

Salisbury, North Carolina
March 20, 2018

REGULAR MEETING

PRESENT: Mayor Al Heggins, Presiding; Mayor Pro Tem David Post; Council Members Karen Alexander, William Brian Miller and Tamara Sheffield; City Manager W. Lane Bailey; City Clerk Diane Gilmore, and City Attorney F. Rivers Lawther, Jr.

ABSENT:

Salisbury City Council met in Council Chambers in City Hall located at 217 South Main Street. The meeting was called to order by Mayor Heggins at 5:00 p.m.

PLEDGE OF ALLEGIANCE

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

RECOGNITION OF VISITORS

Mayor Heggins welcomed all visitors present.

CONSENT AGENDA

(a) Minutes

Adopt Minutes of the Regular meeting of February 20, 2018 and Special meeting of February 20, 2018.

(b) Budget Ordinance Amendment – Ratify the Sale of Surplus Water Meters.

Ratify the sale of surplus water meters and adopt a Budget Ordinance Amendment to FY2017-18 budget in the amount of \$67,155 to appropriate the sale of surplus property.

ORDINANCE AMENDING THE 2017-2018 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA TO APPROPRIATE PROCEEDS FROM THE SALE OF SURPLUS PROPERTY.

(The above Ordinance is recorded in full in Ordinance Book No. 27 at Page No. 18 and is known as Ordinance 2018-13.)

(c) Budget Ordinance Amendment– Public Art Revenue

Adopt a Budget Ordinance Amendment to the FY2017-2018 budget in the amount of \$16,000 to appropriate Sculpture Show donations.

ORDINANCE AMENDING THE 2017-2018 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA TO APPROPRIATE SCULPTURE SHOW DONATIONS.

(The above Ordinance is recorded in full in Ordinance Book No. 27 at Page No. 19 and is known as Ordinance 2018-14.)

(d) Resolution

Adopt a Resolution to approve financing terms to award a contract to Regions Equipment Finance Corporation for the purchase of a new fire truck, for an amount not to exceed \$2,154,000.

RESOLUTION APPROVING FINANCING TERMS

(The above Resolution is recorded in full in Resolution Book No. 15 at Page No. 7, and is known as Resolution 2018-06.)

Thereupon, Councilmember Alexander made a **motion** to adopt the Consent Agenda as presented. Mayor Pro Tem Post seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

PUBLIC HEARING – LEASE OF FIBRANT TO HOTWIRE COMMUNICATIONS

City Manager Lane Bailey addressed Council regarding Fibrant and noted a referendum will be held May 8 regarding the lease with Hotwire Communications. He indicated the City has had assistance from CTC. Mr. Bailey introduced Mr. Tom Asp a consultant with CTC, and Mr. Peter Buck, an outside counsel, along with City Attorney Rivers Lawther. Mr. Asp provided an overview regarding Fibrant's operations. He commented a request for proposal (RFP) was created

to cover the management, lease or sale of the system. He noted 14 letters of intent and 6 responses to the RFP with offers that included purchase or potential leasing of the Fibrant network were received. He commented a Council Committee that included local business leaders was formed to review Fibrant. He stated that it was determined that Hotwire offered the best proposal.

Mr. Asp explained Hotwire Communications would lease the fiber from the City, and Hotwire will upgrade the network electronics and realign the current services offered. He explained the City would be responsible for Fibrant debt. He indicated Hotwire would pay the City rent based on gross revenues from services. He noted Hotwire is not a Limited Liability Corporation (LLC) and Hotwire has the ability to offer customer support staff and technical resources at a lower operating cost than the City. He commented Hotwire will look into offering enhanced services and updates. He added Fibrant debt would reduce substantially over time, and he indicated plans for future cost avoidance.

Mr. Asp introduced Attorney Peter Buck who has worked on the broadband lease. Mr. Buck indicated negotiations were close to being complete and a document would be provided to Council. He pointed out Hotwire would lease all Fibrant equipment for a lease term of 20 years with a renewal option to extend the lease an additional 20 years based upon rent payment history. He indicated the City would receive a percentage of revenue that is not based on Hotwire's profits and noted if Hotwire failed to satisfy minimum target funding for two years out of a three year period, the City would have the right to terminate the Hotwire lease. He noted Hotwire would not assume any liability for the Fibrant debt, and he added the Internal Revenue Service (IRS) policy states the City would have to refinance the current debt.

Regional Executive Vice President of Hotwire Max Kepfir addressed Council regarding the management of the fiber system. He stated he has 25 years of experience in the operations of fiber optic cable, and he noted he owned a fiber optic cable company in northern Virginia. He stated Hotwire is a strong company with footprints from Philadelphia to North Carolina and Atlanta to Fort Lauderdale, Florida. He indicated Hotwire's product brand is called Fision and is an all-fiber brand. He introduced Mr. Johnathan Bullick, the Vice President of Corporate Development. Mr. Bullick noted the company started in 2000 with 1,500 employees throughout the southeast. He indicated Hotwire provides service to 300,000 commercial, residential, hospitality, wholesale and education companies. He stated Hotwire provides a competitive service that offers the fastest internet provider in the country. He commented customer service is a top priority of Hotwire. Mr. Kepfir noted Hotwire provides customers with education that is paramount in the technology world and noted the company takes the time to evaluate customer needs.

Mr. Kepfir commented Hotwire is excited to be a part of Salisbury and have the chance to ensure the needs of all parties involved are met.

Mayor Pro Tem Post referred to the City default on the Fibrant debt. He indicated that if the City defaults the State would take over. Mayor Pro Tem Post also indicated Generally Accepting Accounting Principles (GAAP) requires funding to be set aside as assets age, and he noted Hotwire would cover those capital expenses. Mayor Pro Tem Post indicated at Planning

Retreat, Council could review the Capital Improvement Program (CIP) along with the ten-year savings.

Mayor Heggins asked why defaulting on the Fibrant bonds is not an option. City Manager Lane Bailey commented the North Carolina State Treasurer's office oversees the Local Government Commission and approves all debt. He noted in cases of default the State would take over the municipality. He indicated walking away from the debt is not an option for the City by North Carolina law.

Councilmember Miller stated Hotwire is a better operator in fiber optic cable, and he noted Salisbury already has access to broadband because Salisbury did a lot of work on its own. Councilmember Miller commended Mr. Bailey on providing Council the best solution for a better outcome for Fibrant. Mr. Bailey noted a certified Public Accountant (CPA) company, Baker Tilley, is in the process of verifying numbers in the lease agreement.

Councilmember Alexander asked about value of the fiber optic cables in the ground. Mr. Mr. Buck agreed that the fiber installed in the ground is of high quality and will provide a long term value. He noted the existing debt would be retired in 11 years.

Mr. Bailey mentioned employees who perform adequate job expectations and do not find a job with Hotwire would be placed within City departments. He added during the initial six months of the lease, there will be a transition period that deals with those issues.

(b) Mayor Heggins convened a public hearing, after due notice thereof, to receive comments regarding the lease of Fibrant to Hotwire Communications

Ms. Elaine Spalding stated she is President of the Rowan County Chamber of Commerce and noted the Chamber's board of directors have reviewed the terms of the proposed lease. She stated the board of directors, on behalf of its 824 members, will vote in favor of the Hotwire lease.

Mr. Todd Paris commended Council for its solution to Fibrant and asked the current operating expenses of Fibrant. Mr. Bailey stated the number is approximately \$3.2 million with the debt service repayment to water and sewer fund. Mr. Paris asked about the tax exempt funds and if those exemptions would be paid off early. Mayor Pro Tem Post stated Hotwire will be operated by a non-municipal company and the tax exemptions no longer apply. Mr. Paris asked if it had been determined how much gross profits would need to be made to break-even. Mr. Paris asked if Hotwire would be responsible for the network and if the Hotwire and Fibrant lease would be available to the public. Mayor Heggins agreed.

Mr. Geoffrey Hoy asked about state regulations regarding the area where Hotwire services can be expanded. Mr. Bailey commented the current lease states Hotwire will be confined to the area defined under the agreement.

Mayor Pro Tem Post asked if the attorney involved could explain the areas Hotwire would be able to serve. Mr. Buck stated legislation would have to be passed for the service area to

be expanded. Mayor Pro Tem Post pointed out when the statute was passed, it included major corridors. He noted the County has researched ways to bring broadband into the County.

Mr. David Horvil asked if any contracts or obligations had been determined regarding who would be the new internet provider. He noted Level Three, is the City's current internet provider. Mr. Horvil asked where customers could expect their internet service to originate from. Mr. Buck asked Mr. Horvil if he was referring to where the network in-core connection locations. Mr. Horvil agreed. Mr. Buck explained Hotwire is located in all major locations and noted a fiber release could possibly be from Atlanta.

Ms. Dee Dee Wright asked if Hotwire would have the ability to expand to other small towns such as Chine Grove and Granite Quarry. Mr. Buck stated no expansion can take place unless the statutes were to change. Ms. Wright asked how Hotwire could be successful if it could not expand. Councilmember Miller explained that because of its scale Hotwire will be able to negotiate contracts at a lower cost.

Mr. Kent Winnrich asked how it benefits the City for Hotwire to offer a lower rate. Mayor Pro Tem Post stated the City no longer suffers losses and Hotwire's price structure could attract more customers. Mr. Buck added Hotwire's goal is to put better pricing, better products and better bundles on the market to attract more customers. Mr. Winnrich asked who would be responsible for outstanding make readies. Mr. Bailey asked if his question was in regards to the ongoing litigation of Atlantic Engineering Group (AEG). Mr. Buck stated that would be the City's responsibility.

Mr. Tenkomenin Crowder asked how many Fibrant employees would lose their jobs. Councilmember Miller commented the City intends to take care of its employees and those who are not able to transfer to Hotwire would be placed throughout various City departments.

Mr. Kim Porter expressed concerns about the Fibrant service area, and he commended Fibrant and its employee's for their customer service.

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

Councilmember Miller noted on May 8, 2018 citizens will have an opportunity to vote on the lease.

RECESS

Mayor Heggins made a **motion** to take a five minute recess and all Councilmembers in attendance agreed unanimously to recess.

The meeting reconvened at 6:35 p.m.

PUBLIC COMMENT

Mayor Heggins opened the floor to receive public comments.

Mr. John Struzick commented United Way of Rowan County has provided community support since 1956, and he commended local businesses that sponsored and provided funding to programs.

Mr. Ron Turbyfill noted he is the executive director at Communities in Schools and commented it is a recipient of support from United Way.

Mr. Ronnie Smith shared with Council that the Rowan Vietnam Veterans requested a proposal for the Department of Veterans Affairs in Washington, D.C. to enhance the Salisbury National Cemetery. He noted the project is in a 30-day hearing.

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

CONSTRUCTION CONTRACT – INNES STREET AND FAITH ROAD

Engineering Director Wendy Brindle addressed Council regarding a construction contract approved at a previous Council meeting. She noted the contractor was not able to meet the North Carolina Department of Transportation (NCDOT) requirements for participation. She noted the next option is to concur with Blythe Development Company being awarded the contract as the second lowest bidder, and she noted the company has met NCDOT requirements. She explained the contract is a three party agreement between the City, Centerlane Innes Street, LLC a private developer, and NCDOT. She commented the City would reimburse the developer and NCDOT will reimburse the City once the Transportation Improvement Program (TIP) funds are available.

Thereupon, Councilmember Alexander made a **motion** to authorize City concurrence for Centerlane Innes Street, LLC (previously SBBHAK, LLC) to enter into a unit price contract with Blythe Development Company, the apparent lowest responsive and responsible bidder, for \$816,409.45 to construct TIP Project U-5820B, also subject to NCDOT approval. Mayor Pro Tem Post seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

Councilmember Miller commented by a North Carolina law requires the selection of a lowest responsible contract bid. Ms. Brindle agreed.

BOARDS AND COMMISSIONS

Community Appearance Commission

Upon a motion by Councilmember Sheffield, seconded by Councilmember Miller. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voting AYE, the following appointment was made to the Community Appearance Commission for a term to begin April 1, 2018:

Ms. Lewellen Padgett

Term Expires 3/31/21

Historic Preservation Commission

Upon a motion by Mayor Pro Tem Post, seconded by Councilmember Alexander. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voting AYE, the following re-appointment was made to the Historic Preservation Commission for a term to begin April 1, 2018:

Mr. Jon Planovsky

Term Expires 3/31/21

Ms. Elizabeth Trick

Term Expires 3/31/21

Mr. Johnathan Chamberlain

Term Expires 3/31/21

Parks and Recreation Advisory Board

Upon a motion by Councilmember Alexander, seconded by Councilmember Miller. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voting AYE, the following re-appointment was made to the Parks and Recreation Advisory Board Commission for a term to begin April 1, 2018:

Mr. Roy Bentley

Term Expires 3/31/21

Planning Board

Upon a motion by Councilmember Miller, seconded by Mayor Pro Tem Post. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voting AYE, the following ETJ re-appointment was made to the Planning Board Commission for a one year term to begin April 1, 2018:

Mr. Randy Reamer (ETJ)

Term Expires 3/31/19

COUNCIL COMMENTS

Councilmember Miller indicated the Special Event Permit Ordinance Committee met and elements pertaining to free speech had been separated from the Special Event Permit Ordinance. He commented a second meeting will be held April 10, 2018 to discuss first amendment Ordinance elements. He commented he does not expect both Special Event Permit Ordinance articles to be completed by April 10. Councilmember Miller asked if the City Clerk could provide Council the previously adopted Special Permit Ordinance and asked for two weeks for the committee to

review. City Clerk Diane Gilmore agreed to provide the information. He added a possible public hearing to allow maybe needed.

Councilmember Alexander shared she recently attended a seminar hosted by the National League of Cities (NLC) regarding disaster preparedness, and she expressed that she learned of different opportunities and resources. Councilmember Alexander asked if the City Manager could look into Institute for Business Technology and Safety (IBTS) assessments offered by the NLC.

Councilmember Sheffield commented the Election Process Review Committee has a meeting Wednesday, March 28, 2018 at 5:30 p.m. in Council Chambers.

Councilmember Sheffield added that the portion of the Greenway to be renamed in memory of Mr. Bill Stanback has been presented to the Parks and Recreation Advisory board and is moving forward.

Councilmember Alexander announced the Suggested Rules of Procedure Committee has a meeting Wednesday, March 28, 2018 at 2:30 p.m. at City Hall, 217 South Main Street.

MAYOR PRO TEM COMMENTS

Mayor Pro Tem Post commented he attended the National League of Cities (NLC) Conference in Washington, D.C., and he noted infrastructure was a main topic along with broadband and workforce development. He asked if Council would consider meeting to discuss topics to take to future NLC meetings.

Councilmember Miller requested staff notify Council of future NLC conference meetings.

MAYOR COMMENTS

Mayor Heggins commended Council for the service it provides to the community.

Mayor Heggins announced an event called Monday with the Mayor to start Monday, March 26, 2018 from 5:00 p.m. to 7:00 p.m. and asked the public to email her for potential meetings.

Mayor Heggins commented she attended a two-day workshop, and she noted she would like to establish a Mayor's cabinet on racial equality and bias, and she asked the public to email her if they have an interest to serve as a cabinet member.

CLOSED SESSION

Mayor Heggins requested a motion to go into closed session concerning a personnel matter as allowed by NCGS 143-318.11(a)(6).

Thereupon, Mayor Heggins made a **motion** to go into closed session as allowed by NCGS 143-318.11(a)(6). Councilmember Miller seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

** Councilmember Miller left the meeting at approximately 9:34 p.m. No formal vote was taken excusing Councilmember Miller, therefore his vote shall be recorded as affirmative hereinafter per State Statute 160A-75.*

RETURN TO OPEN SESSION

Thereupon, Mayor Pro Tem Post made a **motion** to return to open session. Councilmember Alexander seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Sheffield voted AYE. (4-0)

Mayor Heggins reported no action was taken during the closed session meeting.

ADJOURNMENT

A motion to adjourn the meeting was made by Mayor Pro Tem Post and seconded by Councilmember Alexander. All Council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 9:38 p.m.



Al Heggins, Mayor



Diane Gilmore, City Clerk