

Salisbury, North Carolina
May 18, 2010

REGULAR MEETING

PRESENT: Mayor Susan W. Kluttz, Presiding; Mayor Pro Tem Maggie A. Blackwell, Councilmen William (Pete) Kennedy, William Brian Miller, and Paul B. Woodson, Jr.; City Manager David W. Treme; Deputy City Clerk Kelly Baker; 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 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.

RECOGNITION – POLICE OFFICER PATRICK SCHMELTZER’S RETURN FROM HIS TOUR OF DUTY IN IRAQ

Police Chief Rory Collins introduced Detective Patrick Schmeltzer who recently returned from a tour of duty in Iraq. Chief Collins noted that Detective Schmeltzer is a seven-year veteran of the Salisbury Police Department who is currently assigned to the narcotics unit. He indicated that Detective Schmeltzer enlisted in the Army National Guard February 2005 and his unit was called for war preparation in December 2008. Chief Collins noted that in April 2009 Detective Schmeltzer’s unit was activated to Baghdad, Iraq where he served 10 months and

thankfully the unit suffered no casualties. He thanked Council for its recognition of Detective Schmeltzer.

Mayor Kluttz thanked Detective Schmeltzer for his service to the Salisbury Police Department and to the Country. She presented him with a Certificate of Recognition in honor of his selfless service to his Country.

RECOGNITION – POLICE AND FIRE DEPARTMENT EMPLOYEES OF THE YEAR

Police Chief Rory Collins recognized the Veteran Office of the Year, Young Officer of the Year, and Employee of the Year for 2010 from the Salisbury Police Department:

Veteran Officer of the Year	Sergeant Lee Walker
Young Officer of the Year	Officer Wanda Gibson
Employee of the Year	Records Coordinator Cindy Botts

Fire Chief Bob Parnell recognized the Veteran Firefighter of the Year, Rookie Firefighter of the Year, and Fire Officer of the Year:

Veteran Firefighter of the Year	Fire Control Specialist Jonathan McCaskill
Rookie Firefighter of the Year	Fire Control Specialist Steven Williams
Fire Captain of the Year	Captain Rodney Misenheimer

Mayor Kluttz congratulated each individual and presented them with a Certificate of Recognition. She stated that the City is grateful for all that the Police Department and Fire Department do for the City.

PROCLAMATIONS

Mayor Kluttz proclaimed the following observances:

VETERANS MEMORIAL DAY

May 31, 2010

CONSENT AGENDA

(a) Approval of Minutes

Approve Minutes of the Regular meeting of May 4, 2010 and the Special Meeting of May 6, 2010.

(b) Budget Ordinance Amendment

Adopt a Capital Project Budget Ordinance amendment in the amount of \$200,000 to appropriate funds for the I-85 Sewer Outfall Project.

INTERSTATE 85 SEWER LINE EXTENSION CAPITAL PROJECT ORDINANCE AMENDMENT.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page No. 43, and is known as Ordinance 2010-22.)

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

LAND DEVELOPMENT ORDINANCE AMENDMENT – CD-01-2010

(a) Mr. Preston Mitchell, Senior Planner, addressed Council regarding Land Development district map and Ordinance amendment CD-01-2010 Good Shepherd Manor. He indicated that the petitioner is requesting to rezone approximately 13.5 acres from General Residential (GR-6) to Residential Mixed-Use (RMX) and to amend a portion of an existing Conditional District (CD) Overlay to permit the development of a 54-unit senior living community. Mr. Mitchell reviewed the criteria for a CD Overlay:

- Petitioner
- Content of Petition
 - Rezoning Petition
 - Master Plan
- Fair and Reasonable Conditions
- Revisions and Amendments
- Rescission

Mr. Mitchell reviewed aerial photographs of the site located along Lumen Christi Lane and discussed the three requests included in the petition:

1. Rezone all of Parcel 2 (13.5 acres)
 - GR-6 to RMX (CD)
 - “RMX-lite” with removal of Uses
 - The Residential Mixed-Use District (will allow 18 dwelling units per acre) is intended to provide for areas of higher density residential development in close proximity (within one-half to one-fourth mile) to existing and planned commercial centers such as the Corridor Mixed-Use District (CMX) and the Downtown Mixed-Use District (DMX). The intent is to create higher density residential areas that compliment commercial districts with physical proximity and pedestrian connectivity. Different

housing types and lot styles along with a limited mix of neighborhood-friendly uses are encouraged.

2. Preliminarily subdivide parcel 2 into 3 separate parcels
3. Amend the CD Overlay to permit development of Good Shepherd Manor
 - o 54 units
 - o Senior Living Community

Mr. Mitchell reviewed the site plan noting that there will be one L-shaped building on the site which will be situated in a manner that best uses the topography of the property. He indicated that the land is flat but drops off in the rear portion where a creek is located. He noted that the building sits at the edge of the drop-off and the developer is using the topography for the benefit of the building. He stated that the parking area will meet the requirements of the Americans with Disabilities Act (ADA) and is adjacent to the recreational open space.

Mr. Mitchell reviewed the Alternative Designs available to a CD:

- Industrial Standards of Chapter 2
- Building Orientation to Street/Recreational Open Space
- Building Materials
- Building Design Standards
- Building Dimensional Standards
- Street Cross Sections
- Street Connectivity and Stub Standards
- Parking
- Private Lighting

Mr. Mitchell pointed out that the developer has met the Code for most of the alternatives and is requesting an exemption from Building Orientation to Street/Recreational Open Space and Parking. He stated that the building is inwardly oriented and the RMX requires buildings to face the street. Mr. Mitchell explained that because of the topography of the site and the size of the building, the building cannot be situated any other way. He indicated that RMX also requires the parking lot to have a connection to adjacent property and he explained that the developer is unable to provide a physical connection to adjacent property from the parking lot because of the lack of development in the area.

Mr. Mitchell reviewed policies from the Vision 2020 Comprehensive Plan pertaining to this request:

- Vision Statement on Housing: We see a multitude of housing choices, ranging from single-family homes, to townhouses, to garage apartments, to apartments over downtown shops or the neighborhood corner store. We see neighborhoods with several different well-designed housing types for all incomes where the elderly, young families, singles and others share experiences and help one another
- Policy N-19: Higher density housing projects, such as apartment complexes and condominium developments, should be located adjoining places of work, shopping and public transit. Access to such higher density housing shall not be

through a lower density housing area. Higher density housing may often act as a transitional use between offices or shops and lower density housing

- Needs to be strong complementary relationship with shopping and working
- Transit
- Direct access to thoroughfares

Mr. Mitchell also reviewed the 2010-2014 Consolidated Plan:

- Elderly households account for 60% of low and moderate income owner households, and only 17% of renter households (35% of total low and moderate income households)
- Among elderly renters, both housing problems and cost burden are more frequent for households in the very low income range (55%) and in the low income range (57%)
- Among elderly owners in the very low income range, housing problems and cost burden are equally high (49.7%), although not to the extent seen for elderly renter households
- Among all low and moderate income elderly households, 49.6% of renters and 30% of owners have housing problems
 - This equates to at least 687 elderly households with a housing need
- Current senior housing availability
 - Fleming Heights – 32 units
 - Yadkin House – 67 units
 - Salisbury Housing Authority – 138 units reserved for senior/elderly

Mr. Mitchell indicated that staff finds that the petition is not consistent with the Vision 2020 Plan, but does meet the needs of the Consolidated Plan. He noted that the Technical Review Committee (TRC) voted unanimously in favor of recommending provisional approval subject to (1) addressing all technical comments (2) providing a 4-foot gravel (or similar material) trail from the development site alongside the Sacred Heart driveway up to the Sacred Heart Church and School. He indicated that these conditions were recommended to the Planning Board.

Mr. Mitchell stated that as part of the original CD, Council required a private greenway trail and easement along the outer edge of the property. He indicated that the developer is requesting relief from that condition. He explained that topographically, access from the property to the trail would be difficult and most likely could not meet ADA standards and that the likelihood of residents using the trail would be low. Mr. Mitchell indicated that the Planning Board decided other provisions should be made if the developer could not accommodate those requirements. He noted that the Planning Board formed a Committee to examine the request and recommend other provisions for the developer. Mr. Mitchell pointed out that the Planning Board unanimously recommended conditional approval with the following statements and conditions as recommended by Committee 3:

- Private linear park easement remain intact and extend along western CD property line

- Petitioner relieved of commitment to construct private linear park
- New 5-foot concrete side path installed along east of Sacred Heart driveway from cul-de-sac to church
- Balconies at 5-feet are permitted per zoning administration
- Not consistent with 2020, yet recommended approval
- List of prohibited uses

Mr. Mitchell indicated that the current easement located east of the Sacred Heart driveway will remain intact and a new easement will be developed along the west side of the driveway. He also indicated that the 5-foot concrete side path will allow for seamless pedestrian traffic. Mr. Mitchell then reviewed the list of proposed prohibited and permitted uses of the site:

Prohibited Uses

- ATM
- Banks/Financial Services
- Business Support Services
- Drive-Thru Service
- Laundry Service
- Medical Clinic
- Post Office
- Professional Services
- General Retail (any square footage)
- Restaurant
- Recreation Facilities, Indoor/Outdoor
- Neighborhood Manufacturing
- Parking Lot (primary use)

Permitted Uses

- All residential uses
- Live-Work
- Child/Adult Day Care Home
- Community Service Organization
- Group Care Facility
- Studio
- Cultural Community Facility
- Meeting Facility
- Cemetery
- Public Safety
- Schools/Religious Institution
- Utilities

Councilman Miller asked if the prohibited uses were decided by the Planning Board or the developer. Mr. Mitchell indicated that the prohibited uses were recommended by the

Technical Review Committee in conjunction with the developer, and were supported by the Planning Board.

Mayor Pro Tem Maggie Blackwell asked Mr. Mitchell to explain the practical purpose of the easements. Mr. Mitchell explained that there is a creek alongside the western and eastern property line that will not allow for development and as a result the developer decided to provide a pedestrian amenity to that area. He added that it is an amenity that could be used by all residents of the area, including vacant properties that will be developed in the future.

(b) Mayor Klutz convened a public hearing, after due notice thereof to receive comments on the proposed Land Development Ordinance amendment CD-01-2010.

Mr. Gray Stout, 3 Gray Oaks Circle, Greensboro NC, stated that he is delighted to speak in favor of the project. He indicated that he feels the proximity of the housing project to Sacred Heart is convenient and provides immediate walkable access from the facility to the Church and School. He pointed out that approximately 900 linear foot of sidewalk will be constructed to the Church. He stated that the easements along the streams are consistent with the original concept of the project to provide permanent public easements to eventually connect Greenway System trails.

Councilman Woodson asked Mr. Stout if he agrees with the 5-foot sidewalk requirement. Mr. Stout stated that he does agree with the sidewalk because currently there is only a driveway leading to the Church and the sidewalk will allow pedestrians to walk to the Church without walking in the driveway.

Mr. Jerry Widelski, Executive Director of Catholic Diocese of Charlotte Housing Corporation, distributed a brochure to Council depicting the type of complex that will be developed for Good Shepherd Manor. He indicated that the Catholic Diocese of Charlotte's mission is to develop affordable senior and special needs housing.

Mr. Mark Morgan, Weaver-Kirkland Development, stated that the unique relationship between the Catholic Diocese and Weaver-Kirkland Development is to supply affordable housing to the communities in which they serve. He indicated that Weaver-Kirkland has partnered with the Catholic Diocese on this particular project and feels this is a great opportunity to supply affordable senior housing where there is a need within the community.

Mr. Tracey Parrott, Summit Consulting, reviewed technical aspects of the project and indicated that the site meets all ADA requirements.

Councilman Miller asked how many parking spaces will be provided at the facility. Mr. Parrott indicated that there will be 41 surface parking spaces on site. Mr. Miller asked if there is a minimum parking requirement for the site. Mr. Mitchell indicated that the developer is taking advantage of a reduction that is allowed in the LDO for developments that are specifically designed for seniors. Mr. Parrott indicated that studies support the opinion that all residents will not own vehicles.

Mr. Woodson asked about Council's Statement of Consistency and noted that there is the option to approve for consistency as well as to approve for inconsistency. Mr. Mitchell indicated that Council is not obligated to agree with the Planning Board who found the request inconsistent with the Vision 2020 Comprehensive Plan because the site is not adjoining places of shopping, transit, or high activity areas. He pointed out that the request does meet the elements of the Consolidated Plan and other elements of the Vision 2020 Comprehensive Plan. He noted that Council could find the request to be consistent with the Vision 2020 Comprehensive Plan.

Mr. Woodson stated that it sounds like a good development for seniors and retirees.

Mr. Miller stated that he accepts the consultant's opinion regarding the parking area but thinks more parking will be needed. He stated that he thinks this is a great development, and there are some topography and dimensions of the site that the developers have used the best that they can and he supports the project.

Councilman Kennedy indicated that he also supports the project because housing is needed for senior citizens, and he likes the idea of leaving the rights-of-way for future development of Greenways to connect the City.

Ms. Blackwell indicated that there is a high need for senior housing, and the need will only continue to grow. She stated that she supports the project.

Mayor Kluttz indicated that senior housing is important, and the walkability factor of this project is great. She stated that she appreciates the comprehensive information about the project, and feels this will be a complement to the Church and School and a great asset to the City.

(c) Councilman Woodson stated that City Council hereby finds and determines that adoption of an Ordinance to rezone the property described herein and amend the Conditional District Overlay is consistent with the goals, objectives, and policies of the Vision 2020 Comprehensive Plan and that adoption of the Ordinance is reasonable and in the public interest. Thereupon, Mr. Woodson made a **motion** to adopt an Ordinance amending the Land Development Ordinance and the Land Development district map of the City of Salisbury, North Carolina, by rezoning approximately 13.5 acres identified as tax map and parcel 327-129 from General Residential (GR-6) district to Residential Mixed-Use (RMX) district by amending a portion of a Conditional District Overlay CD-7-02-2008-15 to permit the development of a 54-unit apartment complex; identifying the development documents; identifying permitted uses; identifying development conditions; providing an effective date; and for other purposes. Ms. Blackwell seconded the motion. Messrs. Kennedy, Miller, Woodson, and Mses. Blackwell and Kluttz voted AYE. (5-0)

AN ORDINANCE AMENDING THE LAND DEVELOPMENT ORDINANCE AND THE LAND DEVELOPMENT DISTRICT MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 13.5 ACRES IDENTIFIED AS TAX MAP AND PARCEL 327-129 FROM GENERAL RESIDENTIAL (GR-6) DISTRICT TO RESIDENTIAL MIXED-USE (RMX) DISTRICT; BY AMENDING A PORTION OF A CONDITIONAL DISTRICT OVERLAY CD-7-02-2008-15 TO PERMIT THE DEVELOPMENT OF A 54-UNIT APARTMENT COMPLEX; IDENTIFYING THE

DEVELOPMENT DOCUMENTS; IDENTIFYING PERMITTED USES; IDENTIFYING DEVELOPMENT CONDITIONS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page No. 44-47, and is known as Ordinance 2010-23.)

LAND DEVELOPMENT ORDINANCE AMENDMENT – CD-03-2010

(a) Mr. Preston Mitchell, Senior Planner, addressed Council regarding Land Development district map and Ordinance amendment CD-03-2010 Villas at Hope Crest located along Lincolnton Road. He indicated that the petitioner is requesting to rezone approximately 4 acres from Residential Mixed-Use (RMX) and General Residential (GR-6) to RMX by removing a General Development-A Overlay and establishing a Conditional District (CD) Overlay to permit the development of a 55-unit apartment complex. Mr. Mitchell reviewed the criteria for a CD Overlay:

- Petitioner
- Content of Petition
 - Rezoning Petition
 - Master Plan
- Fair and Reasonable Conditions
- Revisions and Amendments
- Rescission

Mr. Mitchell reviewed aerial photographs of the site and reviewed the requests of the petition:

- Base District Rezoning
 - Currently split-zoned with Overlay
 - General Residential and Residential Mixed-Use
 - General Development-A Overlay
 - Requests
 - Residential Mixed-Use Only
 - Conditional District Overlay
 - The Residential Mixed-Use District (will allow 18 dwelling units per acre) is intended to provide areas for higher density residential development in close proximity (within one-half to one-fourth mile) to existing and planned commercial centers such as the Corridor Mixed-Use District (CMX) and the Downtown Mixed-Use District (DMX). The intent is to create higher density residential areas that compliment commercial districts with physical proximity and pedestrian connectivity. Different housing types and lot styles along with a limited mix of neighborhood-friendly uses are encouraged.

- Adopt a new Conditional District Overlay to permit development of The Villas at Hope Crest
 - 55 units
 - Senior Living Community (age-restricted)

Mr. Mitchell reviewed a before and after street perspective view of the site and noted that the site is located along Lincolnton Road. He then presented an on-site video report and indicated that the site is within walking distance to the intersection of Jake Alexander Boulevard and Lincolnton Road. He noted that to the west of the site is Mooresville Road which has primarily residential development. He indicated that the site has been cleared and was used as a borrow pit for other development sites in the area and that the rear of the site slopes upward. He pointed out that there is a single family structure on the site that will be removed as part of the development, along with much of the vegetation. Mr. Mitchell stated that the property will undergo significant grading to allow construction of the building. He pointed out where the split zoning occurs in the front yard of the single family home and indicated that the GR-6 classification needs to be removed and the entire site rezoned to RMX.

Mr. Mitchell reviewed the site plan noting that the structure is a 3-story, U-shaped building facing Lincolnton Road with recreation open space in the rear of the structure and parking along the sides and front.

Mr. Mitchell reviewed the Alternative Designs available to a CD:

- Industrial Standards of Chapter 2
- Building Orientation to Street/Recreational Open Space
- Building Materials
- Building Design Standards
- Building Dimensional Standards
- Street Cross Sections
- Street Connectivity and Stub Standards
- Parking
- Private Lighting

Mr. Mitchell indicated that all requirements for the project have been met, but the developer would like an alternative design for parking. He pointed out that the petitioner has requested to locate a portion of the parking lot in front of the structure instead of rear. He stated that it is more practical for the design to have one row of parking along the front of the structure and the remainder of parking on the side of the structure in order to have open space recreation in the rear which will allow privacy for the residents.

Mr. Mitchell reviewed policies from the Vision 2020 Comprehensive Plan pertaining to this request:

- Vision Statement on Housing: We see a multitude of housing choices, ranging from single-family homes, to townhouses, to garage apartments, to apartments over downtown shops or the neighborhood corner store. We see neighborhoods

- with several different well-designed housing types for all incomes where the elderly, young families, singles and others share experiences and help one another
- Policy N-19: Higher density housing projects, such as apartment complexes and condominium developments, should be located adjoining places of work, shopping and public transit. Access to such higher density housing shall not be through a lower density housing area. Higher density housing may often act as a transitional use between offices or shops and lower density housing.
- Needs to be strong complementary relationship with shopping and working
- Transit
- Direct access to thoroughfares

Mr. Mitchell also reviewed the 2010-2014 Consolidated Plan:

- Elderly households account for 60% of low and moderate income owner households, and only 17% of renter households (35% of total low and moderate income households)
- Among elderly renters, both housing problems and cost burden are more frequent for households in the very low income range (55%) and in the low income range (57%)
- Among elderly owners in the very low income range, housing problems and cost burden are equally high (49.7%), although not to the extent seen for elderly renter households
- Among all low and moderate income elderly households, 49.6% of renters and 30% of owners have housing problems
 - This equates to at least 687 elderly households with a housing need
- Current senior housing availability
 - Fleming Heights – 32 units
 - Yadkin House – 67 units
 - Salisbury Housing Authority – 138 units reserved for senior/elderly

Mr. Mitchell reviewed staff, Technical Review Committee, and Planning Board recommendations:

- Staff recommends that the petition is consistent with the Vision 2020 Plan and meets the needs of the Consolidated Plan
- The Technical Review Committee voted unanimously in favor of recommending provisional approval, subject to addressing all technical comments.
- The Planning Board unanimously recommended that the petition is consistent with the Vision 2020 Plan and recommend approval of the rezoning, removal of the General Development-A Overlay, and the adoption of the Conditional District Overlay to permit the development

Mayor Pro Tem Maggie Blackwell asked Mr. Mitchell to review the site in regards to its proximity to area businesses. Mr. Mitchell reviewed the site noting its proximity to various businesses in the area including Walgreens, Rite-Aid and the Omega Restaurant. Ms. Blackwell indicated that the nearest transit area is at Harris Teeter located in the Alexander Pointe

Shopping Center, which is a long walk for senior citizens. She noted that there are sidewalks near the site which stop at the corner of Jake Alexander Boulevard. She also pointed out that this area has one of the highest incidences of traffic accidents in the City, and she has concerns with pedestrian safety at this intersection. She added that there have been requests for a cross-walk to be installed at this intersection and asked if this has been given consideration.

Mr. Mitchell stated that the development proposes sidewalks along Lincolnton Road but there will be a missing sidewalk segment near the Time Warner building. He noted that this area scores high on the Sidewalk Priority Index (SPI) which makes it likely that the City could fill the gap if funds are available from the payment-in-lieu fund. Mr. Mitchell agreed that additional work may be needed at the intersection of Jake Alexander Boulevard and Lincolnton Road.

Ms. Blackwell asked if there is a possibility for relief for pedestrians at that intersection. Mr. Mitchell called upon Mr. Dan Mikkelson, Engineering and Development Services Director, to provide additional information regarding sidewalk construction. Mr. Mikkelson stated that there are options available, but each would require money. He noted that Jake Alexander Boulevard is a State-maintained road and any changes would require cooperation from the North Carolina Department of Transportation (NCDOT).

Mr. Mikkelson commented that Jake Alexander Boulevard was designed and constructed for efficient movement of automobile traffic without consideration for pedestrian traffic. He added that as the area is built-out with urban development there is an increasing need to make it walkable. Mr. Mikkelson stated that, at the moment, the cost of the improvements would be the City's to bear, but NCDOT might have funding sources available that staff could pursue. He commented that he did not think this issue is worth stopping the proposed project. Ms. Blackwell stated that her questions were not an attempt to stop the project, but she wanted to raise awareness of this need. She asked if there is potential for this issue to be address.

Mr. Mikkelson indicated that as pedestrian traffic increases in the area, there will be a greater need for sidewalk which will increase the area's SPI score. He commented that there are no routine funding sources for pedestrian improvements; however, staff continually looks for grants and other opportunities that could assist with sidewalk improvements. He stated that with the proposed growth this area will get more attention in the future than it has in the past.

Mayor Kluttz indicated that she feels it is wise to wait until after the project is developed to see what needs are because they may be different than anticipated.

(b) Mayor Kluttz convened a public hearing, after due notice thereof to receive comments on the proposed Land Development Ordinance amendment CD-03-2010.

Ms. Traci Dusenbury, Douglas Development, petitioner, indicated that Douglas Development has been developing in the Carolinas for over 25 years, and have built over 4,000 units. She indicated that Douglas Development decided to build in Salisbury because there is a high need for quality senior housing. She stated that the site is ideal because it is convenient to services needed by seniors. She requested Council support for the project.

Councilman Miller stated he is in favor of the request. Mr. Woodson stated that he also supports the project. Ms. Blackwell indicated that she supports the project, but has concerns with the sidewalks and walkability of the area. Mr. Kennedy stated that staff should continue to examine options to improve the area for walkability.

(c) Councilman Woodson stated that City Council hereby finds and determines that adoption of an Ordinance to rezone the property described herein and to remove the General Development-A Overlay and to establish a Conditional District Overlay is consistent with the goals, objectives, and policies, of the Vision 2020 Comprehensive Plan and that adoption of the Ordinance is reasonable and in the public interest. Thereupon, Mr. Woodson made a **motion** to adopt an Ordinance amending the Land Development Ordinance and the Land Development district map of the City of Salisbury, North Carolina, by rezoning approximately 4 acres, identified as tax map and parcel 062-011, from split zoning of Residential Mixed-Use (RMX) and General Residential (GR-6) districts to Residential Mixed-Use (RMX) district, by removing a General Development-A Overlay, and by establishing a Conditional District Overlay to permit the development of a 55-unit apartment complex; identifying the development documents; identifying permitted uses; providing an effective date; and for other purposes. Mr. Miller seconded the motion. Messrs. Kennedy, Miller, Woodson, and Mses. Blackwell and Kluttz voted AYE. (5-0)

AN ORDINANCE AMENDING THE LAND DEVELOPMENT ORDINANCE AND THE LAND DEVELOPMENT DISTRICT MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 4 ACRES, IDENTIFIED AS TAX MAP AND PARCEL 062-011, FROM SPLIT ZONING OF RESIDENTIAL MIXED-USE (RMX) AND GENERAL RESIDENTIAL (GR-6) DISTRICTS TO RESIDENTIAL MIXED-USE (RMX) DISTRICT, BY REMOVING A GENERAL DEVELOPMENT-A OVERLAY, AND BY ESTABLISHING A CONDITIONAL DISTRICT OVERLAY TO PERMIT THE DEVELOPMENT OF A 55-UNIT APARTMENT COMPLEX; IDENTIFYING THE DEVELOPMENT DOCUMENTS; IDENTIFYING PERMITTED USES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page No. 48-50, and is known as Ordinance 2010-24.)

SPECIAL USE PERMIT- THE DOWNTOWNER RESTAURANT, 1024 LINCOLNTON ROAD

SUP-02-2010 The Downtowner Restaurant

(a) Swearing In

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

Mr. David Phillips

Mr. John Cole

(b) Ex Parte Disclosure

Mayor Kluttz asked Council members to disclose any discussions they have had regarding this case or if they have been provided any information. There were no ex parte disclosures.

(c) Receive Testimony

Mr. David Phillips, Zoning Administrator, stated that the request before Council is for a Special Use Permit (SUP) to be located at 1024 Lincoln Road. He indicated that the application is for The Downtowner Restaurant, which was formerly located at the Elk's Lodge on South Main Street, but will be relocating to the Harold B. Jarrett American Legion Post located on Lincoln Road. Mr. Phillips noted that the property is zoned Residential Mixed-Use (RMX) and for a catering/restaurant use to be allowed in this district, an SUP must be issued.

Mr. Phillips referenced the Decision-Making rules:

- The zoning ordinance (Land Development Ordinance, LDO) must spell out the standards for granting a Special Use Permit (SUP), and those decision-making standards cannot be developed on a case-by-case basis
- The decision to grant or deny the SUP, or to impose conditions on the approval, must be based solely on the LDO standards
- The standards must provide sufficient guidance for decision. The applicant, neighbors, and board(s) all need to know what the ordinance requires for approval

Mr. Phillips discussed the Production of Evidence and stated that the applicant must provide evidence why he should be allowed to be located in this district. He added that any person opposing the application must present evidence as to why the use should not be allowed:

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

Mr. Phillips reviewed the Standards for Decision and noted that the first three general requirements are required for all Special Use Permits. He noted that the fourth requirement is associated with the zoning district:

1. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
2. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area; and
3. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed
4. No such use shall exceed 3,500 square feet in total size.

Mr. Phillips reviewed photographs of the site and an aerial view of the location. He noted the zoning in the area, pointing out Highway Business, Residential and Residential Mixed-Use.

Mr. Phillips stated that the applicant has submitted an explanation of why he believes that he meets the three general requirements. He indicated that the fourth requirement that the use shall not exceed 3,500 square feet has been reviewed by staff and they have verified that the use will not exceed this size limit.

Mr. Phillips stated that based on the requested use, and the requirements of Salisbury-Rowan Utilities, both the staff and Planning Board recommend that the appropriate size Fats, Oils, and Grease (FOG) device and Backflow Device be installed as part of the conditions.

Councilman Woodson asked about the 3,500 square foot limitation and how this size was determined. Mr. Phillips responded that he was unsure why 3,500 was used, but it had been in place for several years. He added that for this zoning district it is listed as the size limit for this use, and the portion of the building to be used will not exceed this limit.

Councilman Miller asked if this was a figure previously used in the B-1 district in the old zoning ordinance. Mr. Phillips stated that the only district with a requirement was the old Business Convenience Service (BCS) district, which had a 2,000 square foot footprint size limit.

Mayor Kluttz then opened the floor to receive testimony from the public:

Mr. John Cole, 1024 Kennelworth Court, Concord, North Carolina, stated that The Downtowner Restaurant is the provider for the Meals on Wheels program in Rowan County and also serves the North Hills Christian School and Salisbury Academy lunch programs. He stated that he has been doing this for nine years and looks forward to continuing to provide these meals for people. He added that he also looks forward to opening the restaurant for lunch very soon.

There being no one present to provide testimony, Mayor Kluttz closed the public hearing.

(d) Findings of Fact

Mr. Kennedy offered the following Findings of Fact:

1. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit
2. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area
3. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed
4. The proposed use shall not exceed 3,500 square feet in total size

(e) Thereupon, Mr. Kennedy made a **motion** to issue a Special Use Permit to allow catering/restaurant use for The Downtowner Restaurant in association with Harold B. Jarrett American Legion Post with the following conditions: require that proper sizing and installation of a Fats, Oil and Grease device for the kitchen area; and that the appropriate Backflow Protection Device be installed on the domestic water service. Mr. Woodson seconded the motion. Messrs Kennedy, Miller, Woodson, and Mses. Blackwell and Klutz vote AYE. (5-0)

Mayor Klutz commented that The Downtowner Restaurant has had an excellent reputation in the downtown area for a number of years, and she appreciates the excellent meals that are served for Meals on Wheels.

REPORT – PUBLIC ART COMMITTEE 2010 SCULPTURE SHOW

Ms. Barbara Perry, Salisbury Public Art Committee Chairperson, Mr. Edward Norvell, Salisbury Public Art Committee Vice-Chairperson, and Ms. Lynn Raker, Urban Designer, addressed Council regarding the 2010 Salisbury Sculpture Show. Ms. Perry indicated that the sculptures were installed March 25-26, 2010 and will be in place until the end of the year.

Mr. Norvell explained that there were seven members of the selection committee and all were associated with the Community Appearance Commission or the Public Art Committee and made up a very diverse group. He indicated that there were 80 submittals from nine states and that 19 pieces were chosen through a blind selection process to be displayed throughout the City.

Ms. Perry thanked the City and the private property owners for allowing the sculptures to be displayed on their property. She indicated that the Sculpture Show was funded through application fees, the sale of sculptures, and grants. She thanked Edward and Susan Norvell for their donation of a matching grant to the Public Art Committee, which made the Sculpture Show possible.

Mayor Klutz asked that Mr. and Mrs. Norvell stand to be recognized.

Ms. Perry stated that the Public Art Committee has named the best in show prize after the Norvell's in honor of their contribution to public art.

Ms. Perry reviewed photographs of the sculptures and recognized the artists:

- “Madonna ‘01” by Mr. Don Green located at the Rowan Visitors Center
- “Blues Storys” by Mr. Glenn Zwegardt located at Liberty and Lee Streets
- “A Subtle Miracle” by Ms. Gretchen Lothrop located at F&M Trolley Barn
- “Windows of Time” by Mr. Dale L. McEntire located at Easy Street
- “Sundial” by Mr. Samuel E. Burns located at Salisbury Police Department
- “A Toy for Sisyphus” by Mr. Ralph Berger located at Liberty and Main Streets
- “Big Wheel” by Mr. Jim Collins located at Rowan Museum
- “Tilt” by Mr. Bill Wood located at the Rowan Museum Garden
- “Up and Over” by Mr. Wayne Trapp located at First Bank
- “Fibonacci’s Hidden Gold” by Mr. Stephen J. Chilingirian located at the Bell Tower Park
- “Tumbling Toward the Sun” by Mr. Gary Gresko located at First Presbyterian Church
- “Steel Inverted Arch” by Mr. Kenneth Thompson located at the Wrenn House
- “Hanging in the Balance” by Mr. Rueven Fields Sadeh located at Rowan Public Library
- “The Burning” by Ms. Paris Alexander located at Rowan Public Library
- “We Are The Problem, We Are The Solution” by Ms. Jeannette Brossart located at Rowan Public Library
- “Bear” by Mr. Doug Makemson located at the Farmer’s Market
- “Leaves of Grass” by Ms. Pattie Porter Firestone located at the City Hall Parking Lot
- “Cattail Bridge” by Mr. Jim Galluci located at the Norvell Theater
- “Le Car” by Mr. Jozef Vercauteren located at the Wachovia Pocket

Ms. Perry announced the winning sculptures:

- First Place - “Tumbling Toward the Sun” by Mr. Gary Gresko
- Second Place - “The Burning” by Ms. Paris Alexander
- Third Place - “Tilt” by Mr. Bill Wood

Ms Perry indicated that all the sculptures on display are for sale and the Public Art Committee receives 25% commission on all sales. She stated that the commission from the sales will be used to help fund next year’s sculpture show, which the Public Art Committee has voted unanimously to hold.

Mayor Pro Tem Maggie Blackwell stated that visitors have been amazed that a City of this size has such a wonderful show. She thanked the Norvell’s for their many contributions to the community.

Mayor Kluttz thanked the Committee and everyone involved with this project. Mayor Kluttz stated that she feels this show is a wonderful addition to the City and visually emphasizes the importance of art to the community.

REPORT/SET PUBLIC HEARING – NUISANCE CONDITIONS, 1605 SOUTH MAIN STREET

Mr. Chris Branham, Code Services Manager, addressed Council regarding nuisance conditions located at 1605 South Main Street. Mr. Branham displayed an aerial photograph of the property and reviewed the timeline and process leading to this request:

- January, 2010 – Several complaints received regarding condition of flags
- January 18, 2010 – Inspection of property was conducted, zoning violation found regarding flags and Notice of Violation letter sent to owner
- January 26, 2010 – Second Notice of Violation letter sent, \$50 civil citation issued
- February 12, 2010 – Third Notice of Violation letter sent, \$100 civil citation issued, given final compliance date
- February 19, 2010 – final compliance date, \$250 fine per day begins
- March 26, 2010 – Follow-up letter sent, giving updated total of fine amount to owner
- April 6, 2010 – Flags offered to property owner to replace dilapidated flags, flags were not accepted by owner
- April 20, 2010 – Compliance date given by property owner, no compliance gained
- April 30, 2010 – Petition received from neighboring business with 502 signatures requesting property be cleaned
- May 6, 2010 – Notice of Violation letter sent addressing junked vehicles, piles of red dirt, concrete barriers, and flags
- May 18, 2010 – Council receives presentation and asked to set a public hearing in order to declare the property a nuisance.
- May 21, 2010 – Compliance date for junked vehicles to be removed from property

Mr. Branham reviewed the Directive of the City Code and the Federal Flag Code:

- Section 14-2: Any other condition specifically declared to be a danger to the public health, safety, morals and general welfare of inhabitants of the City and a public nuisance, by the City Council, including structures that have been damaged by fire or other causes or have otherwise deteriorated. Such proceedings may be initiated by the [Code Services Division] before the City Council after giving written notice in conformity with section 14-3. The notice will state that the City Council will be requested on a day certain, after a public hearing at which the person notified may appear and be heard, to declare that the conditions existing constitute a danger to the public health, safety, morals and general welfare of the inhabitants of the City and a public nuisance, and that, after such declaration by the City Council in the form of an Ordinance, the condition will be abated as provided for in this article
- Section 14-3 Notice to Abate: (a) whenever any public nuisance is found to exist on any property within the City, the [Code Service Manager] or his designee shall notify the owner and the occupant of the premises where the nuisance is located

(b) the notice to abate a nuisance issued under the provisions of this chapter shall contain:

- A statement that conditions exist on the property which constitute a public nuisance
- The condition existing
- The location of such condition
- A statement that, unless the condition is abated within 15 days from the mailing of the notice, which shall be sent by first class mail, the conditions constituting a nuisance will be abated and the cost of abatement shall constitute a lien against the premises
- Land Development Ordinance, Section 12.3H
 - Official Flags: Current official flags of the United States of America, State of North Carolina, County of Rowan, and City of Salisbury are permitted by right. Whenever these flags are used, they should follow the Federal Flag Code whenever possible.
- Federal Flag Code
 - Flags should be removed or replaced once in deteriorated state

Mr. Branham displayed photographs depicting the condition of the property and its proximity to a neighboring business. Mr. Branham requested Council set a public hearing for June 1, 2010 to consider declaring 1605 South Main Street a general nuisance. He pointed out that if the property is declared a nuisance, abatement of the issues will begin June 2, 2010.

Thereupon, Mr. Miller made a **motion** to set a public hearing regarding nuisance conditions at 1605 South Main Street for June 1, 2010. Mr. Woodson seconded the motion. Messrs. Kennedy, Miller, Woodson, and Mses. Blackwell and Kluttz voted AYE. (5-0)

PUBLIC COMMENT SESSION

Mayor Kluttz opened the floor to receive public comment.

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

APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS

This item was postponed.

COMMENTS FROM THE CITY MANAGER

(a) **FY2010-2011 Budget Presentation**

City Manager David Treme presented a copy of the FY2010-2011 proposed budget to Council and indicated that preparation of the budget has been more challenging than the previous

fiscal year. He stated that the local economy continues to impact the City's revenues and pointed out that the City relies on sales tax, but the sales tax income is not doing well. He noted that even though there are signs of economic recovery, the City's governmental revenues will lag up to one year behind trends in the general economy.

Mr. Treme indicated that at the February 10-11, 2010 Future Directions and Goal Setting Conference, Council provided the following direction:

- No tax increase
- Maintain current level of services as much as possible
- Use fund balance judiciously

He indicated that major challenges in the current budget are mandated cost increases that are being passed down to the local government level. He indicated that the City will have to absorb these increased costs. He reviewed the specific mandated cost increases:

- Health Insurance - \$341,367
 - Average increase 5%
 - 2010-2011 increase 15%
 - Amount of claims are consistent with previous years
 - Dollar amount of claims have increased
- Retirement - \$244,404
 - North Carolina Retirement System is increasing employer contribution
- Workers Compensation - \$107,600
 - Accidents and injuries lower than previous years
 - Severity of claims has increased
 - Dollar amount of claims have increased
 - An irregular occurrence
- Gasoline and Oil - \$150,697
 - Over 700 vehicles and equipment requiring gasoline and oil
 - Operating costs increase
- Electricity - \$20,814
 - Duke Energy rate increase
- Street Lighting - \$93,875
 - Duke Energy rate increase
- Total - \$958,757

Mr. Treme indicated that last year the Police Department requested funds from the Community Oriented Police Services Grant Program to fill seven police positions, but only received funding for four positions. He noted that the City will fund those additional positions at a cost of \$150,000 to ensure the Police Department is fully staffed. He pointed out that this cost, along with the other mandated expenses equates to approximately \$.04 on the tax rate and is a cost that the City will absorb.

Mr. Treme then reviewed the strategies that staff will use to absorb the \$1.1 million gap:

- Substantial cuts in the area of special projects, capital projects and discretionary spending
- Implement a rolling freeze of vacant positions across City government
- Restructure limb service pick-up from weekly to monthly
- A 10% reduction of funding to special community efforts groups

Mr. Treme indicated that the FY2010-2011 budget will be the fourth consecutive fiscal year without a property tax increase. He stated that if the City absorbs the \$1.1 million expenses, the City will be limited in terms of flexibility for any unforeseen expenses. He noted that in the future, financial cuts may be necessary in both personnel and operations of the City.

Mr. Treme reviewed other major recommendations:

- No new positions, except those funded by the City's Fiber Optic Network Fund
- No reduction in force or furlough
- A \$500 average employee bonus across the board based on performance
- A continued absorption of three Police Officer salaries by the General Fund
- A 10% reduction in funding to special community efforts groups
- A 10% increase in the recycling fee due to a 10% increase in contract cost
- An average 5.57% water and sewer increase in the water and sewer utility rate

Mr. Treme stated that neighboring jurisdictions have much higher water-sewer rate increases. He indicated that the I-85/Highway 29 Water Sewer Project is complete and he feels that its completion will provide future tax dollars for development along that corridor.

Mr. Treme indicated that the City has an A+ standard rating from Standard and Poors.

Mr. Treme stated that the City has an outstanding budget staff and recognized Mr. John Sofley, Management Services Director; Ms. Teresa Harris, Budget and Performance Manager; Mr. Wade Furches, Finance Manager; Mr. Evans Ballard, Budget and Benchmarking Analyst; Ms. Renee Pierson, Management Analyst; Ms. Melissa Drye, Finance Specialist; Mr. Mark Drye, Senior Management Analyst; Ms. Kizzy Lea, Accountant; Mr. Doug Paris, Assistant to the City Manager; and Ms. Myra Heard, City Clerk. He also thanked the entire Management Team and their staff. He asked that Council give these recommendations serious consideration and stated that he is open to any suggestions, recommendations, or changes Council may have.

Councilman Woodson asked if there are any fee increases other than the recycling fees. Mr. Treme indicated that there is a 5.57% increase in water and sewer fees.

Mayor Kluttz thanked Mr. Treme and City staff for their work on preparing the FY2010-2011 Budget.

Council discussed dates for a Budget Workshop and agreed for City Clerk Myra Heard to coordinate the date.

Thereupon, Mr. Kennedy made a **motion** to set a public hearing regarding the FY2010-2011 budget for June 1, 2010. Mr. Miller seconded the motion. Messrs. Kennedy, Miller, Woodson, and Mses. Blackwell and Kluttz voted AYE. (5-0)

MAYOR'S ANNOUNCEMENTS

(a) Save Your Home Expo

Mayor Kluttz announced that the Salisbury Community Development Corporation will host a "Save Your Home Expo" Thursday, May 20, 2010 at the F&M Trolley Barn, 125 East Liberty Street from 5:30 p.m. until 8:00 p.m. Food will be provided and the event is free and open to the public.

(b) Farmer's Market – Rowan Regional

Mayor Kluttz announced that the Farmer's Market located at Rowan Regional Hospital's Surface Lot A will be opened on Thursdays from 4 p.m. until dusk.

(c) Salisbury-Rowan READS!

Mayor Kluttz announced that the Salisbury-Rowan READS! program will take place on Wednesday evenings this summer from 5:00 p.m. until 7:00 p.m. at the following locations:

- July 14, 2010 Rowan Public Library, 201 West Fisher Street, Salisbury
- July 21, 2010 East Branch Public Library, 110 Broad Street, Rockwell
- July 28, 2010 Spencer Library Park, Fourth Street, Spencer
- August 4, 2010 South Branch Public Library, 920 Kimball Road, China Grove
- August 11, 2010 Cleveland Elementary School, 107 School Street, Cleveland

Mayor Kluttz noted that citizens from any part of the County can visit any or all of the events. She thanked Ms. Karen Wilkinson, Public Information Manager, for her had work in coordinating these events.

(d) The Norvell Children's Theater

Mayor Pro Tem Maggie Blackwell announced the grand opening of the Norvell Children's Theater will be held Friday, May 21, 2010. She encouraged citizens to support the theater.

ADJOURNMENT

Motion to adjourn the meeting was made by Mr. Woodson, seconded by Mr. Kennedy. All council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 6:29 p.m.

Susan W. Kluttz, Mayor

Myra B. Heard, City Clerk