

Salisbury, North Carolina

January 15, 2002

The City Council of the City of Salisbury met in regular session in the Council Room of the Municipal Building on Tuesday, January 15, 2002, at 4:00 p.m., with the following members being present and absent:

PRESENT: Mayor, Susan W. Klutz; Mayor Pro Tem, Paul Woodson, Jr.;
Councilmen William (Bill) Burgin; William (Pete) Kennedy;
and Robert (Bob) Martin.

ABSENT: None.

The meeting was called to order by Mayor Klutz, and the invocation was given by Councilmember Martin.

Staff members present were:

David W. Treme - City Manager

Swannetta B. Fink - City Clerk

Larry Chilton - Director, Land Management
& Development

Chris Herring - Police Chief

Rivers Lawther - City Attorney

Foster Owen - Assistant City Manager

John Sofley - Finance Director

Melissa Taylor - Director, Human Resources

John Vest - Director of Utilities

Gail Elder White - Director, Parks & Recreation

RECOGNIZE HUMAN RESOURCES DIRECTOR MELISSA TAYLOR

Mayor Kluttz recognized the City's Human Resources Director, Melissa Taylor, who has recently achieved the international recognition of attaining the IPMA-CP credential from the International Personnel Management Association. Mayor Kluttz presented a plaque to Ms. Taylor for this achievement.

CONSENT AGENDA

(a) Minutes

Minutes of the meeting of January 3, 2002.

(b) Voluntary annexation - Corbin Acres, Phase 1

Council received the Certificate of Sufficiency and adopted a resolution setting a public hearing for February 5, 2002 concerning voluntary annexation of Corbin Acres, Phase 1.

RESOLUTION SETTING DATE OF PUBLIC HEARING ON QUESTION OF THE ANNEXATION OF CORBIN ACRES PHASE 1 PURSUANT TO G.S. 160A-31 AS AMENDED.

(The above resolution is recorded in full in Resolution Book No., under Chapter XII - Miscellaneous, at Page Nos. 135-136, and is known as Resolution No. 2002-4.)

(c) Andrew Jackson Masonic Lodge - Brunswick Stew Sale

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Council received a request from the Andrew Jackson Masonic Lodge to reverse the flow of traffic and prohibit parking on Water Street on February 28 for their annual Brunswick Stew sale.

(d) Group Development Site Plans

Approve group development site plans for the following:

- G-2-1996 - Lowe's Home Center and NationsRent, 207 Faith Road (Innes Street Market)
- G-1-1987 - Winn-Dixie Store, 710 Jake Alexander Boulevard West
- G-15-2001 - Gateway Area Parking Lot, 100 block North Lee Street

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

ZONING MAP AMENDMENT - Z-30-01 - SALISBURY PLANNING BOARD

Z-30-01 - Salisbury Planning Board

Highland Avenue, Barker Street, Mocksville Avenue, and Grove Street

The request is to rezone properties along both sides of Highland Avenue, along the west side of Mocksville Avenue down to Grove Street, and along the north side of Grove Street from Mocksville Avenue to one lot past Highland Avenue.

(a) Mr. Harold Poole, Senior Planner, told Council that Z-30-01 evolved out of Z-22-01 which was filed several months ago which requested originally that the property on the northwest corner of Grove and Highland Avenue be rezoned from R-6 to B-1. The Planning Board looked at this particular request and thought about the proximity of this entire area along Highland Avenue to the hospital. They also had some thoughts about the new MED District where Dr. Shellhorn's office is located. This matter was sent to a committee for further study. The committee made a recommendation on 22 lots in this area to be rezoned from R-8, R-6, and B-1 to MED Medical Services.

Mr. Poole showed aerial photos of the properties to Council which showed the zoning patterns in the area. The Planning Board committee noted the alleyway that separates the Highland Avenue area from the Holmes Avenue area. They also looked at differences between Highland and Holmes Avenues. There is a dead end street that is well suited for the homes there but would probably not be suited for medical, Mr. Poole noted. Most of the area on Highland is residential. Approximately fourteen years ago, a similar request to go to B-1 was received. The people on Highland Avenue opposed the zoning change and asked to be left residential which was done, he said. There are more rental units now. Other things going on in the area tended to lead the Planning Board more to MED Medical Services than B-1 Office Institutional. If there is a place for medical to locate, it would probably be here in an individual house or maybe taking one-two lots and converting them into office buildings rather than spilling over into neighborhoods, Mr. Poole stated.

Mr. Poole stated there was some concern in the Jersey City area and other neighborhoods that medical could spill over into if we did not try to provide areas specifically for medical, he said. There are about half as many uses permitted in medical as in M-1. It was felt that the medical office district was the one that came closest to fitting what the hospital needed. The plans for the hospital are to extend down to about Grove Street, Mr. Poole noted. A request may be forthcoming that the HS Hospital Services be extended to this point, he said. The Planning Board committee is wanting to look at the future of a medical services district along Mocksville Avenue similar to what B-1 was done in 1973. Therefore, the Planning Board committee felt the MED would be best for this area, according to Mr. Poole.

Mr. Poole indicated that meetings were held and invitations were sent to members of the surrounding neighborhood to talk about the future of this area. The conclusion was that the MED district would be preferable for this area.

(b) Mayor Kluttz convened a public hearing, after due notice and advertisement thereof, on the following zoning map amendment Z-30-01 Salisbury Planning Board, Highland Avenue, Barker Street, Mocksville Avenue, and Grove Street.

Those speaking **in favor** of the above proposal were:

Mr. Tom Lynch, 957 Confederate Avenue, who owns property on Highland Avenue told Council when this situation was initially proposed, he had no objection to the one lot being rezoned to B-1. But, he asked the Planning Board to look at the whole area, he said. He wants to save the City money and every individual property owner coming back one lot at a time ties up a lot of resources. Mr. Lynch said he thinks Mr. Poole adequately addressed the situation. His mother lived in the neighborhood as well as older people and that was the opposition, Mr. Lynch noted. These people mostly have passed away now and there are a lot of rental properties. At this time, it will be in the best interest of the community for our medical community, and especially doctors, will know in which direction to go to locate around the hospital, according to Mr. Lynch. This is a win-win situation for the medical community and the hospital, he noted. He expressed concern about the lack of sidewalks, and, he said a member of staff stated we need sidewalks right away. He noted he certainly hoped that we would not waste the City's resources by putting sidewalks in, not knowing how the area is going to be developed. The whole thing needs to be done at one time, he noted. He praised Leigh Ann Loeblein who chaired the small area committee.

Mr. David Harrison, 1019 Highland Avenue, told Council he currently owns three (3) pieces of property on Highland Avenue. He said he is highly in favor of this rezoning situation. He also represents Harrison Enterprises which consists of four (4) other properties that borderline the Holmes Avenue side that backs to the current medical zoning request. He said he is currently interested in finding out if this is zoned medical and wondered how it is going to affect our individual taxes? By going to a medical district, the property taxes will probably be affected and go up. He said he wants to know how much.

Mr. John Smith, 528 Grove Street, told Council that his property fronts Highland and Grove Street. Initially, he and his wife after some time, decided that they wanted to sell and get as much as possible out of the property, he stated. He said when he moved into the neighborhood it was residential. It has lost the integrity of a residential neighborhood because many of the people have died. We signed many petitions in the past in agreement with those who lived there, he said, but they weren't trying to destroy the neighborhood. He thanked everyone on the Zoning Board for acting on this matter expediently to get this area rezoned.

Mr. Harold Faulkner told Council he owns property at 1022 Highland Avenue and he is in favor of the proposal.

Those speaking **against** the above proposal were:

Mr. Ken Martin, 1101 Highland Avenue, told Council he butts up against the new doctors office. He said he wanted to remind the Council of the requirement of setbacks for residential up against the medical services. This means there will be no building on Highland Avenue that butts up against Holmes Avenue and this is due to the setback requirements, he stated.

No one else was present to speak for or against the above proposal. Mayor Klutz closed the public hearing.

City Manager Treme stated it may well be that the Medical District Zone would be looked at more by the County Tax Assessors as more commercial type property than residential. It may be that there would be an increase, but he could not say. He advised that the residents contact Mr. Jerry Rowland, Rowan County Tax Assessor, concerning this matter.

Mr. Harold Poole stated it appeared to staff when they looked at the tax valuation of individual properties in comparison to those on Holmes and some other properties in the area, these appeared to be already a little on the high side. It's a possibility that in accessing these properties they were considered likely to in the future be rezoned to B-1 or something other than residential, he noted. This may be already factored in. He also noted he couldn't say they aren't going to be revalued in the future.

Councilmember Burgin commended the Planning Board for recognizing that the zoning was really more extensive than one piece of property. They indeed needed to look at the bigger picture, he noted. As a community, we also need to recognize that the medical center needs support by way of medical offices and we need to address the issue, Mr. Burgin stated. As you look at the edges of what is being recommended to change as it relates to residential communities, this is a good edge, he said. It doesn't encroach into the adjacent residential. On the Mocksville Avenue side, it is mostly offices and this side is very compatible. Mr. Burgin stated he is certainly in favor of this zoning. It does bring a lot of zoning changes at once will save resources and time, he indicated.

Councilmember Kennedy concurred with the rezoning along with Mayor Pro Tem Woodson. Mr. Woodson stated he was curious about the remark about the setback requirements. Mr. Burgin noted if we abut residential, there is a larger setback. As far as setbacks go, it would have the same in front and rear and little bit more for side yard setbacks, Mr. Poole said. Mr. Burgin noted it does have an exception that rear setbacks abutting residential is 30 feet if it's 30 feet or less in height and, if greater than 30 feet, it is one foot additional for every one foot of additional height. As those buildings get taller on the left side they are going to get further away from setbacks. The gentlemen's point is well taken. They have to deal with those issues-whoever develops them. We, as a City, enforce them. There is some give and take in this, but they have done a good job of defining the edge, and hopefully, the property is big enough to deal with, Mr. Burgin stated. Councilmember Martin noted that the Planning Board voted 8-1 in favor with little, if any, opposition. This is a win-win situation.

(c) Thereupon, Mayor Pro Tem Woodson made a **motion** to rezone from R-8, R-6 and B-1 to MED Medical Services. Mr. Martin seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 8 ACRES LOCATED ALONG PORTIONS OF MOCKSVILLE AVENUE, GROVE STREET, HIGHLAND AVENUE, AND BARKER AVENUE, IDENTIFIED AS PARCELS 96, 99, 99A, 100, 101, 102, 103, 104, 105, 106, 110, 113, 114, 115, 116, 117, 118, 118-1, 119, 261, 262, 266, AND 267 ON SALISBURY TOWNSHIP TAX MAP 2, FROM R-8 SINGLE FAMILY-8 RESIDENTIAL DISTRICT, R-6 TWO-FAMILY RESIDENTIAL DISTRICT, AND B-1 OFFICE INSTITUTIONAL DISTRICT TO MED MEDICAL SERVICES DISTRICT.

(The above ordinance is recorded in full in Ordinance Book No. 18, under Chapter XI - Zoning & Planning, at Page Nos. 31-32, and is known as Ordinance No. 2002-6.)

PROPOSED SIDEWALK AMENITIES

Mr. Patrick Kennerly, Planner, informed Council that the proposal concerning sidewalk amenities originated from Downtown Salisbury, Inc. Using slides, he illustrated the major points of the proposal. Staff has taken the recommendation from Downtown Salisbury, Inc. and put it in ordinance form, he stated. One of the purposes for the sidewalk amenities is to activate the street and increase sidewalk activity; allow for and encourage sidewalk dining and retail displays; and encourage further use of public sidewalks to stimulate economic activity in the Central Business District.

Mr. Kennerly informed Council that staff is looking at five (5) general areas for proposed City code additions: sidewalk dining; sidewalk furniture; placing goods and merchandise on sidewalks; newspaper vending racks; and sidewalk entertainment. There are two (2) zoning ordinance revisions identified by Downtown Salisbury, Inc. (DSI) that relate to Section 9.05 (Signs Permitted by District): (1) Downtown Sidewalk Signs (Sandwich Board Signs) and (2) Downtown Pole Displays. Both of these items will need to be referred to Planning Board for recommendation, he noted

Mr. Kennerly reviewed with Council the following five (5) proposed City Code additions:

Sidewalk Dining

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- Ordinance would allow for the use of sidewalks for this purpose
- Permit required
- Must be associated with, but secondary to, an existing restaurant
- Regulations to protect public safety and sidewalk clearances
- Alcohol sales permitted with additional regulations

Sidewalk Furniture (not placed by City)

- Permit would allow for placement of benches, chairs, planters, etc.
within the sidewalk or other public areas
- Allowed within 4 foot of the curb or within 3 foot of building wall
- Must maintain 5 foot of unobstructed pedestrian passageway

Placing Goods or Merchandise on sidewalk

- Allowed within 4 foot of the curb or within 3 foot of building wall
- Must maintain 5 foot of unobstructed pedestrian passageway

Newspaper Vending Racks

- Permitted in designated area in each block
- No more than five (5) racks in one location
- first priority - daily publications (5 days or more per week)
- second priority - weekly publications (1-4 days per week)
- third priority - other publications (less than 1 day per week)
- Consent of closest property owner, if within 5 feet
- Racks must be serviced and maintained appropriately

Sidewalk Entertainment

- Would apply to musical performances, dance, magicians, clowns, jugglers, theatrical presentations, etc.
- Would not apply to speeches, lectures and sermons
- Restrict time of performance (9 a.m. to 10 p.m.) and duration (2 hours)

Mr. Kennerly reviewed the two proposed zoning ordinance changes:

Downtown Pole Displays

- Increase maximum display time to 90 days (currently 45)
- Allow for logo of sponsor, up to 25% of banner

Downtown Sidewalk Signs (Sandwich Boards)

- Maximum size 10 square feet (4' height x 2.5' width)
- Located within 4 foot of the curb or 3 foot from the building wall
- Must maintain 5 foot of unobstructed pedestrian passageway
- Appropriate content and appearance

Mr. Kennerly reminded Council that the above two proposed zoning ordinance changes would need to be referred to Planning Board for recommendation.

Mr. Randy Hemann, Executive Director of Downtown Salisbury, Inc., reminded Council of the Flowers Bakery study when the retail consultant, Jim McCurry, said Salisbury needs to find ways to liven up their sidewalks. This is an effort from that, he said. Successful ordinances are in places like Wilmington and Asheville now, and they allow businesses to do more on the sidewalks. They also protect the rights of the property owners as it relates to other people placing things in front of their businesses, he noted.

Mr. Hemann proposed as a change immediately under Section 22-46 Sidewalk Dining, (b) Permit required. He would like to add the following sentence: "a permit shall not be required for sidewalk dining in instances where no seating is provided." He gave instances like eating an ice cream cone in front of Spanky's or eating a hot dog in front of Hap's. This is not the intent of the ordinance, he noted. Adding this sentence will clarify the intent of where we want to be with this. As it does promote the use of

sidewalks, it also maintains a clear passageway of 5 feet so it will not obstruct people from walking up and down the sidewalks, he stated. In most cases, the sidewalks on Main Street are about 12 feet wide. Mr. Hemann suggested that the Council work with Downtown Salisbury, Inc. by appointing a committee to further study the proposed sidewalk amenities package.

Mayor Kluttz appointed a Council Committee consisting of Mayor Pro Tem Woodson and Councilmember Burgin to work with staff and Downtown Salisbury, Inc., concerning the sidewalk amenities proposal. A public hearing will be held at a later date, she said.

Mr. Hemann agreed with City Manager Treme that he could distribute the proposed recommendations to merchants in the downtown area. Some of the proposals have been grandfathered in like the flowers in front of O.O. Ruffy's.

Mr. Kennerly asked if it was Council's consensus to go ahead and send the sign proposals to Planning Board to review. Mr. Burgin stated he was OK in getting help from any direction. He said he did want us to have a clear clarification on signs as it relates to the historic district in the downtown.

KLUMAC ROAD GRADE SEPARATION U-3459

Mr. Dan Mikkelson, City Engineer, informed Council that approximately seven (7) years ago, the City conducted one of the first rail corridor safety studies in the state. The goal of the study was to prepare a long range plan to consolidate rail crossings while improving our local transportation. As a result of the study, Boundary Street was improved and extended all the way to Jake Alexander Boulevard; Military Avenue was realigned to take better advantage of the existing underpass; and 9 grade crossing were closed, Mr. Mikkelson reported. A big part of the recommendation that came with closing all those grade crossings was to try to get two separated crossings, he noted. A grade separation could be a tunnel or a bridge; one on the north side of town and one on the south side of town, Mr. Mikkelson said. As you close the other crossings, you are forcing the crossing traffic to go to the remaining at-grade crossing. Klumac Road is on the south side of town, he said.

Mr. Mikkelson told Council that NCDOT staff met with the City recently and they suggested it would be appropriate for the City to submit a request to accelerate the planning for the grade crossing at Klumac Road. The state would study reasonable alternatives; come up with the recommended alignment; determine the cost, benefits, and impacts of doing the grade separations. Based on their findings, the City would determine if we felt it was appropriate to continue, he said. If this was not terribly controversial, it would probably be a ten (10) year project, he noted. Mr. Mikkelson reminded Council this is consistent with our long range planning.

Mr. Mikkelson asked for Council's concurrence that City staff ask NCDOT to proceed with the planning study on the Klumac Road grade separation. The planning study will not impact any property owner but the recommended alignment would ultimately impact some property owners, he noted. This grade separation was identified by our Rail Corridor Safety Study and is part of the mutually adopted Thoroughfare Plan. This has been in our TIP recommendation priority list since 1994.

Councilmember Kennedy asked about the grade separation in the northern part of town. Mr. Mikkelson responded that the one on the northern part of town would come somewhere near the Henderson Street crossing. There has been a preliminary study done on both locations. The one at Klumac Road seems more feasible; the one by Henderson Street has a lot of geometric impacts. For instance, there is a historic district there, and they have been unable to identify an alignment that wouldn't impact historic properties, he said. With the proximity of Long Street to the railroad tracks, there is not a whole lot of room to get a change in grade, whether the grade separation is going to go over the tracks as a bridge or under as a tunnel. There weren't a lot of alternatives, he said. Klumac Road seems to have better alternatives. NCDOT felt it was best to go with the easiest to do first, he noted.

It was the consensus of Council for staff to proceed with NCDOT on the planning for a grade separation at the Klumac Road railroad crossing.

REPORT FROM CITY MANAGER

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(a) Planning Board recommendations

Council received the Planning Board recommendations as information only.

(b) South Rowan Water Project

City Manager Treme informed Council he was guest of the County Commissioners and there was discussion about the South Rowan Water Project. Mr. Treme reported the meeting to be positive. He said he's reporting to clarify what the project was, what it is now, how much it's going to cost, and to see if we are still on track.

Mr. John Vest, Director of Utilities, gave Council a summary of the cost estimates for the South Rowan Water Project. The original scope and project estimate was \$6.8 Million, which was Rowan County's cost. It is now \$7.8 Million which includes the \$1,010,413.00 that they (Rowan County Commissioners) agreed to last Monday in additional cost, he said. This is for additional water line construction, additional pump station construction modifications, and additional engineering cost. In addition, the City's cost would be additional easement cost, deferred water line construction and the Old Concord Road pump station and water line replacement, which adds up to the \$3.3 Million. The deferred portion is not to build the full project at this point until the demand is such that it is necessary, Mr. Vest stated. Mr. Vest gave an example of the reason not to do that is the County's industrial park. He said the City put in the full facilities to serve that park about 5 years ago. The County only has two industries there and we are having water quality problems because we have the full facilities in and don't have the demand. This is what the Old Concord Road portion is for - to correct that water quality problem, he noted. As the demand increases and the customers are there, they would pay for the additional deferred portion, and the project will be built as the demand dictates it.

Mr. Treme noted that the 11.1 million gallons referenced basically is a 30 year plan. There will be up to 2 million gallons that could be used by China Grove, up to 2 million gallons which could be used by Landis, and up to 3.1 million gallons which could be used by the residents of Kannapolis who are Rowan County residents. Another 4 million gallons could be used in and around that area, Mr. Treme pointed out. We don't want to end up with tremendous facilities, pumps, and lines that would result in not being used, and therefore, cause water quality problems. We would see a depreciated system before we activated it. The City feels this is a better approach to allow the demand to dictate the construction schedule over the 30 year period. Now our permit at the water plant will be 18 million gallons a day. Over a 30 year period, we predict the demand could be 45-50 million gallons, Mr. Treme advised.

Mr. Treme informed Council that the County Commissioners have sent back an addendum to the original agreement that reflects changes. Staff has reviewed the changes and are in agreement with all but one, he said. County Commissioners indicated as the demand approaches, the City of Salisbury should be in a position within one year to serve that increased demand. The City said we would do that within the year time period, but only after receiving the permits from the Department of Environment & Natural Resources (DENR). The permitting can be slow and the City doesn't want to be held responsible for doing something in the year without a permit. Mr. Treme advised he has shared this information with County officials.

Councilmember Burgin stated it did appear that the County was not as happy with the arrangements of the project as they should be, and maybe we weren't. Mr. Burgin said he came to City Hall and met with the City Manager and staff concerning this matter. Mr. Burgin pointed out one of the main goals is to stabilize utility rates for our customers. One of the other goals is to get water to the southern end of the County. After going over the numbers and in the effort to defer some of the cost in the City's column, he wanted to be sure the sale of the water would support the cost, he noted. He emphasized that in his mind the City has met it's #1 objective of still being on course for stabilizing the rate increases in our water system. He stated he thinks the City can get the water that was promised to the southern part of Rowan County. Some of the over-run is in trying to analyze the system we have and actually coming to the conclusion that we couldn't get 11.1 million gallons a day to the southern part of the County unless we had one more pump station and piping, he said. Mr. Burgin said until this was engineered and we learned what was necessary, we had been working with educated guesses. Now, we know we need the extra dollars, he pointed out. Mr. Burgin spoke of the other thing he wanted to do being to try to come up with a better process. We don't want partners mad at the City, he noted. He suggested that we ask the County to confirm our estimates and be a part of this process by attending meetings concerning the project.

Mr. Burgin also noted that the Council members should have been with the City Manager when he went to the County Commissioners meeting last week to support him. The Council is responsible for the project, he noted. Mr. Burgin pointed out he feels this project is a win-win situation.

Mayor Klutz stated she agreed with Mr. Burgin and his recommendation on this project. Mr. Kennedy stated the newspaper indicated we were off by \$3 million and the County has agreed to pay \$1 million more. What is going to happen to the other \$2 million? Is this going to be borne by the future rate payers? Mr. Treme replied that rather than have that be borne by the existing rate payers, the future customers will pay for the expansion. Without this project, our rate would probably be double digit next year, he noted. Mr. Treme noted that big industries are pulling out of surrounding towns such as Charlotte, Gastonia, and Mt. Airy, as well. The difference between us and them is that we do have a way to win. The City does have customers who need our service. Our goal has been to expand the customer base, spread the capital cost, and moderate the rates. With this project the City can accomplish that, Mr. Treme noted. With our County funding partner we need to go forward with this, he said. Councilmember Kennedy noted he didn't remember Mr. Treme telling Council the City was off \$3 million. Mr. Treme indicated he shared the information at the last council meeting that we were over, especially on the easements. Two of the projects were long term projects, he said. Other projects were added that would make the whole thing work better. The figures were approximately 35% over what was estimated when the need for the additional pump station and piping was determined.

Councilman Burgin again explained how he sees this as a workable project. Mr. Woodson pointed out the City has lost 35% of its utility sales and Mr. Treme noted 2.9 million had to be cut from the utility and some staff laid off. Mr. Treme reminded Council again that this is a slowly developing 30 year project. We are looking at future intake for 30 years, a future pump station for the river, increasing supply lines, and improvements to the plant.

Thereupon, Mr. Burgin made a **motion** to accept the Memorandum of Understanding (MOU) Addendum with the changes as presented. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0)

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MAYOR ANNOUNCEMENTS

(a) Economic Development Commission

Mayor Klutz reminded Council they will have dinner with the Economic Development Commission Board, Wednesday, January 16, 2002, at 6:30 p.m., at the Chamber of Commerce.

(b) Martin Luther King, Jr. Events

Mayor Klutz reminded Council of the following Martin Luther King, Jr. events:

- Friday, January 18, 2002 at the VA Medical Center, at 1:30 p.m.
- Sunday, January 20, 2002 at Mt. Zion Baptist Church, at 3:00 p.m.
- Monday, January 21, 2002 at Civic Center, at 6:30 a.m. breakfast

(c) Boards & Commission Luncheon

The Boards & Commission Luncheon will be held February 14, 2002 from 12:00 noon - 2:00 p.m. at City Hall.

(d) City Council Retreat

The annual Council retreat will be held February 21-22, 2002.

RECESS OF MEETING

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Upon **motion** of Mr. Burgin, seconded by Mr. Kennedy, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the meeting was recessed at 5:05 p.m., to wait for environmental attorneys to arrive and give report of their meeting with the Department of Environment and Natural Resources (DENR) in Raleigh on January 9, 2002.

RESUME RECESSED MEETING

Upon **motion** of Mr. Burgin, seconded by Mr. Kennedy, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the meeting was resumed at 5:15 p.m.

REPORT FROM ENVIRONMENTAL ATTORNEYS CONCERNING MEETING WITH DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) ON JANUARY 9, 2002

Mr. George House and Ms. Jessica Marlies, Environmental Attorneys working with the City of Salisbury joined the meeting to give Council a report from the meeting with the Department of Environment and Natural Resources(DENR) held January 9, 2002. Mayor Klutz noted that she; Mayor Pro Tem Woodson; City Manager, David Treme; and Risk Manager, Richard Kelly attended the DENR meeting as well.

Mr. House reported the following from the above referenced meeting held with DENR:

The meeting lasted approximately two hours and they delivered to DENR a booklet which contained the comments of the City of Salisbury regarding the permitting process related to Associated (Asphalt). This document contains in detail what was discussed with DENR on January 9, 2002. Several issues were raised with DENR regarding the permitting, one dealing with the specific benzene testing which was done by the state in the neighborhood area and the other being the hydrosulfide emissions coming from the plant itself. Some concern was expressed to DENR about both those emissions and the data which had been collected although DENR advised the data had not yet been verified. DENR goes through a verification process with the preliminary data. Assuming the preliminary data remains consistent, there is an elevated level of benzene in the neighborhood that exceeds the acceptable ambient level under our state toxics law. The source of that benzene is not 100% certain. That's what DENR would tell us. Although, if you plot the actual benzene emissions (readings) in the neighborhood, you find as you get further away from Associated, the levels go down, and as you get closer to Associated, the levels go up.

There was no testing done at the time at the actual plant itself. We thought that was an error. We asked DENR to test the benzene at the same time they test the neighborhood area so we can have a better feel for what the numbers would be coming out of their plant. We also expressed some concerns about the hydrosulfide numbers which Associated had tested. It did it's own testing and reported it to DENR. The number is reasonably close to the teper which is the toxic pollutant emission rate allowed by our state law. It's under it the way they test it, but to stay under that there would have to be, we thought, certain operating parameters the company would have to use continuously-one including use of carbon filters which they had taken off to use eco-sorb for. Another was certain times at which they could load out only one tank at a time. They have expressed a willingness to respond to our concerns about permitting by the end of this month. DENR moves slowly. The Mayor especially stressed how upsetting this was both to the City and the citizens and they promised to have us a response back. If the recommendations we made are accepted, and those permit requirements required of Associated, we think there's a likelihood it will have an impact upon the odor problem as well as an impact on our concerns of both benzene and hydrosulfide. If the measures recommended

are taken, and the odor problems continue to occur, then we'll have to look at other avenues and other procedures. What we have asked to do was within their ability, not taking long studies or a great year-long review. They could just do it if they agree with the recommendations.

Our recommendations were based upon, not lawyers thoughts, but we retained a consultant, an expert in air emissions-Trigon Engineering. We also supplied DENR with a copy of Trigon's report. Trigon reviewed all the data, made the recommendations to us and, to a certain extent, re reiterated what Trigon was saying, from a scientific point of view. We hope to have an answer from DENR. Ms. Marlies is in touch with DENR about every three days. We believe they are expeditiously trying to address our comments. There was a good section of DENR staff at the meeting of January 9, 2002 including the head of permitting, the head of toxics and three or four others. The decision makers were there.

Mr. House further reported he felt they (DENR) will look favorable upon our request and hope they will undertake those and require those permit changes, and hopefully those permit changes will result in a significant decrease in the odor problem. He said when the process began, there were carbon canisters on both some of the loan in and some of the load out features. Those canisters were taken off and ecosorb was tried which is a spray mist situation, Mr. House explained. Mr. House went on to tell Council: the odor complaints were not a significant number initially when the carbon canisters were there. They only lasted a short period of time so it may not be a fair trial, but based upon statistical numbers of complaints, it appears that the complaints have been much more prevalent sin the ecosorb was used as opposed to carbon filters. The filters themselves would collect a great deal of pollutants within them and would require a significant number of changes causing expense and the company was looking for a solution that was less expensive. I wouldn't say I would have any reason to believe they were trying to find a way to be more harmful but they were looking for a less expensive solution. We're not opposed to them finding a better solution, but we're opposed to one which created the problems that are currently occurring there, Mr. House advised.

Ms. Marlies added the following:

DENR did express that they do want odor complaints to come to them. There are new odor regulations in effect in North Carolina that they were not able to operate under previously but they are able to operate under now. They did express to us at the meeting that in order to proceed under the odor regulations would be starting afresh on the same old problem and it would take longer than any of us think it should to address this problem. On the other hand, if they had had these regulations in place way back when this problem started, we would already be a resolution under those regulations. They did encourage both the City officials who get complaints and the citizens who have complaints to contact the Mooresville office with those concerns as that process can also start at the same time they are performing their tasks that we requested them to do.

Mr. House further told Council:

Remember the data we're working with now is data we gathered since, I guess, they started testing in August. We spent the first part of this year, when you retained us, getting DENR to require testing to occur out there. The test data we're working from now is a result of what you authorized us to undertake back there-6 to 8 months ago- forced some data to be gathered.

The odor issue can be addressed in a number of ways. Of course, we think the health issues that this data brings forward can, we think should, be addressed more quickly.

Mr. Woodson asked if we could go back to the carbon canisters in 30 days, and Mr. House responded as soon as they (DENR) mandate it. A temporary relief was given from requirement of the carbon canisters, Mr. House noted, in order to try the ecosorb system. The ecosorb system has not succeeded in working very well, Mr. House advised. He went on to say DENR can instantaneously revoke that system and go back to carbon canisters, which is what we asked for in the letter. They can do that as soon as they make the decision. It shouldn't take 30 days. As you know DENR doesn't work rapidly, Mr. House reminded Council. He said they (DENR) seems to understand we take this seriously and we'll continue to take further action to get this resolved.

Mr. Woodson asked Mr. House if the next step is to get test results from DENR in March. Mr. House responded they have to complete the report and they are a little concerned about using tests that are preliminary. The numbers are so consistent and so widespread, Mr. House said he doesn't think there would be much chance the data would turn out to be bad. But they are asking us in some respects to go slowly because they (DENR) want to complete and file their report, Mr. House said. Mr. House further offered the following information:

It takes DENR incredibly long periods of time to write reports. They get data, have to verify, and then write what it means. The City has given them what we think it means very quickly but they have to exercise their independence of judgment and they're going to review it and write a report. We know that ATSDR is going to write its report. Those numbers aren't in yet and their opinion isn't in yet, so we don't know what EPA's going to say about the situation. We tried to short circuit that. We know the need here's great. We tried to get around waiting for reports and asked for something to be done immediately and have given DENR a series of things they can do which don't require waiting for this report. They can take these actions immediately. If they don't choose to do that, we will seek further assistance from the Secretary, and if not, the Secretary and the Governor. Let the people responsible make the decisions. If they don't act responsibly, or they won't, as we believe act responsibly, then we'll seek review by the Secretary and the Governor.

Mr. Woodson expressed hope they (Associated Asphalt) will go back to the carbon canisters within 30 days. Mr. House also said hopefully the carbon canisters will be back on and if the early indications are correct, it should have a substantial impact upon the others. It will have a substantial impact upon the hydrosulfide and the benzene emissions. There's no question it will have an impact on those two things, Mr. House noted. If it works, we'll lick this problem, he said. I have no problem in the future, with them proposing alternative methods for addressing it, but they should only be tried if they meet the levels the carbon canisters control.

Mr. Kennedy checked with Mr. House to understand he is saying DENR is going to request this company (Associated Asphalt) go to this other system in order to alleviate the odors. Mr. House explained this was the originally permitted system. He said we are asking them to go back to the original permit that was granted when they were first authorized to do business here. There was a system by which they were to control emissions. They had asked for relief from that system because the carbon canisters were becoming too dirty so rapidly that it was expensive to keep changing them. We are asking that that temporary relief be withdrawn now and they go back to running the carbon canisters even if it is expensive until they come up with a system that will work.

Mr. House explained that DENR is the permitting authority; the City does not have control of the permit. There are things the City could do beyond it. The quickest and most effective way is permit control and management, and DENR will act on the permit. We hope that will alleviate the problem, he said.

Mr. Kennedy asked about DENR wanting testing reported to them directly. Mr. House gave an example of the process for reporting to DENR. He reminded Council the state has a new odor rule and we can't use our noses, they have to use their noses. He said this is cumbersome, and doesn't work very well as we're 30-45 minutes from the Mooresville office of DENR. Benzene is a toxic substance and high levels of it can be damaging; long-term low levels can be damaging. He said the state level for benzene is based on the potential for cancer. The state accepted ambient level is one in a million, Mr. House noted. That's their level of risk that is allowable, he noted. The numbers which we're picking up in the neighborhood are exceeding that one in a million. It doesn't exceed it dramatically. He reminded everyone those are long term exposures that occur after many years. He said this may seem slow to the citizens but it takes many, many years on a cancer question before you run into a problem. Ms. Marlies noted that the DENR AAL is looking at one cancer per million for 70 years of exposure and we haven't reached the 70 year mark for this facility. It's over a long term, she said. To be fair with Associated and DENR, there are other areas of the state which have similar constituents of benzene and intersections of big cities may have benzene levels this high but people don't live there. It may be acceptable at a large intersection for a brief exposure but not acceptable for living in your house.

Mr. Kennedy said he assumes the City will be contacted when DENR makes this decision. Mr. House explained he assumes we will be but the permit is with Associated and the letter would go there but the City should get a copy. He reminded Council that DENR could disagree with the City and the City would then have to decide what actions to take. He also pointed out that maybe Associated itself will consider these things. He said they things we've asked are not outrageous, that they are simple operating procedures that can be managed. We're asking them to do what they proposed –filling one tank at a time and putting the carbon canisters back on which is what they originally proposed when they built this plant. We're asking them to do what they proposed when they got a permit to expand this plant in this neighborhood.

ADJOURNMENT

Upon **motion** of Mr. Kennedy, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the meeting was adjourned at 5:45 p.m.

Mayor

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City Clerk

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