

Salisbury, North Carolina
April 18, 2006

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. Treme; City Attorney, F. Rivers Lawther, Jr.; and City Clerk, Myra B. Heard.

ABSENT: None.

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

PLEDGE OF ALLEGIANCE

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

RECOGNITION OF VISITORS

Mayor Kluttz recognized all visitors present.

VISITING FIREFIGHTER

Fire Chief Bob Parnell introduced Mr. Luis Ferman who is a firefighter visiting from Guatemala. He explained that Mr. Ferman has been a certified firefighter for one and one half (1 ½) years and had visited Salisbury and one of its fire stations several years ago. He then arranged to return to Salisbury to visit and will participate in the City's rookie school and training program. He noted that Mr. Ferman will reside at Fire Station Number 51 until June 10, 2006.

Mr. Ferman thanked Council and members of the Fire Department for their hospitality, and added that he was happy to be here on behalf of firefighters of the Guatemalan community.

Mayor Kluttz welcomed Mr. Ferman to Salisbury.

KIDS CARE

Ms. Karen Wilkinson, Marketing and Communications Manager, introduced Mr. D'Marius Rouse, City Parks and Recreation Coordinator Miller Center, and participants in the Salisbury Parks and Recreation after school program who will be presenting a message on Boomerangs. Mr. Rouse read a poem explaining how being a good citizen is similar to a boomerang because you receive back what you give, as the after school participants acted out the poem.

Ms. Talita McCain, City Parks and Recreation Programmer, on behalf of the Salisbury Parks and Recreation Department and the Kids Care 4 Critters Campaign, presented Mr. Bob Pendergrass, Rowan County Parks & Recreation, with a check in the amount of \$1,600 to help rebuild the Petting Zoo at Dan Nicholas Park, which was recently destroyed in a fire. Mr. Pendergrass, on behalf of Rowan County and the Dan Nicholas Park Nature Center, thanked the group for the donation.

Mayor Kluttz thanked the children and staff of the City Parks and Recreation Department for their efforts.

PROCLAMATION

Mayor Kluttz proclaimed the following observance:

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CONSENT AGENDA

- (a) Approve Minutes of the regular meeting of April 4, 2006 and the special meeting of April 6, 2006.

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

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REPORT FROM THE NORTH CAROLINA DEPARTMENT OF PUBLIC HEALTH

Mr. Leonard Wood, Director of the Rowan County Health Department, introduced Dr. Doug Campbell, Head of the Environment and Epidemiology Branch of the North Carolina Division of Public Health; Ms. Karen Knight, Central Cancer Registry Director; Dr. Paul Buescher, State Center for Health Statistics Director; and Mr. Bill Pate, Head of Health Risk Assessment for Environmental Exposures.

Dr. Campbell stated that the mission of the Environment and Epidemiology Branch is to find health risks in North Carolina and eliminate them and respond to environmental issues.

Dr. Campbell stated that the Division of Public Health worked to address an issue of concern raised by a citizen in 2000 regarding the environmental contaminates of an asphalt facility near the Milford Hills neighborhood and how they relate to the number of cancers and other health issues in the area. Dr. Campbell presented to Council a study conducted of statewide asphalt facilities and the facility in the Milford Hills area of Salisbury. He then reviewed the highlights of the study:

- Questions to Answer
 - Do the numbers of cancers/suicides suggest a problem?
 - Are there contaminants that can cause a problem?
 - Can there be other causes of the problem?
 - What can be done to fix the problem?
 - Do we need to do any more studies:
- Risk Factors for Cancer
 - Genetic
 - Life-style
 - Environmental
- Environmental Risk Factors for Cancer
 - Air Chemicals
 - Water Infectious agents
 - Soil Sunlight
 - Home Ionizing radiation
 - Workplace Drugs
 - Diet Alcohol
 - Tobacco
- Results of Cancer Studies
 - 7 statistical studies of cancer by Central Cancer Registry of NC (CCR)
 - No elevated numbers at 1 and 2 mile radius
 - No elevated numbers at 12 plants statewide
 - Federal Agency for Toxic Substance and Disease Registry (ATSDR) Study in North Carolina
 - No elevated numbers at 1 mile
 - Elevated brain and lymphoma in 2 block groups
- Results of Suicide Studies
 - State Center for Health Statistics – 11 asphalt facilities statewide
 - Rate within 2 miles lower than rest of state
 - State Center for Health Statistics – 2 census block groups in Milford Hills
 - Six suicides / 10 years
 - None: 1996 – 2000
 - One: 2001
 - None: 2002
 - Two – 2003

- Results of Environmental Studies of Air around Asphalt Facility
 - Chemical concentrations higher at facility, much lower away from facility
 - Away from facility:
 - Hydrogen sulfide – odor levels
 - Volatile Organic Compound's similar to other urban/rural settings
 - No known causes of brain cancer, lymphoma or suicide
- Groundwater
 - Direction of flow from asphalt plant away from Milford Hills
 - Low Levels of contaminants in Milford Hills
 - None are known causes of brain cancer, lymphoma, or suicide
- Bradford Hill Criteria (1965) – study of exposure to cause of an affect
 - Strength of association
 - Consistency of findings
 - Specificity of findings
 - Temporality of findings
 - Biologic gradient
 - Plausibility
 - Coherence of findings
 - Experimental Evidence
 - Analogy
- Conclusions of Occupational and Environmental Epidemiology Branch (OEEB)
 - No chemicals found in air or water are known causes of brain cancer, lymphoma, suicide
 - Number of cancers/suicides 1 and 2 miles are similar to expected number
 - Municipal water eliminates risk of ground water
 - Carbon filters – much improved air
 - No further epidemiologic studies recommended

Dr. Paul Buescher, Director of the State Center for Health Statistics, stated that the Federal Agency for Toxic Substances and Disease Registry (ATSDR) report found two (2) cancers to be statistically significant, and explained that this does not exceed the chance percentages found in all studies. He added that there is no reason to link these two cancers to the particular exposures observed in the area, and noted that there has been substantial emission abatement since 2002. He concluded by stating that based on the report he does not believe there are excess health risks in the Milford Hills area.

Mayor Klutz thanked the speakers for the report and added that it is important for the public to hear what these agencies and reports have to say. She stated that the City is always concerned about the health and safety of the citizens. She added that Council has heard these health concerns since 2000 and that it depends on County, State and Federal Health Departments to monitor these concerns. She stated that the City Council operates on fact and not fear and that these allegations, which have been highly publicized, have generated fear among the residents of this neighborhood and it is important for this report to be presented to the City. She asked if she would be correct in stating that the residents of Milford Hills are not at risk. Dr. Campbell stated that this was the finding of the study.

Mayor Pro Tem Woodson stated that at one time textile plant workers were exposed to large amounts of hydrogen sulfide and noted that it would be interesting if ATSDR conducted a study on the exposure to hydrogen sulfide in textile plants.

Councilman Lewis asked about the meaning of epidemiology. Dr. Campbell stated that it is the study of disease in populations of people rather than individuals. Mr. Lewis asked when issues are identified throughout the State, is the NC Department of Public Health the agency that is contacted and is it reasonable to suggest they are the experts. Dr. Campbell responded that Mr. Lewis is correct. Mr. Lewis noted that this was a six (6)-year investigation conducted by multiple agencies including the Central Cancer Registry, North Carolina State Center for Health Statistics, Agency for Toxic Substance and Disease Registry, Division of Air Quality Toxics Protection Branch, North Carolina Division of Public Health, Occupational and Environmental Epidemiology Branch, North Carolina Department of Environment and Natural Statistics, and the North Carolina Department of Environment and Natural Resources, who are experts and that the report states that there is no additional risk for living in Milford Hills than there would be in any other neighborhood in North Carolina. Dr. Campbell concurred that these were their findings.

Councilman Burgin acknowledged that Council has concerns because of the rumors and he appreciated the expertise of these agencies in clarifying this matter. He added that this cancer problem has scared people and that Council wants facts and wants the citizens to feel assured that Council has been responsible in attempting to identify that this neighborhood is not at risk.

Dr. Campbell pointed out that hydrogen sulfide was identified as an odor problem and although not a risk, it could have irritated some people's respiratory tracts. He added that he feels this has been addressed by the use of carbon filters and the levels now present are quite safe.

Councilman Kennedy thanked the agencies for their assistance to the City of Salisbury in this matter.

Mayor Klutz stated that during a previous ASTDR meeting one of the neighborhood residents asked if this neighborhood was considered a cancer cluster and the ASTDR answer was no. Dr. Campbell and Dr. Buescher indicated that they agreed with the ASTDR statement.

Mr. David Treme, City Manager, stated that copies of the report are available at City Hall. He thanked Mr. Leonard Wood for putting staff in

contact with the State to seek their assistance and thanked Mr. Richard Kelly, City of Salisbury Risk Manager, for his work on this issue.

(THE NORTH CAROLINA DIVISION OF PUBLIC HEALTH OCCUPATIONAL AND ENVIRONMENTAL EPIDEMIOLOGY BRANCH REPORT TITLED "CANCER AND SUICIDE NEAR ASPHALT DISTRIBUTION FACILITIES: SALISBURY, NORTH CAROLINA A REPORT OF A SIX-YEAR INVESTIGATION" AND THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (ASTDR) REPORT TITLED "A REVIEW OF THE INCIDENCE OF CANCER CASES AMONG RESIDENTS OF ROWAN COUNTY, NORTH CAROLINA, AND RESIDENTS LIVING NEAR INDUSTRIAL FACILITIES IN SALISBURY, NORTH CAROLINA" ARE HEREIN INCORPORATED AND MADE A PART OF THESE MINUTES.)

AMENDMENT TO CODE OF ORDINANCES RELATING TO POOL HALLS

Deputy Police Chief Steve Whitley noted an amendment to the Code of Ordinances relating to pool halls and indicated that the amendment is an effort to update the language in the Ordinance. He indicated that the current Code contains language that states no pool hall shall be located upon any floor of the building other than the first or ground floor. He stated that staff feels this language is antiquated and not consistent with new construction and current business practices. He added that the Police Department does not feel this requirement has any value and does not impact their response to calls for service.

Chief Whitley referred to the section of the Ordinance related to application for permit and fee. He recommended the language be modified to delete the \$50.00 fee and refer to the fee as established by the Fee Schedule adopted by the City Council each fiscal year.

Thereupon, Mr. Lewis made a **motion** to adopt an Ordinance amending Article II, Chapter 4, of the Code of the City of Salisbury, relating to pool halls. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING ARTICLE II, CHAPTER 4, OF THE CODE OF THE CITY OF SALISBURY, RELATING TO POOL HALLS

(The above Ordinance is recorded in full in Ordinance Book No. 21, Administration, at Page No. 31, and is known as Ordinance No. 2006-23.)

PUBLIC HEARING - POOL HALL PERMIT APPLICATION – JORGE ORTEGA

(a) Deputy Police Chief Whitley informed Council that Mr. Jorge Ortega has submitted an application for a pool hall permit for a new business, Jorge's Italian Bar and Grill located at 124 East Innes Street. Chief Whitley informed Council that a background investigation was performed and there was nothing detrimental or disqualifying found.

(b) Mayor Klutz convened a public hearing, after due notice and advertisement thereof, to consider a pool hall permit application for Jorge Ortega, 124 East Innes Street.

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

(c) Thereupon, Mr. Woodson made a **motion** to approve a permit for Jorge Ortega to operate a pool hall located at 124 East Innes Street. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

PUBLIC HEARING - POOL HALL PERMIT APPLICATION – TODD LITTLETON

(a) Deputy Police Chief Steve Whitley indicated that an application for a pool hall permit has been submitted by Mr. Todd Littleton for Benchwarmers located at 113 East Fisher Street. Chief Whitley stated that Benchwarmers has been in operation for quite a while and there have been some issues of concern in the past. He noted that in 2004 there were six (6) disturbances related specifically to the business and in 2005 the disturbances increased to twelve (12). Chief Whitley stated that State investigators and members of the Salisbury Police Department met with the owner who immediately took action to replace staff and hire off-duty police officers to provide security and reduce problems. He pointed out that since January there have only been two (2) disturbances and both were isolated events that involved individuals who came to the business already intoxicated.

Chief Whitley informed Council that he believes Mr. Littleton is doing everything he can to make this a good business for downtown and the Police Department does not consider it to be dangerous. He noted that, based on concerns of prior history, the Police Department recommends approving the pool hall permit for three (3) months to allow the Police Department an opportunity to study the situation and report back to Council.

Councilman Kennedy stated that he would like to extend the period to six (6) months because he feels it would be more indicative of what might be going on.

(b) Mayor Klutz convened a public hearing, after due notice and advertisement thereof, to consider a pool hall permit application for Todd Littleton, 113 East Fisher Street.

Mr. Todd Littleton, 525 Pebble Point Road, stated that he addressed the problems brought to his attention as best he could and he feels he is on the right track.

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

Mayor Klutz commented that she is impressed with Mr. Littleton's response to the problems that were brought to his attention.

(c) Thereupon, Mr. Kennedy made a **motion** to approve a temporary permit for one hundred eighty (180) days for Todd Littleton to operate a pool hall located at 113 East Fisher Street. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

Councilman Burgin noted that he feels it is important to understand this is a privilege granted by Council and if it is abused Council will not allow these activities. He added that it is important to have businesses that operate in safe, orderly and respecting ways downtown.

ZONING TEXT AMENDMENT T-05-06 AMENDMENT AND NOTIFICATION SECTION CONSISTENT WITH CLARIFICATION BILL

(a) Mr. Preston Mitchell, Senior Planner, indicated that there were two (2) sets of changes made to Planning Law by the General Assembly during 2005. He stated that the two sets of changes were called the Clarification changes and Modernization changes. He noted that the request before Council today is a proposal to update the City's Zoning Code relative to the Clarification changes. He pointed out that the City has been practicing these changes since January 2006 and now the changes need to be brought forward into the Code. Mr. Mitchell stated that staff is in the process of determining how to best implement the Modernization requirements and those changes will be brought to Council at a later date.

The proposed amendments include:

- Planning Board recommendations on all proposed zoning text and map amendments shall be submitted to City Council within thirty (30) days of submission to the Board
- Although the City already requires this, it is now a state requirement to post a sign on the rezoning site
- Protest Petitions shall no longer apply to text amendments and now only apply to zoning map amendments
- When voting members recuse themselves, and in cases of vacant seats, these seats are not considered in calculation of the required three-fourths (3/4) majority vote that is required for a protest petition
- The area for valid protest shall be twenty (20) percent of the area included or five (5) percent of a one hundred (100) foot perimeter buffer, and if less than a full parcel is petitioned for rezoning the entire property boundary shall be used to compute the buffer
- A protest petitioner may withdraw their name from a protest petition before the final vote is taken on a rezoning matter. The protest petition will only be valid when all requisite names remain in place at the time of the vote

Councilman Lewis questioned if a member of City Council is recused, then three (3) out of four (4) votes is required for approval when there is a valid protest petition. Mr. Mitchell responded that this is correct.

Mr. Lewis asked if the Planning Board can request additional time beyond the thirty (30) days required for a recommendation to be submitted. Mr. Mitchell responded that the Planning Board now has only thirty (30) days to make a recommendation. If a recommendation is not made during this time then the issue comes to Council with no recommendation. He explained that in the past if the Planning Board did not submit a recommendation within the specified time it meant that the issue was sent to Council with an automatic recommendation of approval. Now, if the thirty (30) days lapse, then the item is submitted with no recommendation.

(b) Mayor Klutz convened a public hearing, after due notice and advertisement thereof, to consider zoning text amendment for T-05-06 City of Salisbury.

There being no one to address Council regarding the text amendment, Mayor Klutz closed the public hearing.

(c) Mr. Woodson stated that the City Council finds and determines that adoption of the Ordinance pertaining to zoning text amendment T-05-06 is consistent with the 2005 Planning Law Clarification Bill as ratified by the North Carolina General Assembly and thereupon, made a **motion** to adopt an Ordinance amending the Code of Ordinances, Zoning Appendix, of the City of Salisbury, North Carolina, by amending Article XIX (Amendments and Notifications), Section 19.10 (Amendment Procedures), for the purposes of securing compliance with the 2005 Planning Law Clarification Bill. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, ZONING APPENDIX, OF THE CITY OF SALISBURY, NORTH CAROLINA, BY AMENDING ARTICLE XIX (AMENDMENTS AND NOTIFICATIONS), SECTION 19.10 (AMENDMENT PROCEDURE), FOR THE PURPOSES OF SECURING COMPLIANCE WITH THE 2005 PLANNING LAW CLARIFICATION BILL.

(The above Ordinance is recorded in full in Ordinance Book No. 21, Zoning & Planning, at Page Nos. 32-35, and is known as Ordinance No. 2006-24.)

ANNEXATION ORDINANCES FOR AREA 1 – AIRPORT ROAD; AREA 2 – CEDAR SPRINGS ROAD; AREA 3 – SOUTH MAIN STREET

Mr. Bill Duston, Planning Director with Centralina Council of Governments (COG), reviewed amended annexation reports with Council. The effective date of annexation is June 30, 2006.

AMENDED REPORT AREA 1 – AIRPORT ROAD

The amended Annexation Report for Area 1 – Airport Road, including the qualifications for annexation and the estimated revenues and cost to provide services, was reviewed with Council.

Thereupon, Mr. Burgin made a **motion** to adopt the amended Annexation Report for Area 1. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

(THE AMENDED ANNEXATION REPORT IS HEREIN INCORPORATED AND MADE A PART OF THESE MINUTES.)

AMENDED REPORT AREA 2 – CEDAR SPRINGS ROAD

The amended Annexation Report for Area 2 – Cedar Springs Road, including the qualifications for annexation and the estimated revenues and cost to provide services, was reviewed with Council.

Thereupon, Mr. Kennedy made a **motion** to adopt the City of Salisbury Amended Report of Area 2 – Cedar Spring Road area. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

(THE AMENDED ANNEXATION REPORT IS HEREIN INCORPORATED AND MADE A PART OF THESE MINUTES.)

AMENDED REPORT AREA 3 – SOUTH MAIN STREET

The amended Annexation Report for Area 3 – South Main Street, including the qualifications for annexation and the estimated revenues and cost to provide services, was reviewed with Council.

Thereupon, Mr. Woodson made a **motion** to adopt the Area 3 South Main Street Report as amended. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

(THE AMENDED ANNEXATION REPORT IS HEREIN INCORPORATED AND MADE A PART OF THESE MINUTES.)

ANNEXATION ORDINANCES

AREA 1 – AIRPORT ROAD

Mr. Duston reviewed the amended Ordinance for Area 1 – Airport Road.

Thereupon, Mr. Kennedy made a **motion** to adopt an Ordinance to extend the corporate limits of the City of Salisbury, under authority granted by Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina for Area 1 – Airport Road to be effective June 30, 2006. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

Councilman Lewis noted that water and sewer extension appeared to be the major expense for the annexations and asked staff to verify that if Council adopts the Ordinances it will not cause a tax increase to the existing citizens to pay for the services. Mr. John Sofley, Management Services Director, responded that all three (3) areas are viewed as a whole and there will be a net increase in revenues. He stated that there is a line item in each annexation budget to fund a portion of the debt service in the water and sewer fund so that when the lines are extended there is no net additional cost to any existing utility customer. City Manager David Tremé pointed out that these figures only include existing structures and customers and not future growth which will also add revenues.

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SALISBURY, UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 3 OF THE GENERAL STATUTES OF NORTH CAROLINA.

(The above Ordinance is recorded in full in Ordinance Book No. 21, Zoning & Planning, at Page Nos. 36-54, and is known as Ordinance No. 2006-25.)

AREA 2 – CEDAR SPRINGS ROAD

Mr. Duston reviewed the amended Ordinance for Area 2 – Cedar Springs Road.

Thereupon, Mr. Burgin made a **motion** to adopt an Ordinance to extend the corporate limits of the City of Salisbury, under authority granted by Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina for Area 2 – Cedar Springs Road to be effective June 30, 2006. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SALISBURY, UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 3 OF THE GENERAL STATUTES OF NORTH CAROLINA.

(The above Ordinance is recorded in full in Ordinance Book No. 21, Planning & Zoning, at Page Nos. 55-73, and is known as Ordinance No. 2006-26.)

AREA 3 – SOUTH MAIN STREET

Mr. Duston reviewed the amended Ordinance for Area 3 – South Main Street.

Thereupon, Mr. Lewis made a **motion** to adopt an Ordinance to extend the corporate limits of the City of Salisbury, under authority granted by Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina for Area 3 – South Main Street to be effective June 30, 2006. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SALISBURY, UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 3 OF THE GENERAL STATUTES OF NORTH CAROLINA.

(The above Ordinance is recorded in full in Ordinance Book No. 21, Zoning & Planning, at Page Nos. 74-91, and is known as Ordinance No. 2006-27.)

COUNCIL COMMITTEE REPORT T-01-06 HOT MIX ASPHALT ALLOWED IN M-2 HEAVY INDUSTRIAL

Mayor Klutz indicated that a Council Committee comprised of Mayor Pro Tem Woodson and Councilman Burgin was appointed to review the request to allow Hot-Mix Asphalt plants in the M-2 Heavy Industrial District.

Mayor Pro Tem Woodson reported that he and Councilman Burgin met individually at the asphalt plant located on Jake Alexander Boulevard on several occasions. He noted that the entire Council toured the new APAC facility in Concord and commented that the plant was very clean and looked good. He stated that he feels the Committee felt better about the plant after the tour and he feels the berm and clay around the Concord plant would help with air pollution. He indicated that the Committee feels the condition that there be a two (2) mile separation from any other facility is an excellent idea. He added that it appeared the new plant in Concord is superior to the old facility on Jake Alexander Boulevard and that type of facility here would be an improvement.

Councilman Burgin commented that Council wanted to be cautious in its deliberations for this type of zoning and he feels that during the process Council has gained some clarity on what can be added to the ordinance to provide additional protection. He noted that he likes the two (2) mile separation because it will enable Council to identify who is the cause if any problems should arise. He stated that he also recognizes that as a growing community there is a need for this product and if Council can create an environment in which the product can be delivered in a cost effective way this kind of facility is what is needed. Mr. Burgin added that by requiring a special use permit Council will be in control of other variables that may come into play.

Thereupon, Mr. Woodson made a **motion** to adopt an Ordinance amending the Code of Ordinances, Zoning Appendix, of the City of Salisbury, North Carolina by amending various articles and sections for the purpose of conditionally permitting the construction and operation of a Hot-Mix Asphalt plant in the M-2 districts. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, ZONING APPENDIX, OF THE CITY OF SALISBURY, NORTH CAROLINA, BY AMENDING VARIOUS ARTICLES AND SECTIONS, FOR THE PURPOSE OF CONDITIONALLY PERMITTING THE CONSTRUCTION AND OPERATION OF A HOT MIX ASPHALT PLANT.

(The above Ordinance is recorded in full in Ordinance Book No. 21, Zoning & Planning, at Page No. 92, and is known as Ordinance No. 2006-28.)

COUNCIL COMMITTEE REPORT G-02-06 EARLY BIRD PROPERTIES, LLC (DOLLAR GENERAL)

Mayor Klutz stated that Mayor Pro Tem Woodson and Councilman Burgin served on a Council Committee to review group development site plan G-02-06 for Dollar General.

Councilman Burgin indicated that the property in question is zoned properly for the construction of the Dollar General and he feels it is unfair of Council to try to stretch the general development overlay into anything beyond its proper zoning. He commented that he feels they were able to work to find improved access into all of the six (6) parcels located on seven and three tenths (7.3) acres. The developer has agreed to develop the entire property with two (2) driveways onto Sherrills Ford Road and one (1) onto NC 150, rather than the six (6) that are allowed. Mr. Burgin indicated that the developer has agreed to build the entire building using brick veneer with relief columns for visual entrance on the main elevation. The developer will also install a black canvas canopy over the front entrance to improve the appearance. Mr. Burgin stated that the Committee was pleased that the developer agreed to a ground sign with a maximum height of five (5) feet, and he commented that the Committee feels all of these changes will allow the building to begin to blend in with the churches in the area.

Thereupon, Mr. Burgin made a **motion** to approve the Dollar General Store zoning request. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

Mayor Pro Tem Woodson stated that the developer was very cooperative and is going to work to have a nice, attractive facility in the area.

STAFF REPORT – DRIVEWAY FROM HENDRICK’S BARBECUE ONTO ASHBROOK ROAD

Ms. Wendy Brindle, Traffic Engineer, stated that in 2004 a site plan was brought to Council for Hendrick’s Barbecue that recommended a driveway connection onto Ashbrook Road, but because Westcliffe neighborhood representatives raised concerns that the driveway would increase cut-through traffic and speeds, Council chose to approve the site plan that did not include the driveway. In December 2005 the North Carolina Department

of Transportation (NCDOT) constructed a temporary drive to the property to provide access during the construction in front of Hendrick's Barbecue. Ms. Brindle noted that at that time Council asked staff to provide an update in April 2006.

Ms. Brindle stated that when the temporary drive was installed staff reviewed volume data from 2003. New volume data was then collected using Sycamore Road and White Oaks Drive and based on the numbers obtained there was no significant change in the traffic volume once the driveway was installed. She indicated that there have been no reports of accidents in the area. Ms. Brindle stated that there was no prior data related to speeds but staff obtained speeds in January and April 2006 and there has not been a significant change in the speeds and staff does not feel the driveway is contributing to a speeding problem.

Ms. Brindle informed Council that NCDOT has indicated that within four (4) to six (6) weeks they will shift traffic on US70 and the driveway can be removed at that time; however, NCDOT has strongly recommended that the driveway remain due to safety concerns.

Councilman Burgin commented that he appreciates staff following up with Council's request but the information has done nothing to change his position and he fully expects NCDOT to remove the temporary entrance as Council requested. He stated that he does not feel the current conditions reflect what may happen in the future and the driveway has only been shown not to be a hazard during these (construction) conditions.

Councilman Lewis stated that he agrees with Mr. Burgin. He noted that he would like to hear from the Westcliffe Neighborhood Association before Council considered allowing the driveway because their support would possibly change his position. He stated that he remembers that the Association supported a site plan and rezoning of the property to allow the parking lot to be constructed and if Council changes its stand on the driveway now, he feels Council will lose its credibility.

Mr. Lewis pointed out that the report references the Planning Board's US 70 Small Area Plan which was never adopted by City Council. He commented that it would be easier to agree with the principles in the Plan if it had been adopted as official City policy.

Thereupon, Mr. Burgin made a **motion** to ask NCDOT to remove the temporary driveway from Hendrick's Barbecue. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE (5-0)

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APPROVE CONTRACT FOR FIBER TO THE HOME FEASIBILITY STUDY
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Mr. John Sofley, Management Services Director, stated that during the Council Retreat Council received a presentation regarding Fiber To The Home (FTTH) and felt it would be one of their top six goals, appointing a Council Committee to discuss a feasibility study and a business plan. He added that the Committee met and received a presentation regarding the study. Mr. Mike Crowell, Information Technologies Manager, reviewed the proposal of the Committee's top choice and the elements included in it.

Mr. Crowell noted that:

- FTTH was identified as one of Council's six (6) primary goals for FY2006-2007
- FTTH will be a big investment, but it ensures leading edge communications and entertainment services will be available to residents
- Big plus for businesses looking to move here or maintain their presence here
- Dollars spent on services stays in community
- Salisbury's citizens and businesses become shareholders
- Three (3) consultants presented proposals:
 - Ikon Broadband Technologies
 - ONUG Communications
 - Uptown Services, Inc.
- Uptown Services, Inc. had the best proposal and lowest cost
- Uptown Services made final presentation to Council Committee (Councilmen Lewis and Kennedy) on April 7

Mr. Crowell provided information about Uptown Services, Inc., noting:

- Specialized consulting firm focused solely on municipal broadband
 - Formed in 1997 by former broadband and wireless managers
 - Varied client list throughout telecom industry
- Offer end to end services
 - Feasibility studies
 - Financing
 - Implementation
- Selected as Hometown Connections partner in 1998
 - American Public Power Association (APPA) subsidiary created to help members be more competitive
 - Uptown has exclusive endorsement of Hometown for telecom consulting
- Unique capabilities
 - Former managers with incumbent providers (operated these businesses)
 - Served as overall consulting partner in two (2) full implementations
 - All work done by us – no outsourcing except market research
 - Fee-only firm providing unbiased direction to clients

The Principals of Uptown Services, Inc. are Mr. Neil Shaw and Mr. Dave Stockton, who have many years experience in telecommunications.

Mr. Crowell reviewed the qualities of a solid study:

- Being extremely thorough in identifying all costs, especially ongoing Opex
- Conservatively measuring local market demand by applying empirically proven techniques to forecast take rates
- Demonstrating an understanding of industry knowledge and business strategy (e.g. Pricing) to communicate a coherent business approach appropriate for the unique market situation
- Understanding benchmark industry metrics (KPI's) to call out plan assumptions that carry more risk/sensitivity relative to the established operating performance of in-market ventures (e.g. incumbents, other municipal utilities)
- Identifying and understanding, via scenario analysis, the downside risks inherent to the plan and the financial impact to the based case of the scenarios
- Using a time-tested financial model that has been de-bugged, independently verified, and can accommodate assumption changes per the client or financing body

The project scope and deliverables include:

- Task 1 – Demand Analysis
 - Quantitative phone survey with four hundred (400) citizens
 - In-depth interview with local businesses
- Task 2 – Competitive Assessment
 - Service offerings and pricing
 - Subscriber status
 - Customer satisfaction
- Task 3 – Sources of Revenue (Product Planning)
 - Characterization of Revenues
 - Pricing comparison to incumbents and peers
 - Customer value analysis
 - Penetration comparison to municipal and utility peers
- Task 4 – Technology Assessment and Conceptual Design
 - Economic evaluation of architectures
 - Summary of architecture strengths and weaknesses
 - Network architecture recommendation
 - Conceptual design
- Task 5 – Business Structure Analysis
 - Advantages and disadvantages of each business model
 - Financial analysis of each business model
 - Partnership opportunity assessment
 - Business model recommendation
- Task 6 – Financial Analysis
 - Fifteen (15) year Pro Forma economic analysis
 - Creation of alternative financial scenarios
 - Quantitative risk assessment (sensitivity)
 - Cumulative probability analysis

Mr. Crowell summarized:

- What makes a good study
 - Create a solid foundation (marketing, technical, legal, regulatory and financial)
 - Include ALL costs
 - Quantify demand correctly
 - Understand the industry like an insider
 - Use a proven financial model and modeling tools
 - Go crazy with scenarios
 - Beat up the case and do not avoid worst case scenarios
- Uptown Services, Inc.'s advantages
 - Principals complete and present all work product – no junior personnel
 - Academic foundation of principals – each has earned MBA
 - Experience in the private sector – leading edge broadband operations
 - Experience in broadband feasibility studies – over thirty (30) studies in six (6) years
 - Experience in municipal FTTH deployment – end-to-end accountability in Sallisaw
 - Objective and not every study produces a positive recommendation
- Uptown Services, Inc.'s feasibility and operating experience was superior to the other FTTH companies interviewed.

Mr. Crowell stated that staff recommends awarding a contract to Uptown Services, Inc. for a comprehensive feasibility study for FTTH at a cost of \$50,000 plus travel expenses.

Councilman Kennedy stated he was very impressed with Uptown Services, Inc. and he feels it is very important to do the feasibility study. He commented that FTTH is a nationwide trend and with the reforms being developed by Congress regarding telecommunications, he feels it is important to do this now. He stated that he feels this will be beneficial to the citizens as long as it does not get too expensive.

Councilman Lewis commented that the methodology used by Uptown Services, Inc. is definitely the right way to do this and pointed out that their feasibility study will be accepted by financing agencies should Council choose to go in that direction. He added that this will save the City time and money in the future.

Mayor Klutz stated that she did not want the City to miss this opportunity if this is something that will be beneficial both to citizens and the City as another revenue stream.

Mr. Lewis stated he feels this could be a City changing event. Councilman Burgin added that while attending a conference in Washington, DC FTTH was compared to bringing railroads and highways to small towns many years ago.

City Manager David Treme commented that he feels this will actually be a business and implementation plan rather than a feasibility study and once complete Council will know if it makes sense to provide these services. He added that he would like for Salisbury's citizens to have the opportunity to have early access to these services.

Thereupon, Mr. Kennedy made a **motion** to award a contract to Uptown Services, LLC in the amount of \$50,000 plus travel expenses for a Fiber To The Home feasibility study. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

AGREEMENT WITH NCDOT FOR REIMBURSEMENT OF COST OF RELOCATING LONG FERRY ROAD WATER LINE

Mr. Jim Behmer, Utilities Engineering Manager, informed Council that the North Carolina Department of Transportation (NCDOT) is proceeding with its I-85 widening project. This will require the relocation of approximately six hundred nine (609) feet of an existing water line. The project cost is estimated to be \$303,554.86, of which Salisbury-Rowan Utilities will pay one hundred (100) percent.

City Manager David Treme pointed out that when NCDOT widens a road, if the City has utilities in the right-of-way, by State law the City is required to move the utility and it is generally less expensive to contract with NCDOT.

Thereupon, Mr. Lewis made a **motion** to adopt a Resolution authorizing and directing the execution and implantation of the agreement between the City of Salisbury and the North Carolina Department of Transportation for the relocation of a portion of the Long Ferry Road water line in conjunction with NCDOT project I-2511 CB (I-85 widening). Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

RESOLUTION AUTHORIZING AND DIRECTING THE EXECUTION AND IMPLEMENTATION OF THE AGREEMENT BETWEEN THE CITY OF SALISBURY AND THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE RELOCATION OF A PORTION OF THE LONG FERRY ROAD WATER LINE IN CONJUNCTION WITH NCDOT PROJECT: I-2511 CB (I-85 WIDENING).

(The above resolution is recorded in full in Resolution Book No. 12 at Page No. 25, and is known as Resolution No. 2006-13).

AMENDMENT TO I-85 UTILITIES RELOCATION CAPITAL PROJECT ORDINANCE

Thereupon, Mr. Burgin made a **motion** to adopt an Ordinance amending the I-85 Utilities Relocation Capital Project Ordinance in the amount of \$303,555. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

I-85 UTILITIES RELOCATION CAPITAL PROJECT ORDINANCE AMENDMENT

(The above Ordinance is recorded in full in Ordinance Book No. 21, Budget, at Page No. 93, and is known as Ordinance No. 2006-29.)

APPROVAL OF CITY OF SALISBURY'S 2002 WATER SUPPLY PLAN AS AMENDED IN 2006

Mr. Jim Behmer, Utilities Engineering Manager, informed Council that every five (5) years the North Carolina Division of Water Resources requires an update to the Water Supply Plan be submitted. The updates were submitted in 2003 and Salisbury-Rowan Utilities received the Division's comments two (2) years later. The Plan was then amended in January 2006 to include additional reports.

Thereupon, Mr. Woodson made a **motion** to adopt a Resolution authorizing and directing the adoption of the 2002 Local Water Supply Plan for Salisbury (revised 2006). Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

RESOLUTION AUTHORIZING AND DIRECTING THE ADOPTION OF THE 2002 LOCAL WATER SUPPLY PLAN FOR SALISBURY (REVISED 2006).

(The above resolution is recorded in full in Resolution Book No. 12 at Page No. 26, and is known as Resolution No. 2006-14).

COMMENTS FROM THE CITY MANAGER

- (a) Planning Board

Council received the Planning Board recommendations and comments from their April 11, 2006 meeting.

(b) Nuisance Abatement in the Extraterritorial Jurisdiction Area

City Manager David Treme informed Council that there has been recent discussion between Rowan County and the City of Salisbury regarding responsibility for nuisance abatement in the Extraterritorial Jurisdiction (ETJ). He recommended that a collaborative approach be taken that would include a meeting with the County Manager, City Manager, both County and City Attorneys and the proper Planning staff to determine who might be in the best position to provide this service. He pointed out that the City only has planning jurisdiction over the ETJ area and it is not an area in the City limits or an area that pays taxes. He commented that it appears that it would be permissive for both the City and County to provide this service. Mr. Treme stated that the group will meet and prepare a recommendation to the City Council and County Commissioners as to how to best accomplish providing this service.

COUNCIL TO RECEIVE PUBLIC COMMENT

Mayor Kluttz opened the meeting for public comment.

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

MAYOR'S ANNOUNCEMENTS

(a) Report on Metropolitan Coalition Meeting

Mayor Kluttz reported that she attended a Metropolitan Coalition Meeting in Raleigh, April 12-13, 2006 and was reelected Treasurer of the Coalition. She stated that they discussed legislative issues affecting the larger cities in North Carolina and heard from the Wake County Blue Ribbon Committee which has been formed to help determine how to fund infrastructure for the tremendous growth projected for Wake County. Mayor Kluttz indicated that the main focus of the meeting was the court system and the effect under-funding is having on local communities. She noted that they heard from Chief Justice of the North Carolina Supreme Court Sarah Parker and Attorney General Roy Cooper regarding the court issues. She stated that the Coalition's focus is to bring the Mayors together to inform the State Legislature that there is a problem with the court system.

(b) Arbor Day Celebration

Mayor Kluttz announced that the Tree Board will hold their Arbor Day Celebration April 21, 2006 at 10:30 a.m. at the Salisbury Depot, 815 Depot Street.

(c) Lord Salisbury Celebrates Spring – Earth Day

Mayor Kluttz announced that the Lord Salisbury Celebrates Spring – Earth Day will be held Friday and Saturday, April 21 and 22, 2006 in Downtown Salisbury.

(d) Spring Spruce Up Week

Mayor Kluttz announced that the Community Appearance Commission and the Public Services Department will hold their Spring Spruce Up Week April 24 – 28, 2006.

CLOSED SESSION

Mayor Kluttz informed Council that she would entertain a motion for the Council to go into closed session for the acquisition of property located on Tax Map 10 Parcel 328 as allowed by NCGS 143-318.11(5)

Thereupon, Mr. Woodson made a **motion** to go into closed session for the acquisition of property located on Tax Map 10 Parcel 328 as allowed by NCGS 143-318.11(5). Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson and Ms. Kluttz voted AYE (5-0)

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RETURN TO OPEN SESSION

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

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

ADJOURNMENT

Motion to adjourn the meeting was made by Mr. Burgin, seconded by Mr. Kennedy.

All council members agreed unanimously to adjourn. The meeting was adjourned at 6:55 p.m.

Mayor

City Clerk