own the platform and canopies. He added that there is also an agreement with North Carolina Railroad for an encroachment within their right-of-way.

Mr. Mikkelson stated that the first time the project was bid it was over budget and both the North Carolina Department of Transportation and the Salisbury City Council felt it was appropriate to increase the budget rather than reduce the scope of the project.

Mr. Dewey Peck, Purchasing Manager, informed Council that the bid is now within budget and Ike's Construction is the lowest bidder. He noted that this bid covers all original specifications.



Mr. Woodson questioned the amount of the project. Mr. Mikkelson responded that any work done on a railroad is expensive because the project has to be coordinated with train arrivals.

Mr. Mikkelson stated that the project total is \$1.1 million. The State of North Carolina will pay 90%, which is \$990,000 and the City will pay 10%, which is \$110,000. Mr. Peck pointed out that there is a contingency included in the budget because there will be work done in areas that have not been disturbed for 100 years.

Thereupon, Mr. Kennedy made a **motion** to award a contract in the amount \$928,031 to Ike's Construction for a trackside platform and canopies at the Salisbury Depot, subject to approval by the North Carolina Board of Transportation. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

### **REPORT FROM STAFF – OUTCOME 10, GOAL 4 DEFINE FEASIBILITY AND COSTS FOR A RAIL-WALK WITHIN DOWNTOWN SALISBURY**

Mr. Joe Morris, Planning and Community Development Director, stated that in March 2008 City Council adopted a goal of evaluating the feasibility and costs for infrastructure improvements in the North Lee Street area, which has become known as the Rail Walk area. He pointed out that Ms. Lynn Raker, Urban Design Planner, has been working for the past several months with property owners, Duke Energy and City staff to ascertain the costs.

Ms. Raker stated that the areas under consideration for improvements are the 300 and 400 blocks of North Lee Street. She pointed out that the area is referred to as Rail Walk because of the proximity to the railroad and because it has an internal rail spur that runs through the center of the private properties. She reviewed the history of the area for development:

- 2001 Downtown Salisbury Master Plan
  - Renovate warehouse district into galleries and studios
  - Old railroad corridor as art walk
- September 2002: Lee Street Charrette – Redesign and redevelop two-block area
  - Themes
    - Historic Preservation
    - Mixed Uses – Residential, Art Studios/Galleries/Restaurant
    - Enhanced Public Spaces/streetscapes and plazas
    - Pedestrian access
    - Organized parking
  - General Concepts for entire district
    - Reopen rail spur
    - Expose rails – add brick or cobblestone paving

- Canvas/metal awnings
- Pedestrian-scaled streetlights along streets and rail spur
- Gooseneck and other exterior lighting on buildings
- Well-designed signage

Ms. Raker displayed the site plan developed from the Lee Street Warehouse Charrette showing the rail spur, development into public spaces, and a pedestrian walk connecting the Salisbury Depot area to the potential galleries and studios. She pointed out that Rowan Investment Company (RIC), the majority property owner, has ten buildings that are in the progress of renovation or have completed renovation. She added that the type of businesses that have gone into the area have been gallery spaces, Rowan Arts Council, an artist performance collection and some high-tech businesses.

Ms. Raker noted that RIC has invested approximately \$1.5 million to date, projected investment of \$5 million to \$7.7 million over the next five years. She added that the investment has created an increase in jobs from 13 to 43, with a projection for the number of jobs to increase to approximately 135 to 200 over the next five years.

Ms. Raker reviewed photographs depicting the renovated buildings and street scenes through Rail Walk. She reviewed drawings of the concept plan for the 300 and 400 blocks of North Lee Street which includes removal or relocation of overhead utilities, mast arms at the intersection of Kerr Street, raising the existing granite curbing, brick sidewalks, street trees, and pedestrian lighting.

Ms. Raker reviewed the project funding:

• Budget Allocation FY 2008-09	\$ 35,000
• RIC Payment to Duke Energy	\$ 27,000
• Possible CAC incentive grant	<u>\$ 5,000</u>
• Funds available	<b>\$ 67,000</b>
• Streetscape Improvements estimate (includes burial of power lines in both blocks)	\$700,000
• 25% Contingency	<u>\$175,000</u>
• Total Estimate	<b>\$875,000</b>

Mr. John Ketner, Rowan Investment Company, stated that over the last couple of years there has been a real transformation in this area. He pointed out that from Cascade Sculptors, who moved to Salisbury from Oregon, to the Rail Walk studios and galleries, the area is now full of artists. He noted that the area has become an arts incubator in the short time that it has been in downtown Salisbury. He stated that the Rail Walk area has also attracted to two high-tech industries, both of which are growing and anticipate adding high paying jobs. He commented that the area is bringing people to Salisbury who might not otherwise be here, such as Pepsi, Toyota, the United States Department of Defense, and Kohler.

Mr. Ketner stated that RIC feels that in order to move forward and fully realize this opportunity they need the City's help in approving some of the infrastructure improvements. He added that these improvements will allow them to continue with the City's goal of improving and enhancing downtown Salisbury.

Mayor Kluttz asked if there are any plans for funding the project. Ms. Raker stated that she contacted Ms. Marta Matthews, the North Carolina Department of Transportation (NCDOT) liaison for transportation and enhancement grant money, to see if there is a chance grants could be reallocated, but at this point that is not possible.

Councilman Lewis stated that during the Goal Setting Retreat in February 2008, Council talked about Rail Walk and the opportunity of what has been developing on Lee Street and what responsibilities the community has for the infrastructure. He pointed out that the City can leave the overhead utility lines where they are, move the poles over and cut costs, or do what the area deserves which is the proposal that has been presented.

Mr. Lewis stated that City staff, Downtown Salisbury, Inc. (DSI) and Rowan Investment Company have joined together to design the proposed plan to present to Council for consideration. He commented that if Council would like to proceed with the project, staff can move forward to try to find funding. He indicated that he hopes Council will agree with the vision and direct staff to see if the plan can be funded.

Mayor Kluttz stated that the City has worked hard toward downtown renovation. She pointed out that the Police Department has been renovated but she feels the area adjacent to it does not look very nice. She indicated that she feels the City must continue the momentum that has started downtown and the good things that have happened with the money that has already been invested. She stated that at this time the City cannot commit the money that the project will require, but she would like to see the City work toward finding the money.

City Manager David Treme stated that the project will be costly but would certainly be an improvement to the area. Mayor Kluttz added that the support and enthusiasm from the art community is there and she feels that the public has shown that it likes the improvements.

Mr. Lewis stated that the Art on Easy Street Festival was a great success. He recognized the investment made to the F & M Bank Trolley Barn and Waterworks Visual Arts Center and indicated that the artist's area on North Lee Street is not very inviting.

Councilman Kennedy stated that he feels Council supports the concept if staff can find the money to fund the project.

Mayor Kluttz stated that there is a Council consensus to proceed with investigating ways to fund the North Lee Street project.

## **APPOINTMENT – HUMAN RELATIONS COUNCIL**

Upon a **motion** by Mr. Lewis, seconded by Mr. Kennedy, and with Messrs. Lewis, Woodson, Kennedy and Ms. Kluttz voting AYE, the following appointment was made to the Human Relations Council:

Mr. Mike Clawson

Term expires 3-31-2009

## **COMMENTS FROM THE CITY MANAGER**

### (a) Appoint Dangerous Dog Appeal Board

City Manager David Treme called upon City Clerk Myra Heard to address Council regarding the Dangerous Dog Appeal Board.

Ms. Heard stated that the City Clerk's office has received an appeal for a Dangerous Dog Declaration issued by the City's Animal Control Officer. She indicated that the City Code calls for Council to appoint a board to hear such appeals. She pointed out that at Council's December 4, 2007 organizational meeting, Councilman Burgin was appointed to serve as Council's representative on this board. In the past, Council has had to designate who will serve on the board as each appeal was received. Ms. Heard stated that she reviewed this with the City Attorney, and recommends that Council formally appoint the City of Salisbury's Risk Manager and a veterinarian, licensed to practice in Rowan County, to officially serve as the Dangerous Dog Appeal Board along with Councilman Burgin, for a term to expire December 1, 2009. She pointed out that by appointing only the occupations of Risk Manager and a licensed veterinarian the City will have the flexibility should the veterinarian be unavailable. She indicated that the appointments can be made every two years during Council's organizational meeting. She added that this will allow the appeal board to be established so that Council no longer has to designate a board each time an appeal is received.

Mr. Kennedy made a **motion** to appoint the City's Risk Manager and a veterinarian licensed to practice in Rowan County, to officially serve as the Dangerous Dog Appeal Board for a term to expire December 1, 2009. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

### (b) Update on I-85 and Highway 29 Project

City Manager David Treme asked Mr. Jim Behmer, Interim Director of Utilities, for an update on the I-85 and Highway 29 Project.

Mr. Behmer stated that the City has been working with Rowan County since 2005 and has reached a hurdle regarding environmental permitting as it pertains to a large sewer collection interceptor. He pointed out that the City and Rowan County worked with several issues regarding stream buffers along Towne Creek. He noted that the

Rowan County Commissioners held a public hearing and adopted an amendment to their soil and erosion program which includes a Towne Creek overlay and that this will satisfy all of the environmental comments. He explained that this will enable the City to get a finding of significant impact and secure a permit to begin construction of the project by September 2008. Mr. Behmer stated that the next step will be to obtain easements and bid the project.

Mr. Treme stated that he will follow up with the Rowan County Manager or elected officials. He noted that with this last issue being resolved, the City is ready to proceed with the project. He explained that in 2006 the City allocated \$6.5 million for the project to be shared equally by the City and County and he is concerned about the new cost.

### **PUBLIC COMMENT**

Mayor Kluttz opened the floor for the public comment session.

Mr. Larry Wright, 170 Heritage Lane, stated that the City of Salisbury and the annexation opponents have recently had representatives in Raleigh seeking changes to the annexation laws. He stated that forced annexation is currently the law of the land in North Carolina but questioned if this is it right. He reviewed several antiquated laws that have been changed through the years. He indicated that he feels forced annexation is wrong and should be changed.

Mr. William Peoples, 522 North Fulton Street, stated that he was appointed as a Committee Chair of the Neighborhood Appearance Committee to address Council regarding vicious dogs. Mr. Peoples indicated that he talked to Mr. Doug Paris, Assistant to the City Manager, and asked for information regarding vicious dogs, and after reviewing this information the Committee has several suggestions. He stated that the Committee is concerned with the growing number of pit bull dogs in the community that are being used as a source of intimidation. He indicated that the Committee suggests that pit bulls be required to wear muzzles when walked on any City property or sidewalk.

Mr. Peoples stated that another concern of the Neighborhood Appearance Committee is regarding the houses the City and the Community Development Corporation (CDC) built on West Fisher Street. He stated that there is only one street light in this community and that at night it is very scary and desolate. He noted that a young man was shot on Craige Street last year and the Fire Department had to provide light to the crime scene for the investigators. He asked Council to provide more street lights to the area.

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

## **MAYOR'S ANNOUNCEMENTS**

(a) **Krazy Night Out**

Mayor Kluttz announced that Downtown Salisbury, Inc. will host "Krazy Night Out" Friday, July 18, 2008 from 5:00 p.m. until 10:00 p.m. in downtown Salisbury.

(b) **Street Lights on West Fisher Street**

Councilman Lewis asked that staff report to Council at the August 5, 2008 meeting regarding the street lights on West Fisher Street mentioned by Mr. Peoples. He also asked for a report on the street lights along Brenner Avenue.

## **CLOSED SESSION**

Mayor Kluttz asked for a motion to go into closed session concerning a personnel matter as allowed by North Carolina General Statute 143-318.11(6).

Thereupon, Mr. Kennedy made a **motion** to go into closed session concerning a personnel matter as allowed by North Carolina General Statute 143-318.11(6). Mr. Lewis seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

## **RETURN TO OPEN SESSION**

Mayor Kluttz asked for a motion to return to open session.

Thereupon, Mr. Woodson made a **motion** to go back into open session. Mr. Lewis seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

Mayor Kluttz announced that Council took no official action in closed session.

## **ADJOURNMENT**

**Motion** to adjourn the meeting was made by Mr. Woodson, seconded by Kennedy. All council members agreed unanimously to adjourn. The meeting was adjourned at 6:25 p.m.

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Mayor

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City Clerk