

Salisbury, North Carolina  
April 19, 2005

**REGULAR MEETING**

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

**ABSENT:** City Clerk Myra B. Heard.

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.

**ADDITIONS/DELETIONS TO THE AGENDA**

Mayor Kluttz noted the following changes to the Agenda:

Add two (2) proclamations:

National Sportscasters and Sportswriters Days in Salisbury April 30 – May 2, 2005

Better Hearing and Speech Month May 2005

Add – 18(d) Council to receive an update on East Innes Street construction.

**RECOGNIZE JONATHAN AND BRADFORD GARRIGUES - UNITED STATES MARINES**

Mayor Kluttz recognized Jonathan and Bradford Garrigues for their service with the United States Marines during the war in Iraq. Mayor Kluttz thanked them for their service to their country and presented a Certificate of Recognition to Jonathon Garrigues who also accepted a Certificate of Recognition for his brother Bradford. Mayor Kluttz also recognized their parents Brad and Debbie Garrigues.

**PROCLAMATION**

Mayor Kluttz proclaimed the following observance:

ARBOR DAY April 7, 2005

NATIONAL SPORTSCASTERS AND SPORTSWRITERS DAYS  
IN SALISBURY April 30 – May 2, 2005

BETTER HEARING AND SPEECH MONTH May 2005

## CONSENT AGENDA

(a) Minutes

Approve Minutes of the regular meeting of April 5, 2005.

(b) Group Development Site Plans

Approve the following Group Development Site Plans:

- G-19-04 - The Laurels of Salisbury, 215 Lash Drive
- G-04-68 - Rowan Cabarrus Community College, 1333 Jake Alexander Blvd. South
- G-06-05 - Rowan County Airport - 3670 Airport Loop Road

(c) Budget Ordinance Amendment - ArcGIS Training

Adopt a budget ordinance amendment to the FY-2004-05 budget in the amount of \$14,650 to appropriate fees received for ArcGIS Training.

AN ORDINANCE AMENDING THE 2004-2005 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA, TO APPROPRIATE FEES RECEIVED FOR ARC-GIS CLASSES.

(The above ordinance is recorded in full in Ordinance Book No. 20, Budget, at Page No. 20 and is known as Ordinance No. 2205-17.)

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

## PRESENTATION FROM "SPECIAL COMMUNITY EFFORTS GROUPS" CONCERNING 2005-2006 CITY BUDGET REQUESTS

Mayor Kluttz informed Council that requests for funding would be received from "special community efforts groups" concerning the FY2005-2006 Budget.

Those who addressed Council were:

Mr. Randy Harrell, Executive Director of the Salisbury-Rowan Economic Development Commission (EDC) and Mr. Jack Owens, Vice-Chairman of the EDC, spoke to Council concerning their budget request for FY2005-2006. Mr. Harrell indicated that he forwarded a copy of the EDC Goals and Objectives to Council, along with their Plan of Work and targeted industries. Mr. Harrell stated that it has been a very successful year for the EDC and thanked Council for their support. He noted that the EDC is not seeking an increase from its funding partners this year and requested Council again support their request of \$69,498.

Mr. Edward Norvell, Rowan Museum, noted that City Council has supported the Museum in the past and thanked them for their annual appropriation. He stated that they are requesting a slight increase in funding this year. Mr. Norvell reviewed the properties managed by the Rowan Museum and noted that they hosted the North Carolina Museum's Council for their annual meeting and conference. He informed Council that one of their projects is building an extension on the old Courthouse to make it handicap accessible by adding an elevator in the rear. Mr. Norvell thanked Council for their past support.

## ZONING MAP AMENDMENT - Z-05S-05 - GLENN FLASKA

Z-05S-05 - Glenn Flaska, 1815 East Innes Street

Mayor Kluttz announced that a protest petition has been received and asked Deputy City Clerk Kelly King if the petition was valid. Ms. King stated that the City Clerk's office received a valid protest petition which will require a three-fourths (3/4) or four (4) out of five (5) votes in order for the issue to pass.

Mayor Kluttz stated that all people who planned to speak should be sworn in and asked those who planned to speak to please come forward.

(a) Swearing In

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

Mr. Preston Mitchell	Attorney Todd Parris
Ms. Dora Dalton	Dr. Ted James

Ms. Deana Moore  
Mr. Mike Oney  
Ms. Kathy Panther

Ms. Linda Kanipe  
Ms. Barbara Thomas

(b) Evidence Presented

Mayor Kluttz then opened the public hearing and explained that Council will receive evidence from staff.

Mr. Preston Mitchell, Senior Planner, informed Council that the request today is to rezone a 0.63 acre tract from B-1 Office Institutional to B-4-S Special Highway Business District. The owner and petitioner is Glenn (Gus) L. Flaska. He stated that this property is located in a General Development Overlay (GDA) and the petitioner is not requesting to amend the GDA in any form.

Mr. Mitchell gave a brief definition of each zone district noting that B-1 is Office Institutional and was established for service-type business that do not maintain a stock of goods or inventory and do not conduct retail type sales. The B-4-S Special Highway District is identical to the B-4 district except that a Special Use Permit is required, which may allow one or more permitted uses that are permitted by right in the B-4 district. City Council may place additional provisions or restrictions on the S-District Permit.

Mr. Mitchell reviewed aerial maps and photographs of the property in question, including photographs of the surrounding properties. He pointed out a photograph that he felt clarified that this piece of property is the dividing line between two clear land uses. The south section from the property is residentially zoned and generally zoned R-6 or R-8. He noted that as you travel north from the property the zoning is commercial and becomes more intense traveling into town. He noted that a question posed to Council when considering a special zoning to B-4 is, is it an encroachment into the existing residential area or not. He stated that looking at the request in light of the adopted Vision 2020 Plan there are two (2) areas in which this property falls. The first is the Newer Commercial Areas and Mr. Mitchell quoted the Plan stating a "corridor between I-85 and downtown became a classic example of an 'ugly, congested commercial strip.'" He added that that particular sentence dealt with everything on the west side of I-85; however the Plan described the I-85 Corridor as an important corridor that does not need to be continually "stripped" out over time. He noted that it was from this language that the East Innes Street Overlay came about and noted that the Plan goes on to say that it is important to stop continuous "stripping" of Innes Street and instead place commercial development at specific nodes.

The second area in the Vision 2020 Plan is in Newer, Existing Neighborhoods. He noted that this property is located primarily in residential and low-intensity commercial and office development. He pointed out that Policy N-11 of the Vision 2020 states "Architecturally compatible, residentially-scaled office and institutional development may be permitted to locate along sides of neighborhood planning areas; and this policy may be applied to conversion of pre-existing residential properties located along major streets where...homes have become unsuitable for residential occupancy."

Mr. Mitchell stated that staff believes there is not a policy conflict in this case so long as the B-4 Special District is adopted since this will limit the number and type of uses under the S-District Permit associated with the zone change. He noted that the previous request that came to the Planning Board, but not to Council, was a request to allow for General Use B-4 which would have allowed for all of the uses associated with B-4 and staff felt that the uses would be too intensive and inconsistent with the Comprehensive Plan and the goals for this area and staff recommended disapproval of this request.

Mr. Mitchell indicated that the Planning Board voted (10-1) to recommend approval with conditions to the City Council. He added that staff supports the recommendation to rezone the property to B-4-S and grant the S-District Permit with the Permit having the following conditions:

- That all uses allowed by right in the cumulative B-1 district remain allowed by right in addition to the use of "palmist, tarot card reader, or psychic advisor"
- That any or all development associated with this site be conducted under the B-1 district regulations and requirements

Mr. Mitchell stated that the Planning Board had several findings at its meeting which were:

- That this site could redevelop, today, into a commercial use that is allowed by right within the B-1 district. This would include the ability to raze the existing structure and rebuild a commercial-style structure with associated commercial site amenities
- That if this request is granted by the City Council, the user would be required to undergo the Group Development process, which would require that the site meet all commercial B-1 standards – such as landscape buffering, interior landscaping, and meet parking requirements
- That if this request is granted by the City Council, the zoning of the site essentially does not change since there would be only one (1) type of new use added to the list of B-1 uses. No other use allowed by right within the B-4 district would be allowed within this Special District without an entirely new rezoning request
- That there would be no infringement on the surrounding neighborhood since this request is not one that rezones property from residential zoning to commercial zoning. The current zoning is commercial and a professional office already exists adjacent to the subject property

Mr. Mitchell explained that there are two (2) actions asked of Council. The first is to amend the Zoning Maps from B-1 to B-4-S and the second is to establish the S-District Permit, which establishes the permitted uses and conditions of development.

Mr. Todd Parris, Attorney, 113A East Innes Street, stated that this particular piece of property has people above it that treat people with alcohol and substance abuse problems, the Social Security is across the street and there is a vacant lot and dentist's office beside it. He stated that the only boundary line with commercial property is the two houses behind the property. He stated that his client's use is very minimal and the only visual change that she would like to do is to put a sign up. He stated that his client will put in any parking or landscaping as required by the City. He noted that a carwash or Arby's could be put in the location which would really change the character of the neighborhood and his client will not be much of a change for the neighborhood. Mr. Parris stated that he is concerned because the neighbors initially stated they were not concerned about Madame Dora but about the zoning and now they are still upset and he feels it is about Madame Dora and what she does. Mr. Parris read a definition of the word

prejudice and stated that he felt there were some neighbors that had a preconceived notion about what his client does. He indicated that he has invited people to contact them and visit the business but not many have accepted the offer. Mr. Parris stated that if this were a different type of business he does not feel it would be a problem, but he feels it is a problem specifically because of what type of business it is. He reiterated that the only visual changes will be a sign and whatever requirements the City imposes. He thanked Council and stated that he feels the City has treated his client very fairly. Mr. Parris stated that he understands the developers concerns about changing zoning everywhere and he would just request a small accommodation for this property so a legal business can be conducted.

Mr. Dora Dalton, 1815 East Innes Street, stated that she operated her business at 2910 South Main Street for four and a half (4 ½) years and never had any complaints against her. She stated that she had many neighbors surrounding her and never had complaints from any of them. She stated that she can understand the neighborhood's worry but she asked for the opportunity to prove them wrong about her business. She stated that her business is very low profile noting that if she gets two (2) customers a week it is a good week. Ms. Dalton commented that this is the United States and every one needs to live and support their families and asked Council to help her do this.

Dr. Ted James, 1545 Earnhardt Road, stated that Ms. Dalton rented his property for over four (4) years and during that time he never had any complaints or saw inappropriate activity. He stated that the property was always kept neat and clean. Dr. James read a statement from Mr. David Corriher who owned a business beside Ms. Dalton. Mr. Corriher's statement indicated that during the three (3) years that he was a neighbor of Ms. Dalton he never saw any activity that would be a problem for any neighborhood and he felt she was an asset to the community.

Ms. Deana Moore, 210 Fairview Street, stated that East Innes Street is the postcard entrance to Salisbury and although she realizes one sign will not alter the beauty of their neighborhood she fears future rezoning. She noted that many residents remember when most of East Innes Street was residential and there were very few businesses. She stated that a rezoning for their neighborhood could open the door for future rezonings resulting in unsightly development to the doorway of Salisbury. Ms. Moore noted that this zoning change is being requested to accommodate a renter and noted that the property is currently zoned for Office/Institutional. She stated that if the tenant leaves they have no guarantees what standards the subsequent tenants would have in their professions. She stated that even with limitations to specific types of businesses they have no assurances that the present tenant would remain. Ms. Moore stated that the future of their family homes and investments will be affected for years to come and the neighborhood will continue to be affected long after this business is gone due to the irreversible nature of zoning. She indicated that there is a vacant lot next door to the property in question and she questioned how this rezoning will affect chances of a successful sale. She added that they are not just concerned with what could happen today but what could happen in ten (10) or fifteen (15) years. Ms. Moore stated that for residents whose homes are in the immediate area the possibility of increased traffic is a great concern, as they are already plagued with cut-through traffic on the side streets. She added that another concern is for emergency vehicles at this location, feeling it would put the business in this location at risk because there is a narrow, incline drive. Ms. Moore stated that she is not opposed to Ms. Dalton or anyone else using this location as their primary residence but objects to the altering of their family friendly neighborhood. She added that she strongly objects to the proposed zoning change and asked Council for their consideration.

Ms. Linda Kanipe, 205 Fairview Street, stated that she is opposed to spot zoning of any property no matter where it is located or its intended use. She stated that her house is one house away from Faith Road and two (2) streets from East Innes Street but when she stands on her front porch she can see the roof of the house on the property. She added that there are no buffers between 1815 East Innes Street and her neighborhood. Ms. Kanipe noted that on one side of the property is the Rowan County Health Department, on the other side is a dentist's office, and the Social Security Administration is across the street, and added that all of these businesses are only open on weekdays and close each day at 5:00 p.m. Ms. Kanipe stated that these businesses provide a service that most residents of the County will use at some point, but this can not be said about the type of business proposed for 1815 East Innes Street. She commented that she does not feel this business will be an asset to their neighborhood. She stated that they take great pride in their properties and have worked to enhance the City's vision of the East Innes Street Corridor and to improve the gateway to Salisbury. She stated that the residents have patiently endured months of on-going road construction in the area because they know the end result will be beneficial to everyone. Ms. Kanipe stated that a sign advertising this business will be detrimental to the integrity of their neighborhood and to the goals of the City to improve the gateway. She noted that she is happy that the family experienced no problems at its former business location but she felt this East Innes Street area is visually different from their prior location and no comparisons should be made between the two neighborhoods. Ms. Kanipe stated that the rights of an individual should not impose on the rights of many others who only want the best for their neighborhood and City.

Mr. Mike Oney, 2513 Wedgewood Drive, informed Council that he is a Chaplain with Rowan County Jail and has been an ordained minister for twenty-eight (28) years. Mr. Oney stated that he has been involved with occult practices and mind control during his past life while searching for God. He stated that he learned to depend upon people to direct him to the right spiritual source but never quite found them. He stated that the advisors wanted him to be dependent upon their advice and could never give him real direction. He noted that he has also dealt with at least three (3) other people who have been in bondage and he feels it is bad for anyone to claim they are the only ones who can give people direction. Mr. Oney quoted Deuteronomy 18:9 from the Bible and asked Council to look deeply at the issue and not label everything prejudice just because they see a difference in what someone does. He stated that he is a Vietnam veteran who fought for this Country and he hopes Council will look closely at what is being brought into the City.

Ms. Barbara Thomas, 2105 East Innes Street, stated that she thinks it is presumptive that someone would rent a facility knowing it is not zoned for their intended use. She added that she also shares the same concerns that have been expressed.

Ms. Kathy Panther, 520 Morrison Avenue, informed Council that her property backs up to the rental property in question. She submitted pictures of the residential properties surrounding the area. Ms. Panther noted that she is proud to say she lives in the City of Salisbury and is proud of the commercial neighbors around her but she cannot see how changing the zoning for an entertainment business would be worthwhile for her area.

There being no one else to speak to Council concerning the request, Mayor Klutz closed the public hearing.

Council asked Mr. Mitchell to respond to some of the questions raised during the public hearing.

Mr. Mitchell stated that if the zone change is granted and the S-District Permit is issued and the tenant should vacate the property, the S-District

Permit, along with all of its associated conditions and approved uses would remain in place. He noted that the zone change and the Permit run with the land not with the tenant, noting that even if the property was sold everything would remain in place. He informed Council that they have the ability to impose reasonable conditions on the S-District Permit and have the authority to review the Permit in order to modify or revoke it at any time in the future.

Mr. Mitchell stated that this case would not be spot zoning explaining that spot zoning would be to rezone a small portion of a large section to something that is more restrictive than what it was in the past or so much less restrictive that the rest of the large area would then be considered more restrictive. He used the aerial map to show Council an example and to illustrate what might be considered spot zoning.

Mr. Mitchell commented on the buffering and landscaping and stated that both were conditions of the Planning Board and staff. He explained that their recommendation is that if this is approved that all of the development be done under B-1 guidelines meaning she will have to go through the group development process. He stated that as she goes through this process the Zoning Administrator will impose all of the B-1 requirements upon her, which means that the landscape buffer will be larger than what would be required in the B-4 General Zone.

Ms. Kanipe informed Council that she did not realize that spot zoning was a legal term and only used the term as a layman.

Mayor Kluttz stated that this is a difficult decision because there is a zoning map in place in the City and she feels this is part of the protection that people who live in the City are offered. She commented that she personally feels that changing zoning is not something that should be done without a compelling reason and she does not think Council should have to apologize if the zoning is not changed. Mayor Kluttz stated that she can understand the feelings of the people in the neighborhoods and Council supports all of its neighborhoods. She noted that for twenty-five (25) years she lived across the street from the back door of the YMCA and she always wondered what would happen if the YMCA might leave. She added that during that time if she had seen a sign advertising a zoning change, her first reaction would have been panic because of what she invested in her home. Mayor Kluttz noted that she would also have trust in the City Council to protect her home and not do something harmful to the neighbors. She stated that she feels Council has a responsibility to be very careful and are dealing with a business that came in knowing that the zoning was not allowed. She noted that she worries about the precedent this will set for those who may seek special zoning. Mayor Kluttz stated that she wishes to make it clear that her feelings about this case are not based on the person seeking the change or about her business but solely on the issue of rezoning. She added that she felt Council should be very careful and she cannot support this unless she hears a compelling reason to change.

Councilman Burgin stated that he agrees this is a difficult case because there are neighbors who are concerned, but as he analyzed the problem that Council is faced with now he feels what is being presented to Council offers a tremendous amount of protection for the neighborhood. He stated that by the proposal coming to Council with the condition that the business be treated with the B-1 guidelines it is basically every protection they have right now. He stated that there is nothing in this proposal that exposes the neighborhood to any more risk from a construction stand point than what they have right now. He added that the B-1 guidelines give them the exact same protection that is in place right now but the one difference is that one additional use has been added in this one case. Mr. Burgin stated that he voted against the first proposal previously brought to Council because it would have added this one use to B-1 across the City and he did not think that would give Council the kind of control it needs in order to manage this particular business, but he feels under B-4-S Council has this ability. He noted that this is basically a B-1 business adjacent to B-6 beside B-1, across the street from B-1 and across from an empty lot that could be B-1, all under a GDA overlay meaning it has to come through Group Development. He stated that Council will see this plan again and it will be a challenge for the tenant to meet all of the GDA guidelines. Mr. Burgin stated that he feels it is a dangerous practice to rent something that is not zoned for the intended use and the applicant took a huge risk. He stated that he feels Council is protecting the neighborhood against anything that is comparable to what they have, except for the one use, and he thinks the evidence presented is that her use is very near residential and he does not feel the neighbors will see any change. He noted that he feels the house will continue to look like a house but with a sign. Mr. Burgin commented that Council has the ability to control the size of the sign and noted that the maximum sign size is thirty-two (32) square feet and this can be changed if Council feels this will overwhelm the neighborhood. He stated that he understands that the neighbors in this area are unhappy, but he does not think that this particular rezoning is hurting the neighborhood. He noted that he knows how limited the B-4 zoning is and there will not be many options for this particular use and he feels he can support the application before Council. He stated that he is willing to listen to further restrictions concerning the size of the sign or to control the hours of operation. Mr. Burgin stated that this particular property under this particular case will look just like it looks right now; adding that, by right, he feels there could be worse things in the neighborhood.

Mayor Pro Tem Woodson stated that he visited the neighborhood twice and he believes that he was contacted several years ago about putting a large scale operation on this particular piece of property. He added that he feels eventually someone will purchase this property. He stated that he feels that what Ms. Dalton will have to do on the property with landscaping and with only three (3) or four (4) customers a day, the neighborhood is better off with her on the property rather than a big office development. He stated that he investigated and there have been no complaints against Ms. Dalton at her prior location. He added that he feels everyone has a right to try to make a living and he would not want to put someone out of business. Mr. Woodson commented that he sincerely feels this business will not hurt anything. He stated that he can support the request and he feels it may actually improve the property, noting all of the landscaping that will be required if the request is approved.

Councilman Kennedy stated that he agrees with Councilman Burgin and Mayor Pro Tem Woodson and he feels Council got themselves into this rezoning request because when it came to Council at the last meeting the Planning Board had recommended this use be added in B-1. He noted that Council chose not to accept that request and asked the Planning Board to find a way for this property to be used and he feels they have done that. He stated that he understands that Innes Street is one of the City's streets but it is also Highway 52 with many highway vehicles and the rezoning will be to B-4 which is a business highway district. He added that he can support this request because there are safeguards in place and if something goes wrong Council can always pull the permit and the property rights will go away.

Councilman Lewis indicated that he has ridden through the neighborhood and walked the property in question to see how close the houses are and noted that the houses are a little closer than he expected. He noted that he attended all of the Planning Board meetings to hear about this issue and he has also been in contact with Ms. Dalton and Attorney Todd Parris, as well as anyone who wanted to talk about this. He shared his observations that it appears that in the past the closer you get to residential the less intense the uses of business and that it appears that this piece of property's best and highest use is probably not residential. He pointed out a creek adjacent to the property which may have served as a natural boundary. Mr. Lewis stated that he felt most of the properties were probably rezoned to B-1 at one time and noted that B-1 is the least intensive commercial zoning in the Code and

serves as somewhat of a buffer to residential zoning. He noted that there is a Group Development Overlay over this area and it requires site plan review which serves as a protection for people who have interests around the property. He stated that the site plan review requires the submission of a site plan to the Technical Review Committee, to the Planning Board, and then on to City Council for hearings. Mr. Lewis stated that the site review process allows for the approval, denial, or modification of the plan. He added that if someone wanted to develop these properties there would be control as to the buffers along the property lines. Mr. Lewis noted that the house in question is oriented toward the four (4) lane highway and he does not feel it is part of the neighborhood.

Mr. Lewis reviewed the property beside 1815 East Innes Street where a dentist's office is located and noted that on the aerial photograph there is a parking lot behind the dentist's office which he feels is an encroachment into the neighborhood. He noted that on the photograph there are approximately twenty-one (21) cars parked at the dentist's office. He stated that in looking at uses allowed in the zoning classifications the intensity of the use is taken into consideration. Mr. Lewis stated that this is not an irreversible zoning since an application can be filed to rezone someone else's property. Mr. Lewis stated that adding this use to B-1 will not increase the traffic in the area and noted that if the property were redeveloped into a dentist office it would. He commented that the property is already zoned B-1 and the neighbors have lost the battle to commercial zoning. He stated that the hours of operation are valid issues. In regards to the comment that the business will not be an asset to the neighborhood, Mr. Lewis commented that this is a subjective decision based on a person's value system. He commented on the sign and the remarks which were made that it will be detrimental. He stated that he did not feel it was the size of the sign that is the issue but what will be written on the sign. He stated that the issue is whether this use is more of an Entertainment/Adult use or more of an Office/Institutional use. Mr. Lewis stated that from a Planning view point Council has a staff recommendation, a Planning Board recommendation and the issues he outlined as to why he thinks it is a business use. He added that it will have a fifteen (15) foot buffer as required in B-1. He added that the Planning Board and staff both recommend approval. Mr. Lewis stated that in regards to N-11 of the Vision 2020 Plan and the location of the property, he feels this property is located along the side of a neighborhood and is located along a major street.

Mr. Lewis stated he can support the request but does have concerns about the hours of operation and size of the sign. He also noted that he understands the Mayor's concern that Council is being requested to rezone a piece of property to accommodate one renter when there are one hundred seventy-five (175) signatures from the neighborhood in protest and that makes the issue hard. He stated that before the last Planning Board meeting he had supported both recommendations the Planning Board had given but now that there is a group of neighbors who are opposed, it makes the issue more difficult. He noted Salisbury is built on the strength of its neighborhoods and this has to play a part in the decision.

Mr. Woodson stated that he has heard about this issue from his customers and most are split about whether it should be allowed. He added that Council has approved many houses and apartments in the past six (6) months and the City will continue to grow and he feels that this property will be sold for use by big development.

Mr. Kennedy stated that he has a concern that Council is discriminating against businesses. He added that a business is a business and questioned if it is discrimination just because you do not like the business.

(c) Findings of Fact and Decision

Thereupon, Mr. Burgin made a **motion** to approve the zoning to B-4-S having found the following facts as also found by the Planning Board:

- This site could redevelop today into a commercial use that is allowed by right within the B-1 district and would include the ability to raze the existing structure and rebuild a commercial-style structure with associated commercial site amenities
- If this request is granted the user would be required to undergo the Group Development process, which would require that the site meet all commercial B-1 standards such as landscape buffering, interior landscaping and meet parking requirements
- That the zoning of this site essentially does not change since there would be only one (1) type of new use added to the list of B-1 and that no other uses will be allowed from the B-4 list on this particular piece of property
- There would be no infringement on the surrounding neighborhood since this request is not one that rezones property from residential to commercial and that current zoning is commercial and a professional office already exists adjacent to the subject property

Mr. Kennedy seconded the motion. Mr. Lewis asked if there is a compelling reason regarding the sign that could be shared regarding the Mayor's position. Mayor Kluttz responded that her position is purely with the zoning and noted that Council brought up many valid points. She stated she feels confident that Council feels strongly that protection should be given to the surrounding property owners and will place the proper restrictions to give this protection. She stated that her only issue with the sign is the size of the sign. Messrs. Burgin, Kennedy, Lewis, and Mr. Woodson voted AYE. Mayor Kluttz voted NAY (4-1)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 0.63 ACRES, LOCATED AT 1815 EAST INNES STREET, IDENTIFIED AS PARCEL 101 071, FROM B-1 OFFICE INSTITUTIONAL TO B-4-S SPECIAL HIGHWAY BUSINESS DISTRICT.

(The above ordinance is recorded in full in Ordinance Book No. 20, Zoning & Planning, at Page No. 21, and is known as Ordinance No. 2005-18.)

(d) Special Use District Permit

Thereupon, Mr. Burgin made a **motion** for the City to issue a Special District Permit for B-4-S with the restrictions that have been listed by the Planning Board which include, architectural compatibility, B-1 guidelines, the uses allowed under the Permit will be the cumulative B-1 uses in addition to the use of "palmist, tarot card reader, or psychic advisor." He added that the sign of the business be limited to sixteen (16) square feet. Mr. Kennedy seconded the motion. Mayor Kluttz stated that she respects all of her colleagues' opinions and her vote was purely for zoning and she is confident that this will be the most restrictive and Council will continue to look out for the neighborhood. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz

voted AYE. (5-0)

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AN ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLNA, GRANTING AN S-DISTRICT PERMIT IN CONJUNCTION WITH ORDINANCE 2005-18; PROVIDING FOR PERMITTED USES: PROVIDING FOR CONDITIONS OF DEVELOPMENT; PROVIDING FOR MODIFICATION OR TERMINATION; AND PROVIDING FOR AN EFFECTIVE DATE.

(The above ordinance is recorded in full in Ordinance Book No. 20, Zoning & Planning, at Page No. 22, and is known as Ordinance No. 2005-19.)

Mr. Lewis asked if the applicant will now have to submit a site plan. Mr. David Phillips, Zoning Administrator, responded that she will have to file a site plan application like all other group developments, showing the proposed landscaping and parking. Mr. Lewis noted that this issue will come back to the Planning Board and Council and will give neighbors another chance to have input on this issue.

Mayor Kluttz thanked everyone for their attendance and help with this difficult decision. She assured residents that Council will continue to watch this issue to ensure everything is done to protect their property.

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**HOPE LANE NAME CHANGE**

(a) Mr. Dan Mikkelson, Director of Land Management and Development, informed Council that there was a new subdivision street built off of Ivey Street in the Carolina Place subdivision. He noted that due to an oversight in the review process the name of Hope Lane was submitted and approved for the new street, but there was already a Hope Lane in use in the County. Emergency Services has requested staff work with the developer to identify a new name for the street to avoid the duplication. Mr. Mikkelson stated that only one house has been sold within the development and the developer and new home owner have proposed the alternate name of Billie Hope Drive. This name is acceptable to Emergency Services.

(b) Mayor Kluttz convened a public hearing, after due notice and advertisement thereof, to consider changing Hope Lane to Billie Hope Drive.

There being no one present to speak **for** or **against** the proposed name change, Mayor Kluttz closed the public hearing.

(c) Thereupon, Mr. Burgin made a **motion** to approve the change of name from Hope Lane to Billie Hope Drive. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

**GROUP DEVELOPMENT SITE PLAN - G-05-05 - WALGREENS**

G-05-05 - Walgreens - 1505 East Innes Street

(a) Mr. David Phillips, Zoning Administrator, reviewed a site plan submitted by Walgreens for 1505 East Innes Street along with photographs of the area. He noted that the property is zoned B-6 General Business with the Gateway/East Innes Street Overlay applied. He stated that it is subject to different design features and standards than normal B-6 requirements.

Mr. Phillips stated that this site is unique because it is bound on three (3) sides of the building by public rights-of-way and there are few parcels configured in this way in the Overlay area. He noted that in the Gateway/East Innes Street Overlay there is a section of Alternate Methods of Compliance which allows staff to work with the developers to meet the City's intent and the developer's needs for developing the site. Mr. Phillips stated that staff looked at this site from a visual perspective. He stated that in the Overlay the building can be a minimum of ten (10) feet from the property line in an effort to be more pedestrian oriented. He noted that with this site he determined East Innes Street as the front property line and if the building were placed as required it would double the amount of parking on the Faith Road side of the building. Through the Alternative Methods of Compliance committee, it was determined that by dividing the parking lot it would put equal amounts of parking on both the East Innes Street and Faith Road sides and would still allow for the visual corridor for the front of the building. He stated that the developer will provide alternate paving materials as provided by Code and will screen all parking areas with landscaping and brick and wrought iron wall. Mr. Phillips noted that the developer will provide interconnectivity with the property behind it. When East Innes Street is completed with a median the drive on East Innes will be right in, right out only. Mr. Phillips stated that the North Carolina Department of Transportation (NCDOT) is still evaluating the property to determine access onto Faith Road.

Mr. Phillips stated that the Alternate Methods of Compliance committee felt the developer should be allowed to have parking in the front with a circulation drive. They also felt that the trees along Faith Road, as it intersects with East Innes Street, should be omitted to remove a visual barrier for traffic. He added that they will still meet landscaping requirements as required.

Mr. Phillips informed Council that the Planning Board approved the site plan with two (2) contingencies: that the driveway permit be granted by NCDOT, and the developer petition to officially close Cox Lane.

Mr. Phillips reviewed the rendering for the proposed site and noted that they met the building design standards as required by the Overlay. He stated the developer will also have to meet window standards which require that the windows be transparent. He pointed out that on their current proposal the top portions of the windows are transparent and the bottom portion is spandrel glass. Mr. Phillips stated that the way the windows will be installed the spandrel glass can be easily removed and transparent panes installed. He indicated that staff is still working the developer to reach an agreement for the transparent windows but the developer has the option of appealing to the Zoning Board of Adjustment for a ruling.

Mr. Phillips indicated that staff and Planning Board recommend approval of the site plan with the following contingencies:

- All approvals of this site plan are contingent on the closing of Cox Lane right-of-way by City Council.

- NCDOT driveway permit will be required.
- A building design standard requirement for transparent windows has not been met and is being discussed with the developer. The developer is proposing that the bottom portion of the windows consist of spandrel glass. Should this issue not be resolved, the appeal will be with the Salisbury Zoning Board of Adjustment.

(b) Mayor Kluttz opened the floor to receive public comments.

Mr. Steven Austin, Kelly-Austin Properties, 1076 West 4<sup>th</sup> Street Winston-Salem, explained that the rendering of the structure has changed slightly since discussions with staff to remove a portion of the front wall for the installation of brick pavers and to include heavier landscaping. He stated that Walgreens uses a prototype for their building construction and the display cabinets used in this prototype back up to a wall. He noted that this is the reason for their request to use the spandrel glass because if transparent windows were used the backs of cabinets would be seen and he does not feel this makes visual sense. He noted that the windows will be constructed so that if the use of the building changes the spandrel glass can easily be switched to transparent glass.

Mr. Jay Dees, 612 Mitchell Avenue, stated that Council took several years to develop and adopt the East Innes Street/Gateway Plan and now this is the third property in the area and the Plan is not being used. He stated that the prototype store is similar to fitting a square peg into a round hole and he has not heard that there is a hardship to design a site that would conform to the Gateway Plan. He stated that the developers should design for the space and not just for what they want to do. He asked Council to challenge developers within the Gateway to design for the Gateway requirements.

There being no further public comments, Mayor Kluttz closed the public comment session.

Councilman Burgin stated that he appreciates staff's attempt to accommodate business, but he feels this plan does not meet the Overlay requirements. He added that he cannot support any part of the plan and it appears to be a prototype store put onto a corner lot. He reiterated that the plan does not meet any of the goals of the Overlay which included bringing the building to the front, putting the parking behind, making the building pedestrian oriented, and allowing citizens to see into the business. He pointed out that he is not criticizing staff because they were following Council's directive to be business friendly, but this plan does not meet what Council was trying to accomplish with the Overlay. Mr. Burgin stated if Council has expectations for people who will develop along East Innes Street they have to be applied to everyone and he cannot support this plan. Mr. Burgin pointed out that East Innes Street is the Corridor, not Faith Road or the corner, and he feels the building can be oriented this way.

Mayor Kluttz agreed with Mr. Burgin pointing out the three (3) years that the Council Committee spent working on the East Innes Street Overlay Plan.

Mayor Pro Tem Woodson also agreed with Mr. Burgin and added that this is just a prototype store which is not what Council is trying to do.

Councilman Lewis stated that he felt this is a very unique site but it is also a premier site and the design does not meet the objectives of what Council wants.

Councilman Kennedy commented that he personally thought the design was very attractive but he does support the Overlay and agrees with the other Council members.

(c) Thereupon, Mr. Burgin made a **motion** to deny the group development as submitted. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

#### **GROUP DEVELOPMENT SITE PLAN - G-04-05 - CITY OF SALISBURY FIRE DEPARTMENT STATION**

G-04-05 - City of Salisbury Fire Department Station - 2325 Statesville Blvd.

(a) Mr. David Phillips, Zoning Administrator, reviewed the proposed site plan for Fire Station 50 located at 2325 Statesville Boulevard. He stated that the proposal is for the fire station and a modular living unit. He noted that a complete visual separation will be provided as required. Mr. Phillips pointed out that the landscaping along the street was approved through Alternate Methods of Compliance in order to move the landscaping back from the street so it will not create a visual barrier as the fire trucks leave the property. He stated that staff is working with the North Carolina Department of Transportation to have a wider access in front of the main drive in order to cross the street onto Statesville Boulevard. Mr. Phillips informed Council that the building will be a metal and masonry building, along with a modular dwelling unit. He indicated that the Planning Board recommends approval as submitted.

(b) Mayor Kluttz opened the floor to receive public comments.

There being no one present to address Council concerning the site plan, Mayor Kluttz closed the public comment session.

Mayor Pro Tem Woodson noted that Council is aware that if it does not take action the fire rating could drop from a Class 2 to a Class 3 and this station has been planned for several years in the new annexed area.

Councilman Burgin stated that Council would obviously like to do something more substantial for the fire station but, given the tough budget decisions Council will have to make, this makes sense. He noted that this will meet Council's objectives and will be serviceable.

City Manager David Treme noted that the goal is to reduce the fire response time while maintaining the Class 2 rating, noting Salisbury is one (1) of only five (5) in the State with a Class 2 rating.



Mayor Kluttz commented that this was a top priority from Council's planning retreat.

Mr. Woodson stressed that if the fire rating is dropped then businesses will pay a higher rate for their fire insurance.

Mr. Treme noted that in the recent Citizen Survey the top rated service in the City was the Fire Department.

(c) Thereupon, Mr. Kennedy made a **motion** to approve G-04-05. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

#### **GROUP DEVELOPMENT SITE PLAN - G-11-04 - FIRST NATIONAL BANK**

G-11-04 - First National Bank - 1938 Jake Alexander Blvd. West

Thereupon, Mr. Kennedy made a **motion** to excuse Councilman Burgin due to a conflict of interest. Mr. Lewis seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

(a) Mr. David Phillips, Zoning Administrator, reviewed a vicinity map of the site in question and noted that the plan is for an approximately ten thousand (10,000) square foot building for a bank. He stated that this plan was originally approved for Rowan Bank but there was a merger which put the plans on hold. He added that the bank has acquired additional property during this time and has created a new design. Mr. Phillips stated that there will be two (2) phases for the plan and what is before Council today is Phase I.

Mr. Phillips noted that Alternate Methods of Compliance was used in regards to landscaping where a fifteen (15) foot buffer strip is required. If fifteen (15) feet is required the bank will lose access to a portion of its building. Using the Alternate Methods of Compliance the developer will use the minimum of eight (8) feet. Mr. Phillips added that the plan still meets the point system with required plantings but will just have a more narrow width.

Mr. Phillips pointed out an alley that runs through the back of the property and noted that staff and the North Carolina Department of Transportation (NCDOT) had concerns about an existing driveway entrance off of Jake Alexander Boulevard, feeling it may cause some confusion with the traffic pattern. He stated that the developer has met with NCDOT and staff has received a letter from the District Engineer stating that NCDOT will grant the driveway to remain but they encourage the developer to petition to have the alley closed. Mr. Phillips noted that staff agrees with NCDOT and, along with the Planning Board, recommend approval of the site plan.

(b) Mayor Kluttz opened the floor to receive public comments.

There being no one present to address Council concerning this site plan, Mayor Kluttz closed the public comment session.

(c) Thereupon, Mr. Lewis made a **motion** to approve G-11-04. Mr. Woodson seconded the motion. Messrs. Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (4-0)

#### **BUDGET ORDINANCE AMENDMENT - EAST INNES STREET GATEWAY STREETSCAPE ENHANCEMENT PROJECT**

Ms. Lynn Raker, Urban Design Planner, informed Council that approximately \$335,000 has been received in private grants and donations for the East Innes Streetscape Enhancement project.

Ms. Raker listed those who have made donations or grants:

The Salisbury Community Foundation  
The Blanche and Julian Robertson Family Foundation  
The Woodson Foundation  
F&M Bank  
Mr. & Mrs. James Hurley  
The Holmes Investment Company  
The J. F. Hurley Foundation  
Mr. & Mrs. Bill Stanback

Mr. Raker noted that \$295,000 of the donations have already been appropriated and indicated that \$40,000 remains which needs to be officially appropriated.

Mayor Kluttz stated that one of the things that make Salisbury so unique is the generosity of the community.

Thereupon, Mr. Woodson made a **motion** approve the budget amendment for the donation to the East Innes Street Gateway Project. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

AN ORDINANCE AMENDING THE 2004-2005 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA, TO APPROPRIATE DONATIONS FOR THE EAST INNES STREET GATEWAY STREETSCAPE ENHANCEMENT PROJECT.

(The above ordinance is recorded in full in Ordinance Book No. 20, Budget, at Page No. 23, and is known as Ordinance No. 2005-20.)

**AWARD CONTRACT - CRIMSON FIRE AND SAFETY - FIRE RESCUE STYLE PUMPER TRUCK**

Mr. Dewey Peck, Purchasing Manager, and Fire Chief Bob Parnell, informed Council that specifications for a new fire truck were furnished to eight (8) vendors but only two (2) responses were received. He stated that of the two (2) responses received, staff felt only one met the City's specifications.

Bids were received from:

<b><u>Vendor</u></b>	<b><u>Unit</u></b>	<b><u>Bid Proposal</u></b>
Metrolina Fire & Rescue	Smeal Spartan Gladiator	\$356,440
Crimson Fire Apparatus	Crimson Star Series Rescue Pumper	\$384,924

Mr. Peck noted that there were major areas that the lowest bid did not comply with the City's specifications:

1. Hose bed for two and one half (2 ½) inch line is twenty-five (25) percent smaller than specification.
2. Rescue compartments are one hundred thirty (130) cubic feet on the Smeal and two hundred forty-eight (248) on the Crimson unit. Specifications call for a minimum of two hundred twenty-five cubic feet of storage.
3. Specifications call for a front suction connection. The Smeal does not provide this critical connection.
4. A front discharge was specified to be two and one half (2 ½) inch. The Smeal provides and one and one half (1 ½) inch discharge and the Crimson provides the requested two and one half (2 ½) discharge.

He stated that because the lowest bidder did not meet the City's specifications staff recommends awarding the bid to Crimson Fire Apparatus for \$384,924.

City Manager David Treme asked how this price compares with what was budgeted. Mr. Peck responded that it is well under budget.

Councilman Burgin asked if more than one vendor can meet the specifications and just chose not to respond. Mr. Peck explained that most of the companies that manufacture fire trucks seek bids with a larger number of units and the City only bid a single unit. He added that all of the vendors could meet the specifications.

Thereupon, Mr. Burgin made a **motion** to authorize the Mayor to purchase a Crimson Fire Apparatus Series Rescue Pumper for \$384,924. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

**SUMMIT PARK ELEMENTARY SCHOOL - WATER AND SEWER EXTENSION PROJECT**

Mr. John Vest, Deputy Director of Utilities, informed Council that the Rowan-Salisbury Schools is planning the Summit Park Elementary School to be located off of Ritchie Road. The requested water and sewer agreement will be for approximately five hundred (500) feet of six (6) inch water line and approximately one thousand one hundred (1,100) feet of eight (8) inch sewer line. The estimated cost of the project is \$200,000 and the School Board will pay the entire amount.

Councilman Burgin asked if this extension will help with the dead-end water line at Summit Corporate Center. Mr. Vest responded that this particular line will run off of the existing twelve (12) inch line on Ritchie Road and will give more usage but will not solve the problem.

Thereupon, Mr. Woodson made a **motion** to authorize the execution and implementation of the agreement with the Rowan-Salisbury School System for the Summit Park Elementary School water and sewer extension project. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

RESOLUTION AUTHORIZING AND DIRECTING THE EXECUTION AND IMPLEMENTATION OF THE AGREEMENT BETWEEN SALISBURY-ROWAN UTILITIES AND THE ROWAN-SALISBURY SCHOOL SYSTEM FOR THE CONSTRUCTION OF A WATER MAIN AND A SEWER MAIN TO SERVE SUMMIT PARK ELEMENTARY SCHOOL.

(The above resolution is recorded in full in Resolution Book No. 12, at Page No. 11, and is known as Resolution No. 2005-11.)

**BOARDS AND COMMISSIONS APPOINTMENTS**

**Historic Preservation Commission**

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

Ms. Susan Hurt            Term expires 3-31-08

### **Zoning Board of Adjustment**

Upon a **motion** by Mr. Lewis, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voting AYE, the following appointment was made to the Zoning Board of Adjustment:

Ms. Maggie Blackwell   Term expires 3-31-08

Upon a **motion** by Mr. Kennedy, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voting AYE, the following reappointment was made the Zoning Board of Adjustment City Alternates:

Mr. John Hudson            Term expires 3-31-08

Mr. Lewis asked staff to provide a list of former ETJ Planning Board members.

### **COMMENTS FROM THE CITY MANAGER**

#### (a) Planning Board Recommendations

Council received the Planning Board recommendations and comments from their April 12, 2005 meeting.

#### (b) Update on 531 East Fisher Street

City Manager David Tremé informed Council that Ms. Anne Lyles is in the process of closing on the property located at 531 East Fisher Street and he will report back at the next meeting should the property close.

#### (c) Parks & Recreation Department

Mrs. Gail Elder White, Parks and Recreation Director, informed Council that the Parks and Recreation Department will host a visitation team from the Commission for Accreditation of Parks and Recreation Agencies May 9-13, 2005. A luncheon will be held on Tuesday, May 10, 2005 at 12:00 p.m. at the new picnic decks at the Salisbury Community Park. She invited Council to arrive at 11:30 a.m. for a tour of the facility.

#### (d) Update on East Innes Street Construction

Mr. Dan Mikkelson, Director of Land Management and Development, informed Council that over the next several weeks the State will begin installation of medians on East Innes Street around the I-85 exit. He stated that there will be sporadic lane closures during this period.

Mr. Mikkelson stated that the North Carolina Department of Transportation (NCDOT) has opened the new entrance and exit ramp at East Innes Street and as a result Bendix Drive is no longer directly connected to the Interstate exit ramp, but has not yet been realigned to connect to Faith Road. He noted that this will be an impact to the businesses located on Bendix Drive and NCDOT will install signs to direct traffic. NCDOT will realign Bendix Drive in the near future.

#### (e) Water Sewer Consolidations

City Manager David Tremé noted that he, Assistant City Manager for Utilities Matt Bernhardt, and Finance Director John Sofley, will attend the China Grove Board meeting immediately following tonight's Council meeting. He noted that the meeting will be to discuss the consolidation of the water/sewer utility.

Mr. Tremé noted that they will attend the Town of Landis Board meeting on April 20, 2005 at 4:00 p.m. to discuss their consolidation.

#### (f) Rowan County I-85/US 29 Sewer Project

Mr. Tremé stated that he anticipates completion of a proposed agreement with Rowan County for the I-85/US 29 sewer corridor this week and he will be continuing to work with the County on this project.

#### (g) Alcoa Relicensing

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Mr. Treme stated that he, Assistant City Manager for Utilities Matt Bernhardt, and Attorney Randy Tinsley, are negotiating with Alcoa concerning their relicensing and they will continue to work on an agreement that will protect the rights of the City.

(f) FY2005-2006 Budget

Mr. Treme noted that staff is in the middle of budget preparation and he hopes to present a budget to Council for their consideration at the first or second meeting in May.

(g) Solve-It Skateboard Meeting

Councilman Kennedy stated that he has been reading the articles in the Salisbury Post related to the meeting which was held to discuss the downtown skateboard problem. Mr. Treme stated that he will make a full report to Council at its next Council meeting.

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**MAYOR'S ANNOUNCEMENTS**

(a) Access 16

Mayor Kluttz announced that local government access channel, Access 16, began broadcasting on April 1, 2005. Mayor Kluttz introduced Mr. Jason Parks and congratulated him for his work to make Access 16 a success. She noted that the information that has been provided has already proved to be a wonderful way to educate the public about City services and opportunities.

(b) Clean Air Lecture Series

Mayor Kluttz announced that the next program in the Clean Air Lecture Series will be held at the Catawba College Center for the Environment on Wednesday, April 20, 2005 at 6:30 p.m. The title of the program is "Conservation Through Subdivision Design."

**ADJOURNMENT**

**Motion** to adjourn the meeting was made by Woodson, seconded by Mr. Lewis.  
All council members agreed unanimously to adjourn. The meeting was adjourned at 6:40 p.m.

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Mayor

\_\_\_\_\_  
City Clerk