

Salisbury, North Carolina
December 20, 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. 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 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 change to the Agenda:

Omit item 14 – Council to go into closed session concerning a personnel matter as allowed by NCGS 143-318.11(6).

She noted that this item will be postponed until Council's January meeting.

RECOGNIZE FOOD LION AND MILK BONE FOR THEIR CONTRIBUTION TO PURCHASE A POLICE CANINE

Police Chief Mark Wilhelm recognized Mr. Tim Shipman and Mr. Jeff Lowrance from Food Lion and Mr. Rick Bradford from Kraft Foods. He stated that after the unexpected death of a Police Canine, Food Lion and Kraft Foods donated \$5,000 for the purchase of a new dog. Chief Wilhelm explained that without the contribution the canine could not have been replaced because funds had not been budgeted this year. He thanked Food Lion and Kraft Foods for their donation.

Mayor Kluttz thanked Food Lion and Kraft Foods for their generous donation and noted how proud Salisbury is to have them as corporate citizens.

CONSENT AGENDA

(a) Minutes

Approve Minutes of the regular meeting of December 6, 2005 and the special meeting of December 12, 2005.

(b) Group Development Site Plans

Approved the following group development site plans:

- G-04-68 - Rowan Cabarrus Community College, Jake Alexander Boulevard
- G-01-73 - Mitchell Avenue Medical Center, 810 Mitchell Avenue

Mayor Kluttz indicated that she received a request to pull G-01-73 Mitchell Avenue Medical Center, 810 Mitchell Avenue from the Consent Agenda and asked for a motion to approve the Consent Agenda with the exception of this item.

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)

G-01-73 MITCHELL AVENUE MEDICAL CENTER

Mayor Kluttz indicated that Council would receive a report from staff and then open the floor for public comment.

Mr. David Phillips, Zoning Administrator, reviewed a site map and aerial photographs for G-01-73 Mitchell Avenue Medical Center located at 810 Mitchell Avenue. He noted that the site plan for a two (2) story, fourteen thousand (14,000) square foot building was originally approved in 2003. He explained that the reason this site plan is back before Council is the time expired on the approved plan before construction could begin and the developer is requesting it be re-approved.

Mr. Phillips informed Council that after the site plan review for the RoMedical building was approved a concrete median was added to Mitchell Avenue to correspond with the right in, right out only driveway. He stated that staff has also requested that the site plan for Mitchell Avenue Medical Center reflect the median and right in, right out only drives. He explained that this will direct traffic away from the neighborhood and is the only change to the site plan. Mayor Kluttz asked Mr. Phillips to confirm that there were no changes from the site plan approved in 2003 to the plan before Council today. Mr. Phillips responded that the change for the driveway and a slight modification to the footprint of the building were the only changes from the plan approved in 2003. He added that the modified footprint did not change the size or location of the building approved in 2003.

Mayor Kluttz then opened the floor for public comment.

Mr. John Isenberg, 721 Mitchell Avenue, stated that he realizes the building will be there but he would like to request some things that will help the neighborhood. He stated that when the RoMedical building was remodeled the contractors worked seven (7) days a week and often worked at 6:00 a.m. on Sunday morning to 8:00 p.m. or 9:00 p.m. and he feels Sunday should be a day of rest. He added that neighbors felt there was too much noise and the contractors should be more considerate of the neighbors. He asked consideration for shrubbery or some type of barrier to help keep the noise down. Mr. Isenberg commented that last Christmas he was awoken by bulldozers at 8:00 a.m. He asked for consideration to establishing times that the contractors can work to coincide with the regular work day. He also suggested planting visual barriers before the work begins to help with the noise and noted that heavy equipment operators could still work without destroying the shrubbery.

Ms. Maggie Blackwell, 422 Mitchell Avenue, stated that she is president of the Fulton Heights Neighborhood Association and thanked Council for removing this item from the Consent Agenda and allowing the public comment. She commented that she seconds Mr. Isenberg's request for courtesy hours for the construction, and added that construction is a disturbance when it is in the early morning, late evening, Sundays and religious holidays. She stated that RoMedical has an important place in Salisbury and provides a much needed service, but because it is the closest commercial business to the neighborhood the neighbors appear before Council when issues arise. She noted that during construction heavy trucks travel on Mitchell Avenue and pointed out that there is a 'No Trucks' sign on Fulton Street, as well as at the base of Mitchell Avenue and asked that these signs be honored. Ms. Blackwell expressed concern with the name of Mitchell Avenue Medical Center and stated that she is concerned this will lead people to drive on Mitchell Avenue to reach the facility.

Mr. Kyle Davis, KMD Construction, informed Council that his company is the contractor for the building and he feels the concerns that were shared with Council have been addressed. He stated that the medical center will not be named Mitchell Avenue Medical Center, but the owners of the property are Mitchell Avenue Properties and until a tenant is in place a final name will not be decided. He commented that his company will work with the neighbors regarding construction hours and stated that, as the owner of KMD Construction, if anyone would have approached him with this problem it would have been addressed. He added that he has not heard a complaint and cannot address them if he does not know about them. Mr. Davis indicated that one reason this site plan is back before Council today is because during the site plan review for the RoMedical building the neighborhood had concerns about both projects running at the same time so they agreed not to run the projects concurrently. The first building took longer than anticipated and that is why the site plan for the second building is back before Council today. He stated that the owners of the buildings are trying to do all they can to work with the neighborhood and is installing more than the required landscaping.

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

Mayor Kluttz commented that she feels this is an example of how communication is important and it is important that Council hear from citizens with concerns. She added that she was pleased that Mr. Davis was present to respond to the issues.

Councilman Lewis asked if there has been an agreement reached regarding construction hours. Mr. Davis responded that they typically work Monday through Friday from 7:00 a.m. or 7:30 a.m. until 4:00 p.m. or 5:00 p.m., with occasional work on Saturdays. He assured Council that there would be no work on Christmas day. Mr. Lewis asked Mr. Isenberg if he feels these hours will work. Mr. Isenberg concurred, as long as the work was during normal construction hours. Mr. Lewis stated that he is confident that Mr. Davis will take care of any problems that arise.

Councilman Burgin asked if Council can set the work hours for construction as part of the site approval process. Mr. Phillips responded that the group development process does not address construction hours, but there is a provision under the Police section of the City Code. He added that he would have to research the Code to find the exact hours and added that zoning enforcement staff would also not be onsite during these times. He informed Council that he has given Mr. Isenberg his contact information and asked him to contact him if there are any problems late in the evening.

Thereupon, Mr. Kennedy made a **motion** to approve G-01-73 Mitchell Avenue Medical Center, 810 Mitchell Avenue. Mr. Woodson

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

FIRE HOUSE LOFTS SIDEWALK ENCROACHMENT

Mr. Dan Mikkelson, Director of Land Management and Development, addressed Council concerning a request from the developers of Firehouse Urban Lofts regarding an encroachment into the public right-of-way for steps for the facility. He noted that the developer has provided written confirmation that the steps are included under the insurance for the building and they have agreed to assume responsibility for any injury or death as a result of the use of the projection. He stated that the architect has confirmed that the steps conform with the North Carolina State Building Code, which allows projections into the right-of-way provided there are handrails. Mr. Mikkelson commented that given this and the fact that there are no other viable options to gain entry to the building, staff recommends approval of the request.

Thereupon, Mr. Woodson made a **motion** to approve the sidewalk encroachment in the 200 block of East Fisher Street for Firehouse Lofts in accordance with Section 22-19 of the City Code. Mr. Kennedy seconded the motion.

Councilman Burgin asked how far the steps will encroach into the right-of-way. Mr. Mikkelson responded that according to the survey it will extend approximately eleven (11) inches and pointed out that the State Building Code allows it to project up to a foot. Mr. Burgin stated that the State Code requires handrails to extend an additional twelve (12) inches from the bottom step, which would make the encroachment almost two (2) feet into the right-of-way. He asked if staff has seen the rail. Mr. Mikkelson responded that he has not and agreed that the rail will have to meet State Building Code. He noted that the maximum projection would then be two (2) feet into the sidewalk and added that the sidewalk is approximately ten (10) feet wide at that point. Mr. Burgin stated that he would feel better if he knew for certain what was being asked of Council and asked if this could be brought to the next meeting. Mr. Mikkelson stated that he will obtain a sketch from the architect and bring the information to the next Council meeting.

Councilman Lewis questioned if the request will be turned down if it is determined the extension is an additional twelve (12) inches. Mr. Mikkelson indicated that the State Code only addresses the extension of the step into the right-of-way but states that the step must be protected by a rail or pillar. Mr. Burgin reiterated that he would feel more comfortable knowing what he is approving. Mr. Mikkelson commented that he did not think the units that need the encroachment agreement will be occupied and delaying this until the next meeting should not delay their schedule. Mr. Lewis noted that the developer is not present and if Mr. Burgin needs full disclosure he will support the delay. He added that as infill is promoted these are the type of issues that will have to be addressed.

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

COUNCIL COMMITTEE REPORT REGARDING YORKSHIRE DRIVE

Mayor Kluttz noted that Mayor Pro Tem Woodson and Councilman Lewis had served on a Council Committee to review a request for the City to take over maintenance responsibility for Yorkshire Drive.

Mayor Pro Tem Woodson reported that two Committee meetings were held with residents of Yorkshire Drive and staff. He stated that the Committee recommends accepting Yorkshire Drive, including the side street loops, for City maintenance. The Homeowner's Association will continue to maintain the planted islands subject to the approval of the City Landscaping Manager. He noted that the Committee also recommends accepting the triangular curbing in its current condition, but have the Homeowner's Association make a payment in lieu of upgrading the substandard curb. He explained that the Street Division determined the difference in value between triangular curbing and valley curbing to be approximately \$2.40 per foot at eight hundred (800) feet, therefore the Homeowner's Association will pay \$1,920.

Mr. Woodson stated that the Committee recommends accepting utility mains but not the laterals for maintenance by the City. He noted that the City did not inspect the original construction of utilities and record drawings were not available for either phase of construction; however, Salisbury-Rowan Utilities can inspect the sewer mains with a camera and locate water valves in the system. He stated that homeowners would qualify for the City's transfer program in which the City will reconstruct the private laterals from the main to the right-of-way for a standard fee of \$1,300 and then the City would accept maintenance for the laterals. Mr. Woodson noted that homeowners can apply for the program at any time but typically apply only when there is a problem with the lateral.

Councilman Lewis stated that, in regards to street lighting, there are four (4) pedestrian scale street lights. Based on illumination formulas, the City would normally require two (2) large cobra head lights. He noted that the pedestrian lights are normally twelve (12) to fourteen (14) feet versus twenty (20) for the cobra head lights to produce the illumination that is necessary. He explained that when there are decorative poles Duke Power has an additional charge for maintenance and the City requires homeowners to pay the difference between the decorative pole and wooden pole on a monthly basis. He noted that staff has suggested the City pay the part it normally would for two (2) poles with the Homeowner's Association paying the difference, while requiring the Homeowner's Association pay for all of the remaining two (2) poles. Mr. Lewis commented that he feels the City should take all four (4) poles with the Homeowner's paying the difference between a regular and decorative lamp because he feels it is equity and fairness in respect to what is expected from the rest of the City.

Mr. Lewis stated that the Committee acknowledges that Yorkshire Drive and Prestwick Court serve as precedents for accepting private streets, but the Committee points out that there are specific distinctions in this case. He noted that these private streets were specifically approved by the City at a time when private streets were allowed by City Code. The private streets serve as the only means of access to single-family lots, they were approved with a fifty (50) foot minimum right-of-way, and look and act just like a public street. He pointed out that this is different from some of the other private streets in the City and these four reasons are why the Committee recommends doing this.

Mr. Woodson expressed appreciation to the neighbors for working with staff to get this resolved and added he feels a lot was accomplished.

Thereupon, Mr. Lewis made a **motion** to accept Yorkshire Drive as a public street with the issues as discussed dealing with accepting Yorkshire Drive and the maintenance, accepting payment in lieu of, \$1,920, to accept the utility mains, to accept all four (4) street lights into the City system with them paying the additional fee monthly to Duke Power and that the issues we identified as far as precedents are concerned are entered into the official record. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

Mr. Lewis commented that in regards to the street light issue he was aware there is conflict between the Vision 2020 Plan and the City Code. He then read two (2) of the four (4) polices regarding street lights from the Vision 2020 Plan. He noted that through these polices it appears the City acknowledges it likes pedestrian scale lighting with decorative poles and wants to encourage developers to use them. He added that the current Code discourages their use and makes developers pay more. Mr. Lewis indicated that after research he found that if the City decided to accept the difference for the decorative lights it would be approximately \$7.00 per light, per month or approximately \$14,000 per year for all of the decorative lights throughout the City. He stated that he would like Council to consider this and hold a discussion at some point to see if this is the direction Council should go. Mayor Klutz suggested adding this issue to the agenda for Council's retreat.

Mr. Carl Dean, 110 Yorkshire Drive, thanked the Council Committee and staff for their work on this matter and expressed his appreciation for their cooperation.

AWARD CONTRACT - ECON INTERNATIONAL YORKSHIRE CORPORATION - SIDEWALKS ON EAST INNES STREET

Mr. Dan Mikkelson, Director of Land Management and Development, indicated that the project for the installation of sidewalks along East Innes Street began from a request from Mayor Pro Tem Woodson. He stated that staff contacted the North Carolina Department of Transportation (NCDOT) who found discretionary funds to pay for the project. NCDOT will pay for the first \$125,000 of the project. He reviewed a map depicting the length of the sidewalk and noted it will begin at the Rowan County Health Department down to Jake Alexander Boulevard and ties into the I-85 project. He pointed out one property along the route that is in bankruptcy and noted that because it is in bankruptcy the owner is unable to sign the sidewalk easement and it will have to be skipped.

Bids were received on November 22, 2005 from the following:

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| 1. Econ International Corporation | \$132,140.00 |
| 2. Mustang Enterprises | \$159,951.00 |
| 3. Carolina Siteworks, Inc. | \$201,744.50 |

He noted the Econ International is the lowest bidder and has become certified with NCDOT. Mr. Mikkelson pointed out that this is a unit-price contract and even though a specific amount is given the actual payment is based on the number of units as they are measured at installation, so the final payment may vary from the bid by a small amount.

Thereupon, Mr. Woodson made a **motion** to award a unit-price construction contract to Econ International Corporation in the amount of \$132,140 for the construction of sidewalks on East Innes Street. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

Councilman Kennedy commended staff for their hard work and asked them to continue to monitor the location where the easement could not be obtained.

AMENDMENTS TO THE 457 DEFERRED COMPENSATION PLAN

Ms. Karen Ingram, Human Resources Analyst II, reviewed the 457 Deferred Compensation Plan document with Council. She noted that the plan is available only to governmental employees and currently there are eighty-two (82) City employees who participate. She stated that on July 11, 2003 the United States Treasury issued final regulations for the Internal Revenue Service (IRS) Code 457. The IRS requires that governmental 457 plans conform to the final regulations as of January 1, 2006.

Ms. Ingram reviewed the changes, noting they will allow plan to plan transfers, allow division as the result of a domestic relations order, increase the annual limit for participants, allow Police and Fire to retire at an earlier age but not less than age forty (40), define a spouse as a person of the opposite sex, allow the continuation of deferrals while on paid leave, require participants to coordinate all 457 plans and make the City aware of participation in other plans. The plan also allows deferrals for paid sick or annual leave up to two (2) months following termination and allows the City to make deferrals on behalf of the plan participant. Distributions are allowed from funds rolled into the account and are allowed for unforeseen emergencies and for inactive accounts with amounts less than \$5,000. She noted that rollovers and loans are permitted similarly to those allowed in the 401(k) plan but there are limitations on transfers or exchanges from investments with restrictions. The 457 Plan is considered an asset for the City and is now covered and exempt from bankruptcy. She asked Council to adopt the revised 457 Plan document as administered by Nationwide Retirement Solutions.

Councilman Kennedy clarified that there are only eighty-two (82) employees taking advantage of the program. Ms. Ingram responded that all of the City employees participate in the 401(k) program and in addition to the 401(k) program, eighty-two (82) participate in the 457 Plan.

Thereupon, Mr. Lewis made a **motion** to adopt amendments to the 457 Deferred Compensation Plan as presented. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

COMMENTS FROM THE CITY MANAGER

(a) Planning Board

Council received the Planning Board recommendations and comments from their December 13, 2005 meeting.

(b) Decoration Award

City Manager David Treme informed Council that the City received an award for the Best True Meaning of Christmas Decorations for a municipality from radio stations WRNA/WRKB Ford Broadcasting.

(c) Strategic Plan Review

City Manager David Treme recognized Mr. Evans Ballard, Budget and Benchmarking Analyst, who presented the City's Second Annual Performance Report to Council.

Mr. Ballard stated that Outcome Nine (9) of the City's Strategic Plan calls for participating in statewide programs to establish performance standards, develop systems of standards to measure performance and accomplishments for all City departments, and monitor accomplishments in achieving those stated standards. He noted that in the spring of 2005, the City received a second \$15,000 grant award from the Alfred P. Sloan Foundation through the National Center for Civic Innovation. He added that in August of 2005 the City conducted three (3) facilitated focus group sessions consisting of citizens who were chosen using a third party firm, neighborhood associations and non-profit organizations, and members of the business community. The two objectives of the focus groups were for citizens to describe an ideal customer service experience with the City and to aid the City in improving the format, content, and distribution of the Second Annual Performance Report.

Mr. Ballard pointed out that as a result of a two (2) day site visit from the Governmental Accounting Standards Board (GASB), the City was awarded an additional \$4,400.00 in grant funds. He noted that in the last eighteen (18) months the City has received a total of \$35,000 in grant funds for improving customer service and producing the annual reports.

Mr. Ballard stated that the City was invited to Connecticut to make a presentation to members of GASB and the Financial Accounting Standards Board (FASB), noting that he felt the invitation was based on community involvement in Salisbury and the City's citizen friendly approach in developing the second report.

Mr. Ballard indicated that the reports will be available throughout the City buildings and will also be published on the City's website. He noted that participants in the focus groups felt that Salisbury had a good story to tell and that staff needed to do a better job of telling it.

He concluded that the City continues its leadership and participation in the Performance Measurement Project sponsored by the University of North Carolina Chapel Hill, which played a major part in the City receiving the grant funds.

Mr. Treme addressed the Strategic Plan with Council and noted that an icon of a green dot has been added to the Plan to note items that are on-going/on-track. He explained that these items have now been incorporated into the City's operations and as Council prepares for its 2006 Goal Setting Retreat he suggests eliminating those items that have been completed and that are on-track/on-going. He added that these will remain part of the departmental goals but not the Council goals. Mr. Treme noted that the goals were reviewed with the Management Team in August and the Strategic Plan will be updated at Council retreat in February.

COUNCIL TO RECEIVE PUBLIC COMMENTS

Mayor Kluttz opened the floor to receive public comments.

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

CLOSED SESSION

This item was postponed until Council's January 3, 2006 meeting.

ADJOURNMENT

Motion to adjourn the meeting was made by Mr. Woodson, seconded by Mr. Burgin. All council members agreed unanimously to adjourn. The meeting was adjourned at 5:12 p.m.

Mayor
