

Salisbury, North Carolina  
April 15, 2008

## **REGULAR MEETING**

**PRESENT:** Mayor Susan W. Kluttz, Presiding; Mayor Pro Tem Paul B. Woodson; Councilmen William (Bill) Burgin, William (Pete) Kennedy, and Mark N. Lewis; City Manager David W. Treme; City Attorney F. Rivers Lawther, Jr.; and Deputy City Clerk Kelly Baker.

**ABSENT:** City Clerk Myra Heard

The meeting was called to order by Mayor Kluttz at 4:00 p.m. The invocation was given by Mayor Pro Tem Woodson.

## **PLEDGE OF ALLEGIANCE**

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

## **RECOGNITION OF VISITORS**

Mayor Kluttz recognized all visitors present.

## **ADDITIONS/DELETIONS TO THE AGENDA**

Mayor Kluttz noted the following change to the Agenda:

Add – Council to receive a report from the City Manager regarding annexation.

## **PROCLAMATION**

Mayor Kluttz proclaimed the following observances:

CHILD ABUSE PREVENTION MONTH	April 2008
BETTER HEARING AND SPEECH MONTH	April 2008
NATIONAL SPORTSCASTERS AND SPORTSWRITERS DAYS	May 3-5, 2008

## **CONSENT AGENDA**

(a) Approval of Minutes

Approve Minutes of the Special meeting of March 31, 2008 and the Regular meeting of April 1, 2008.

(b) Temporary Street Closing – East Liberty Street

Close the 100 block of East Liberty Street Saturday, April 19, 2008 from 8:00 a.m. until 9:00 p.m. for the “Salisbury’s Got Talent” event.

(c) Temporary Street Closing – Stanley Street

Close the 1100 block of Stanley Street Saturday, April 19, 2008 from 1:00 p.m. until 3:00 p.m. for the Fulton Heights Spring Tour.

(d) Temporary Street Closing – South Church Street

Close the 100 block of South Church Street Saturday, June 7, 2008 from 8:00 a.m. until 11:00 p.m. for the Pops at the Post event.

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

## **REPORT ON PROPOSED ANNEXATION**

City Manager David Treme indicated that he has a preliminary report on the proposed Mooresville Highway annexation. He explained that there are three (3) aspects of the proposed annexation. The first aspect is qualification of the area and Mr. Treme stated that staff was able to show that the area met qualifications. He noted that the second part of the analysis deals with the general fund and he concluded that beginning the first quarter of the fifth year there would be an approximate eighteen (18) percent return to the City. He stated that the third aspect is the water and sewer fund and

yesterday (Monday, April 14, 2008) at 5:00 p.m. was the deadline for water and sewer interest surveys to be returned. He noted that six hundred fifty-nine (659) surveys were received from the total area and after evaluating the location of the requests he recommends that the City discontinue the current annexation of the Highway 150 area. He added that to continue the annexation would not meet the minimum financial objectives of extending water and sewer to the area. Mr. Treme stated that he estimates only about twenty (20) percent of those who submitted surveys would actually hook onto the system and his preliminary analysis and conclusion is that the City should discontinue the annexation.

Councilman Burgin clarified that in regards to annexation in North Carolina, Salisbury does not assess the cost of the water and sewer extensions but tries to meet the needs of those who desire service. He added that the requests for service have been so high that to meet the policy puts a burden on the Utility Department.

Mr. Treme commented that Salisbury is one of the only cities in North Carolina that does not require people in annexation areas to hook onto water and sewer when it becomes available. He noted that the City's plan was to extend water and sewer down the major corridors to make service available should well owners have problems in the future. He stated that many cities require hook-ups along with assessments, in order to have the money available for the water and sewer line extensions. Mr. Treme commented that Salisbury waits until it determines the need and then develops the plan based on the need to determine if an annexation is financially feasible. He stated that given the current policy and with six hundred fifty-nine (659) people expressing an interest in service it is not economically feasible to extend water and sewer to every resident's home without the requirement for them to hook-up. He commented that what has worked in the past may not work in the future and before any future annexations are undertaken he feels the water and sewer policies need to be reviewed. He added that he would recommend a mandatory water and sewer hook-up to make the annexation economically feasible.

Mr. Treme stated that Council has gone through the annexation process as required by State Statute but it was not until Monday at 5:00 p.m. that the last request for water and sewer was received. He commented that after reviewing the water and sewer survey forms it became evident that the annexation would not be financially sound.

Councilman Lewis stated that this annexation goes beyond the scope of numbers. He stated that the annexation must be looked at from each viewpoint of those involved who are the citizens in the proposed annexation area, the County Commission and the City Council. He stated that citizens do not like to be forced to do anything particularly if it involves their children or their wallets. He noted that in this case the citizens do not see a sufficient cost-benefit relationship. He stated that the County Commission views this annexation as an usurpation of their authority over the airport and do not want to be required to work with the City in this manner. He added that the proposed annexation will redirect approximately \$240,000 in State sales tax reimbursements from the County to the City. Mr. Lewis stated that from the City's viewpoint if the City does not continue

to grow it will be faced with ever increasing costs for services and the associated tax increases to support them. He indicated that the City would like to grow in areas that make sense and noted that the Highway 70, Highway 150, and Highway 29 corridors are the most likely candidates for potential growth. He stated that only using voluntary annexation to grow will eventually cause pockets of properties all along and within the City that will be part of the City. He added that this will require going around these areas to provide municipal services to other City citizens.

Mr. Lewis stated that he has evaluated all of the information regarding annexation and he still believes that municipalities in North Carolina have been given the annexation law as a means of ensuring that they stay strong.

Mr. Lewis commented that he feels the current annexation process has been neither friendly nor respectful of the people in the proposed annexation area. He recommended that if Council is going to adopt a goal in favor of systematic annexation then two Council members should be assigned to work along with City staff. He noted that the Council members would have input on which areas qualify for annexation and meet Council's definition of systematic and controlled growth of the City. He also encouraged the development of a better communication strategy than the one currently in place.

Mr. Lewis stated that he does not believe that County Commission Chairman Arnold Chamberlain's property being located in the proposed annexation area was the motivating force behind the Commission's opposition to this annexation. He noted that the County would be forced to work with the City on the airport economic development plans and will lose \$240,000 of redirected Sales Tax revenue and therefore he feels their opposition has merit. He stated that he questions why the County Commission would consider using tax dollars for a potential law suit against twenty (20) percent of its own citizens. He commented that the citizens of the City of Salisbury are also citizens of Rowan County and pay the same County tax rates as everyone who lives outside of a municipality. Mr. Lewis stated that he feels it is time for both boards to rise above their differences and get back to the business of governing in a respectful, cooperative manner that shows that each want to support a quality of life in this County that is unparalleled in this State.

Mr. Lewis noted that that the costs for this annexation show it to be prohibitive for the near future. He questioned the substantial use of Subsection D to qualify areas for annexation. He stated that it essentially uses land that would not qualify under the State's density threshold as a land bridge to get to the lots more urban in nature. He added that he feels this violates the principal of small, systematic annexations that the City has undertaken in the recent past. Mr. Lewis commented that if the area between Jake Alexander Boulevard and these subdivisions does not meet the urban density test then they are not in the way of progress and he noted that until that time occurs he could not vote to annex these neighborhoods. He stated that he might be presented with information in the future that would lead him to change his mind but right now he does

not think this annexation would be the right time or method even if the numbers suggested it was economically feasible.

Mr. Lewis stated that he will not support the proposed annexation and proposed several things he feels need to take place:

1. The City's annexation process needs more input from its elected officials early in the game to determine any potential annexation areas and it needs to amend the process to allow for increase citizen dialogue
2. The Good Neighbors of Rowan, the County Commission and State Legislators need to give input to those within the State Legislature evaluating the annexation laws for any potential changes in density or contiguousness thresholds
3. City and County leaders need to work together for the benefit of the community. For the County to prosper, this cooperation is essential and is expected by the electorate they serve

Mr. Lewis concluded by saying that there have been bruised feelings though this process but all involved are still members of the same greater community and he thinks each needs to forgive each other for any statements, threats or accusations made in the heat of the moment. He stated that he knows that everyone in Rowan County is a good person and he is proud to be their neighbor.

Councilman Kennedy stated that throughout his sixteen (16) years of serving on City Council he has never made a decision until he heard all of the information, facts and deliberation. He noted that he has now heard these things.

Thereupon, Mr. Kennedy made a **motion** that based on the figures provided by the City Manager today to discontinue or stop the annexation process for the area on Highway 150. Mr. Lewis seconded the motion.

Councilman Burgin stated that as a member of City Council the process of annexation is both difficult and important. He stated that he has reviewed his position during the process and still supports annexation because he feels it is what keeps towns and cities strong. He noted that as growth comes up the I-85 corridor, if the municipalities do not have a way to bring in the growth they will be crushed under the load. He added that he feels the growth will create an overwhelming strain on the community's infrastructure and everyone must share the burden. Mr. Burgin stated that it is obvious from the annexation process that each group comes from a different perspective. He noted that the residents in the proposed area made it clear that if they had wanted to live in the City they would have moved there to begin with and they do not feel the services offered by the City are worth the value the City asks in taxes. He added that he does not believe that the thirty thousand (30,000) citizens currently living and taxed in the City would agree.

Mr. Burgin stated that he feels that as the suburbs grow in numbers it puts a burden on the City's services and infrastructure. He noted that he feels strongly that if a resident lives in proximity of the City they do so because they recognize the assets of the City and he feels they should share in the cost.

Mr. Burgin commented that during a previous meeting he stated that he believes that in rare circumstances both parties in an annexation would win. He added that he feels this is rare and in most cases it is a win-lose situation. He explained that either the City loses by having to provide more services to a community than it can receive in taxes or the annexed community receives fewer services and pays extra in regards to taxes. He stated that he noted during the public hearing meeting that if the situation was lose-lose that he would not support it. He noted that he feels this annexation should be stopped because if no one can gain it is not a smart decision. Mr. Burgin commented that as time goes on he will continue to be interested in the debate on the subject of annexation. He indicated that he feels this is taxation with representation because he feels the representation is at the legislative level adding that Council is the one that implements the law. He stated that if the annexation laws change in the future, Council will abide by the changes but if the laws do not change then the City will continue to review this option.

Mayor Pro Tem Woodson commented that Council indicated throughout the process that if the annexation was not advantageous it would not be approved. He stated that he was most impressed by the organization of the citizens who spoke during the public hearing and he feels the democratic process works. He commented that many people thought Council had already made up their minds, but Council had not and they did listen. He noted that he feels the City needs to grow and annexation may come up in the future and he is interested to see if the legislature will make any changes to the law. Mr. Woodson stated that he feels the City and County must work together to obtain better jobs and a better standard of living in the community. He agreed that this is not advantageous for the residents or the City and he supports the motion to discontinue the annexation.

Mayor Klutz commented that she continues to believe that annexation can be an important tool for growth for municipalities and as responsible City Council members they have an obligation to those they represent to study and evaluate all legal and reasonable recommendations for expansion of the City. She noted that she has pointed out at each meeting that this is a process that Council has followed and after receiving all information each member of Council has an opportunity to judge whether they feel this is beneficial to the City. She stated that if Council accepts an annexation it must be accomplished with a positive financial benefit but after hearing the City Manager's report today she feels it is clear that this particular annexation will not be beneficial to the City.

Mr. Kennedy commented that Council did not change its mind because of any threats from any group but feels that this is something that cannot be supported because of the expense. He stated that he has voted for areas of annexation in the past but this one does not make sense and that is why Council opposes it at this time.

Mayor Kluttz noted that until 5:00 p.m. on April 14, 2008 Council did not have these final numbers and this is the first time to hear the report.

Messrs. Burgin, Kennedy, Lewis, Woodson and Mayor Kluttz voted AYE. (5-0)

Mr. Burgin noted that Council had a meeting scheduled for April 21, 2008 in order to make a decision on the annexation. He asked if Council's action today now makes that meeting unnecessary. City Attorney Rivers Lawther responded that the meeting is not necessary.

### **PRESENTATION – AMERICAN RED CROSS**

Mr. Steve Simpson, Director of the Elizabeth H. Dole Chapter of the American Red Cross, provided a presentation to Council regarding the services offered by the Red Cross in Rowan County.

He gave information regarding the Red Cross, noting:

- Rowan County Chapter founded in 1916
- Chartered by the National American Red Cross
- Governed by a local Board of Directors
- A Rowan County United Way member agency
- Covers all Rowan County (except Kannapolis)
- Professional staff of six (6) people
- Operates with scores of volunteers from all backgrounds, ages, cultures, etc.

Chapter Funding:

- Annual Budget – Approximately \$380,000
- Sources of revenue
  - United Way allocation
  - Community-wide and Board member contributions
  - Annual Food Lion/Red Cross Gold Classic and other special events – April 18
  - Fees for training programs and Red Cross products
  - Foundation Grants
- The Chapter receives no funding from any government entity or from the National American Red Cross (except in Class II disaster or greater)

The work of the E.H. Dole Chapter in Rowan County:

- Disaster response
- Service to the Armed Forces (SAF)
- Assistance to Veterans
- Health, Safety & Preparedness Training

- Blood Collection
- Worldwide health and welfare inquires
- International training

#### Disaster Services:

- Our primary mission responsibility
- Provide our citizens with disaster assistance, whether a large or small event
  - Provide food, temporary shelter, clothing, lost medications and eyeglasses, comfort kits, transportation – all without charge
  - Plan for and staff mass shelters and mass feeding stations in the event of major disasters
  - Assist government agencies in damage assessment
  - Raise disaster funds
- Coordinate and plan with other agencies to face large magnitude disasters: fire, tornado, ice, hurricane, toxic/chemical spill, pandemic, mass casualty, etc.

#### Service to the Armed Forces:

- Provide emergency communications between Rowan County families and their service members, no matter where in the world they might be, 24/7/365
- Advises service members of family illnesses, deaths, births and emergencies impacting on their families
- Facilitates emergency leave of a service member if warranted
- Assist Veterans using the VA Medical Services with transportation to appointments, etc.
- Assist Active Duty and Retirees obtain loans for emergency expenses

#### Health, Safety and Preparedness Training

- Provide the community-at-large with training that can save a life
  - CPR, first-aid, portable defibrillator use, blood borne pathogens, professional rescuer and aquatics
- Provide training that contributes to the health, safety and economy of our community
  - Certified babysitters, Certified Nursing Assistants, Instructor training, Pet First Aid, Wilderness First Aid
- Provide for initial and re-certification of employees and businesses who must meet certain government requirements
- Train volunteers in various disaster skills and preparedness

#### Blood Services:

- Make the community aware of blood supply needs
- Set up blood drives, public and private, to meet blood supply needs

- Insure the safety and quality of blood supplies

#### Health & Welfare Inquires/International Tracing

- Help community members locate and obtain the status of family members anywhere in the world
  - Lost contacts because of disaster, conflict, communications breakdowns, etc.
  - Assist in locating family members lost in the Holocaust and other war-time situations

#### In 2007 the Chapter:

- Responded to sixty-eight (68) local disasters; assisted sixty-six (66) families; and dispensed more than \$34,000 in aid
- Sent ten (10) chapter staff and volunteers to work in other U.S. disasters such as the California wildfires
- Obtained agreements for and certified twenty (20) mass shelters
- Opened two (2) shelters during the summer heat wave
- Trained six hundred eighty-six (686) people in disaster preparedness
- Assisted seventy-one (71) military members, veterans and their families
- Made seventeen (17) health and welfare inquiries
- Taught four hundred sixty-three (463) health and safety classes and certified one thousand eight hundred thirty-four (1,834) trainees
- Conducted one hundred eighty-eight (188) blood drives and collected seven thousand sixty-one (7,061) units
- Utilized six thousand fifty-eight (6,058) volunteer hours in all service areas

#### In 2008:

- Twenty-four (24) home fires; eighty-one (81) clients assisted at more than \$12,500 in aid
- Coordinated and facilitated service of two thousand two hundred (2,200) meals from more than fifty (50) businesses and organizations; transportation and counseling services during/after the March 7, 2008 Salisbury Millwork fire
- Partnered with Second Harvest Food Bank to purchase and store enough food and water to provide for at least one hundred (100) people for five days
- Working to create a Rowan County Voluntary Organizations Active in Disaster (VOAD) group
- Training and coordinating with Chapters in nearby counties to facilitate mutual aid, if needed

Future Goals:

- Recruit and train more volunteers for disaster services
- Identify and certify additional mass shelters
- Increase our blood donor base by more than ten (10) percent
- Increase outreach to all segments of community to stress importance of and to provide individual preparedness training
- Reestablish the “Youth in Action” program
- Insure Chapter’s viability and effectiveness by increasing our donor base in Rowan County

Mayor Kluttz thanked Mr. Simpson for his presentation and for all that the Red Cross does for the community.

**SPECIAL USE PERMIT – J&L SPORTS BAR, 206 SOUTH MAIN STREET**

SUP-01-08 J& L Sports Bar, 206 South Main Street

(a) Swearing In

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

Mr. David Phillips  
Mr. Randy Hemann  
Mr. Jay Withers

(b) Receive Testimony

Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on proposed special use permit SUP-01-08.

Mr. David Phillips, Development Services Manager, indicated that the case before Council today is a request for a special use permit for J&L Sports Bar to be located at 206 South Main Street. He reviewed a site plan of the property and noted the location of the proposed business. He stated that it is a multi-tenant business and the Sports Bar will be using one of the spaces. He noted the site’s location in relation to City Hall. He then reviewed an aerial view of the site and pointed out the unit where the Sports Bar will be located. He stated that there are two (2) other units in the building. He also reviewed ground photographs of the building and surrounding properties.

Mr. Phillips indicated that the property is zoned Downtown Mixed-Use (DMX) and has a local Historic Overlay attached to it. He stated that in the DMX district the use of sports bar, tavern or nightclub is permitted only with a special use permit.

Mr. Phillips stated that in reviewing the conditions attached to the use, the Code states that if the use is located in the Neighborhood Mixed-Use, Corridor Mixed-Use or Downtown Mixed-Use it must be located at least five hundred (500) feet away from a school. He noted that staff has reviewed the area and there are no schools within five hundred (500) feet of the proposed location. He stated that this is the only requirement established by City Ordinance.

Mr. Phillips commented that if Council should feel it necessary, they can place reasonable conditions on the site if they feel that additional conditions are necessary for such an establishment to operate. He stated that Council should also determine if the use will be injurious to adjoining properties or if the health, safety and welfare of the public will be maintained.

Mr. Phillips stated that a special use permit is binding to the property if approved. He noted that the permit does not go with the applicant but is bound to the property and becomes a part of the Certificate of Occupancy (CO) that will be placed in the file. He added that at some point if the business should violate conditions placed upon it or if Council feels it necessary for the operator to come back before Council to ensure he is still operating within the guidelines of the establishment, Council can make this requirement. He stated that if Council feels, for any reason, that the establishment is not being operated in the spirit of the Ordinance, the special use permit can be rescinded.

Mr. Phillips indicated that this request was presented to the Planning Board and the Planning Board voted unanimously to recommend approval of the permit to City Council with no additional conditions.

Councilman Burgin noted that the Ordinance states the business must be located further than five hundred (500) feet from a school and asked if a daycare is considered as a school. Mr. Phillips responded that it is not and noted that there are separate definitions of daycare and of school.

Mayor Klutz then opened the floor to receive testimonies from the public.

Mr. Jay Withers, 206 South Main Street, stated that he is part owner of the business and is present to answer any questions Council might have. Mr. Burgin asked if the business will be on the main level or also on the second floor. Mr. Withers indicated it will just be the main level. Mr. Burgin asked how many square feet will be used. Mr. Withers stated that building is approximately three thousand (3,000) square feet.

Mr. Randy Hemann, Downtown Salisbury, Inc. (DSI) stated that he is grateful there are businesses that want to open in the downtown and he appreciates their desire to locate there. He emphasized that a special use permit goes with the property and not the tenant. He indicated that he does not know Mr. Withers, who desires to operate the proposed business, but he knows the property where the business wants to locate has serious maintenance issues. He stated that the owner of the building has not made an effort to address those issues. Mr. Hemann stated that Council will be doing the

proposed tenant a favor if it denies the special use permit until such a time as the property meets the minimum standards. He commented that a poorly maintained building will affect the image and ultimate success of the business. He stated that the owners of the business who want to open in this location deserve something more than broken windows and a building with a hole in the roof. Mr. Hemann then distributed photographs of the building. He asked Council to help the owners of the business by sending a message to the owner of the building that says that a special use permit is a privilege and one that will be given to those who maintain their property. He stated that DSI recently invested \$1 million beside this location and while their property is not in pristine condition, they have been rehabilitating and selling the properties they own. He stated that this property has been allowed to slowly deteriorate since 2000 when the current owner purchased the property. He encouraged Council to use its power for issuing this special use permit to help this business, or any business, that locates at the site, by requiring the owner to clean up the building before the permit is issued.

Mayor Pro Tem Woodson asked Mr. Hemann where the owner is located. Mr. Hemann stated that he is an absentee owner and he believes he lives in Mooresville.

Mayor Kluttz then asked if there was anyone else present who would like to address Council.

Mayor Kluttz then administered the oath to Ms. Barbara Perry.

Ms. Barbara Perry, 131 West Bank Street, stated that the neighbors have questions about the type of sports bar this business is proposed to be. She stated that there is a bar located one-half of a block from her residence on the corner of Bank Street and Church Street. She commented that on many occasions it is very loud and boisterous in the parking lot and she noted the neighbors have concerns. She stated that there is a preschool at the Methodist Church and noted that she does not know what the hours are and asked if it will be discussed because the neighbors would like to know.

Mayor Kluttz then administered the oath to Reverend Steve Haines.

Reverend Steve Haines, First United Methodist Church, stated that the church is excited about someone wanting to have a business downtown and do not want to be prudes. He stated that the church has a preschool, child development center and after school care located in its building. He stated that the church is getting ready to invest \$3 million in the area and he has concerns about the type of establishment that would locate in a building, such as the one it proposes, that is in such disrepair. He noted that the church is concerned about evening hours because he feels they will most likely share parking in the back. He stated that he is concerned about patrons who may not be in good shape hanging around outside of the bar and what might happen to some of the ladies who are leaving the church. He commented that the church is concerned about what the establishment will be like.

Mayor Kluttz noted that Council had questions for Mr. Withers and asked him to tell Council about the establishment. Mr. Withers stated that the hours of operation for the bar will be 9:00 p.m. until 2:00 a.m. He stated that all of the parking will be on Main Street. He added that he has \$200,000 worth of game machines and it will be a nice place for tourists or locals to come to have drinks and play games such as video games and ice hockey. He stated that in regards to the condition of the building the owner has informed him that he will have work done and once the permit is received, whatever work the owner does not finish Mr. Withers will finish. Mayor Kluttz asked Mr. Withers if he was referring to this special use permit. Mr. Withers responded yes. Mayor Kluttz asked if Mr. Withers has obtained an Alcoholic Beverage Control (ABC) permit. Mr. Withers stated that he is waiting on that and must do one thing at a time.

Mr. Woodson stated that Mr. Hemann brought up a good point and that the pictures show the building is in ill repair. He questioned if the owner will actually make the repairs if Council issues the permit.

Councilman Lewis asked Mr. Withers if he plans to have onsite security. Mr. Withers responded that he does and plans to hire off-duty Salisbury Police officers.

Mr. Burgin referred to the size of the building, three thousand (3,000) square feet, and asked if Mr. Withers has projected capacity. Mr. Withers responded that he does not at this point, but he is not planning for it to be too big. He stated that he will abide by whatever the Fire Department indicates his limit to be. Mr. Burgin asked if the bar will occupy the entire three thousand (3,000) square feet or if a portion will be for stock. Mr. Withers stated that only approximately two thousand (2,000) square feet will be occupied. Mr. Burgin indicated that the reason he asks is because the Code allows for two thousand one hundred (2,100) square feet and up to three hundred (300) people and this is the magnitude of what Council may be talking about as it thinks about this particular facility.

Mayor Kluttz asked staff why preschool was not considered a school. Mr. Phillips stated that the City's definition of school is K-12 and being accredited through the State. He stated that the preschool is viewed as more of a daycare facility, which has different criteria.

Mr. Burgin commented that the definition of preschool and child development center as it relates to the Ordinance, and what he believes the spirit of what Council was trying to do, should clearly include preschool and child development. He stated that there is no other distinction about a school that makes sense in the discussion of a bar except that they should not be together. He noted that he is having trouble, even though the definition is the definition, and added that the spirit of what Council was trying to do, is if there are kids around this type of establishment then it needs to be further away than five hundred (500) feet.

Mr. Burgin commented that Council has had difficult times with the combination of residences in proximity to Salisbury's nightlife and he feels this is a failure of this

Council not to recognize that they need to have more safeguards in place. He stated that from his perspective, 9:00 a.m. to 2:00 p.m. will put a strain on what he hopes will happen at the Empire Hotel, where people will come to stay and sleep. He noted that he is having a bit of a pause in trying to make this match. He stated that he would not want to think that by offering this gentleman an opportunity for downtown nightlife that Council would need to restrict the hours to those that he cannot live with. Mr. Burgin commented that he is surprised that someone is prepared to move into a building that is in this poor of a shape and added that he also suspects they are prepared to make repairs.

Mr. Burgin stated that he is worried about these issues and if the Sports Bar can be a good neighbor at this location with what it expects to happen around it. He added that the idea of schools being separated from bars by a distance and not including preschools and child development is also a concern. He stated that he is not sure why churches were not included in the definition as one of the groups that should be separated by distance. He noted that as Reverend Haines stated there are people who will come out of the church at night that will be uncomfortable in that environment if Council is not careful. He stated that he is struggling with the decision to approve and is more comfortable with a denial.

Mayor Kluttz stated that Council has had a history of dealing with bars, taverns and nightclubs that has taught them they need to be cautious. She stated that if Council supports the Empire Hotel being a hotel or something where people sleep, she agrees that Council should be cautious.

Councilman Kennedy stated that he does not see how Council could deny this request. He commented that he understands about the preschool being a short distance from the location but the hours will be from 9:00 p.m. until 2:00 a.m. and school is not in session at that particular time. He stated that Club Zidi's is located not far from this location, in addition to Cartucci's, which has a bar. He noted that Council can always set limitations and requirements but to deny the permit without giving Mr. Withers an opportunity, he does not see how Council should do this. He stated that Council can set a limitation on the hours and encourage him to repair the building. He added that the Planning Board voted 9-0 to approve and he does not see how Council can deny this request to use the property. He stated that a special use permit can always be taken away if it is not working, but to just say no, he does not agree.

Mr. Lewis stated that he also struggles with saying no to this because he does believe in equity. He pointed out that there is a wine shop located across the street from this location that has live music on Friday and Saturday nights and is open until 11:30 p.m. or 12:00 a.m. He noted that Benchwarmers is located right around the corner and it is primarily a bar, not a restaurant. He added that Stelia's is located on North Main Street and it is a restaurant/bar as well. He stated that these give him reason to question if this should be denied. He commented that he might have the mortgage on this building and he would not want to vote on this issue if he does because the special use permit goes with the property and not the lessee. He stated that the idea that a special use permit is a privilege and could be used to send a message to the owner regarding the building's

condition is an interesting spin on this issue. He indicated that if Council lets this impact its decision he feels Council owes it to the property owner to determine what improvements he is preparing to make in anticipation of having this lessee. He added that there is no way that Council can do this today and it would require Council postponing its decision until May 6, 2008.

Mr. Lewis stated that there is an urban etiquette that must take place and Council did not know what this meant until Club 315, which operated across the street from residents in the Old Cheerwine Building. He noted that the parking lot in particular was the issue, not the noise that happened inside the building, but what was happening outside of the building. He commented that this was recognized and dealt with and the best way was with Police Officers who were hired off duty.

Mr. Lewis stated that in order to do justice to Mr. Withers, who is an entrepreneur trying to open an establishment downtown, he feels Council owes it to him and the owner to have some discussion before denying the request. He asked if the special use permit could be granted for ninety (90) days and have it come back to Council. Mr. Phillips responded that he does not think that this is the way the Code is written. He stated that the Code states that if additional conditions are placed on the site, the applicant has up to thirty (30) days to respond before an actual vote is taken to approve or deny. He stated that Council could give Mr. Withers up to thirty (30) days to talk with the property owner to work out maintenance and repairs, but as far as a temporary special use permit, he does not feel this would be allowed.

Mayor Kluttz stated that she would prefer for this to go to a Council Committee to decide. She noted that Council can put requirements on this and find out from the owner what he plans to do in regards to maintenance and she feels Council should be cautious. She added that Councilman Lewis needs time to determine if he has a conflict of interest. Mr. Lewis agreed.

Mr. Woodson stated that he agrees with Mr. Kennedy that child care is in the daytime and Council must be fair to everyone. He stated that he has lived through Club 315 and he feels what will happen is the bar will open and there will be problems. He noted that there were parking and noise problems at Club 315 and he has met with the owner several times and the owner now has it under control. He stated that with anything new that opens there will be problems. He commented that he does not know how many years it will be before the Empire Hotel is completed, but he does not feel it is totally fair to stop this request. Mr. Woodson stated that he realizes there will be problems but he does not have a problem with Club 315 anymore because they were handled. He added that he believes a Council Committee is a good idea. He told Mr. Withers that if people leave the bar late at night and are rowdy he will have problems because the Police will be called.

Mayor Kluttz asked if any members of Council would like to serve on a Council Committee. Mr. Burgin stated that he will serve and share that Council wants to

encourage nightlife and to get a handle on the etiquette it takes to accomplish this. He stated that he will be objective in trying to do this.

Mr. Burgin stated that he would like Council to revisit the five hundred (500) feet from schools requirement because he feels that the intent of that is to be more inclusive. He stated that Council has a set of rules that it must govern by and it must be fair to Mr. Withers to govern his request by those rules. He stated that beyond this case he feels Council has an obligation to the City to take a look at what it really meant and he feels preschools and churches should be included. He added that there is a lot of nightlife at churches and although it usually ends at 9:00 p.m. there could be some overlap that would make citizens uncomfortable. He stated that he would offer to serve on the Committee if Council feels he can help.

Mr. Woodson told Mr. Withers that he will have to add security to his budget because if he does not there will be trouble.

Mr. Kennedy recommended Mr. Lewis serve on the Committee since he has a mortgage on the building. Mr. Lewis responded that this is all the more reason why he should not, because if he has the mortgage he will have a conflict of interest.

Mr. Kennedy offered that he will be happy to serve on the Committee but he is not sure how Council will find an absentee landlord. Mr. Burgin commented that this is not a huge issue for him and he is more interested in the issue of the operation as a neighbor being located beside others who may be not as interested in nightlife. He added that it may be as simple as adding security from the beginning. Mayor Klutz stated that Council must consider that once this permit is issued for the property it stays with the property.

Mr. Woodson stated that he felt Mr. Hemann brought up a great point because the building is in bad repair and if the landlord wants to rent the building he should repair it before the permit is approved.

Mayor Klutz indicated that Council will postpone its decision and the Committee will meet and report back at its next Council meeting.

**GROUP DEVELOPMENT SITE PLAN G-06-94 MCDONALD'S, 1957 JAKE ALEXANDER BOULEVARD WEST**

(a) Mr. David Phillips, Development Services Manager, stated that group development site plan G-06-94 is for McDonald's located at 1957 Jake Alexander Boulevard West. He indicated that an application was submitted for a revision to the previously approved site plan to allow the closure of an existing access drive to the adjacent commercial property. He noted that the developers have already closed the access and reviewed an aerial photograph and ground photographs of the site.

Mr. Phillips pointed out that due to the widening of Highway 70 and improvements to Jake Alexander Boulevard, the Highway 70 access to McDonald's is right-turn in and right-turn out only. The existing access drive allows traffic to enter from and exit to Jake Alexander Boulevard.

Mr. Phillips indicated that the Technical Review Committee (TRC) discovered that when Jake Alexander Boulevard was going through the first re-alignment in 1985 the North Carolina Department of Transportation (NCDOT) proposed a concrete median in front of the property located at 1753 Jake Alexander Boulevard West. This median would restrict left turns in and out of the development. He explained that the developer was advised to pursue access across other properties and that such access was agreed upon by the owner of the property and McDonald's. Mr. Phillips pointed out that concerns were raised by the Fire Department regarding emergency response to the businesses in the area and from the Public Services Department regarding access for the waste collection trucks. He indicated that the Salisbury 2020 Comprehensive Plan encourages the interconnectivity of parking lots to limit traffic to the main thoroughfares.

Mr. Phillips stated that although NCDOT has no jurisdiction over this access, a NCDOT representative recommends that the connecting drive remain open because he feels that closing the connecting drive would cause traffic concerns for the public. Mr. Phillips pointed out that both the TRC and Planning Board recommend denial of the site plan as submitted.

Councilman Lewis asked where McDonald's property line is located in relation to the access drive in question. Mr. Phillips pointed out the property line for McDonald's and responded that McDonald's property does not include any of the access area.

b) Mayor Kluttz opened the floor to receive public comment on group development site plan G-06-94.

Mr. W. H. Austin, franchise owner of the McDonald's located at 1957 Jake Alexander Boulevard West, stated that when the new McDonald's was built NCDOT indicated that parking was too close to Statesville Boulevard and they lost five (5) or six (6) parking spaces. He pointed out that people turning into McDonald's from Highway 70 must go around the building to get to the drive-thru window. He indicated that they closed the interconnected access at the back of the property so McDonald's could use the extra parking spaces in the access area. He noted that the strip of shops adjacent to McDonald's has access from Jake Alexander Boulevard and to the interconnected access. He stated that he closed the access because traffic coming from the shops into McDonald's meets their incoming traffic from Highway 70 and creates a traffic hazard.

Mr. Jay Dees, attorney representing Hotel Group of Salisbury, stated that Hotel Group of Salisbury owns the property that McDonald's is located on as well as the access drive from Jake Alexander Boulevard. He indicated that the interconnected access drive was closed over his client's objections and without approval. He reviewed NCDOT's opinion and staff's objections regarding closing the drive and noted that the Subway

Restaurant also objects to its closing. He requested that Council deny McDonald's request to close the access drive.

There being no one else to speak, Mayor Kluttz closed the public hearing.

c) Councilman Burgin stated that he agreed with the Planning Board's recommendation to deny the request. He indicated that connectivity has its merits and this is one of the best examples. He pointed out that the access drive will cause some additional traffic through McDonald's but will also bring them more business.

Councilman Lewis stated that the Vision 2020 Comprehensive Plan calls for connectivity in commercial parking lots and that connectivity is included in the revised Land Development Ordinance. He indicated that he favors the connectivity.

Thereupon, Mr. Burgin made a **motion** to deny the request to modify the submitted site plan. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

Councilman Burgin asked if Council needed to issue an order for McDonald's to comply with Council's denial. City Attorney Rivers Lawther stated that the Zoning Enforcement Officer will issue the order.

### **RENOVATIONS AT 101 SOUTH MAIN STREET**

Councilman Lewis stated that he needed to be excused from this deliberation due to a conflict of interest.

Thereupon, Mr. Kennedy made a **motion** to excuse Councilman Lewis. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Woodson, and Ms. Kluttz voted AYE. (4-0)

Ms. Wendy Brindle, Traffic Engineer, stated that Central Piedmont Builders submitted a request on behalf of the property owners of 101 South Main Street to use adjacent parking spaces and to close sidewalks during building renovations. She added that the request has been approved by the Historic Preservation Commission. She noted that the work will include demolition of portions of the existing store front façade and restoration to resemble the original façade. The completed building will house a pottery shop on the first floor and basement and a residence on the upper floor.

Ms. Brindle stated that Central Piedmont Builders has requested the use of three (3) parking spaces adjacent to the building in the 100 block of East Innes Street for the duration of the project which should last six (6) to nine (9) months. Ms. Brindle reviewed photographs of the building and the types of trucks that would use the parking spaces. The contractor has indicated that when the spaces are not needed they will be opened for public use.

Ms. Brindle stated that the contractor has also requested temporary closure of the sidewalk on East Innes Street and the handicap parking space on South Main Street in order to remove a portion of the brick façade to restore windows. She noted that this portion of the restoration is estimated to last one (1) to two (2) weeks. Ms. Brindle reviewed the elevation plan and a photograph of the existing building.

Ms. Brindle indicated that staff supports the request to close the sidewalk adjacent to the building on East Innes Street and South Main Street and to close the handicap parking space on South Main Street. She stated that staff feels the request to use three (3) parking spaces on East Innes Street for the duration of the construction is a discretionary decision that Council needs to address. Ms. Brindle pointed out that the City frequently receives requests of this type and asked for Council's direction in responding to them in the future.

Mayor Kluttz stated that she did not have a problem with the temporary closure for safety issues, but expressed concern about the loss of the three (3) parking spaces at the square for the duration of the restoration. She asked Mr. Randy Hemann, Director of Downtown Salisbury, Inc. (DSI) to comment.

Mr. Hemann stated that DSI is thrilled that the building is being renovated. He indicated that with Council's direction, the Parking Committee will meet and discuss a policy to handle these frequent requests. He commented that he has a level of trust with the contractor and feels that if the spaces are not being used for construction they will be opened for public use.

Councilman Burgin asked for clarification on the closing of the sidewalk. He stated that he feels that the City has to provide a means for pedestrian traffic and cannot close this traffic to other businesses. Mr. Chad Vriesema with Central Piedmont Builders explained that a mobile lift will be used instead of scaffolding. He explained that this will open the sidewalk for use in the evening and that during the day enough area will be left on the sidewalk for people to pass. He indicated that there may be one (1) or two (2) days that the sidewalk will have to be totally blocked for safety purposes. Mr. Burgin asked if pedestrians could use the three (3) parking spaces as a walkway during the days that the sidewalks will have to be completely blocked. Mr. Vriesema stated that this is possible and that barriers can be placed between the sidewalk and parking spaces for the safety of the pedestrians. He noted that the parking spaces would not be used on weekends.

Thereupon, Mr. Burgin made a **motion** to approve the temporary use of three parking spaces in the 100 block of East Innes Street for a period not to exceed nine months for the construction at 101 South Main Street and temporarily close the adjacent sidewalk providing that an alternative sidewalk route is marked for pedestrians for approximately one (1) week during construction. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

## **AWARD CONTRACT TO FOOTHILLS WATER & SEWER, INC. FOR PHASE 2 2006 ANNEXATION AREA**

Mr. Jim Behmer, Interim Utilities Director, stated that the City received eight (8) competitive bids for the completion of water and sewer improvements in the 2006 annexation area. He explained that the project will provide water and sewer in areas around Airport Road, Cedar Springs Road, Circle M Drive and South Main Street.

Mr. Behmer noted that the bids ranged from \$1.46 million to \$2.8 million. He indicated that Foothills Water and Sewer, Inc. of Stony Point, NC submitted the low bid of \$1,461,089.18. He pointed out that the contractor has an excellent record for completing projects on time and within budget. Mr. Behmer requested Council consider awarding this contract to Foothills Water & Sewer, Inc.

Thereupon, Mr. Burgin made a **motion** to award a contract in the amount of \$1,461,089.18 to Foothills Water & Sewer, Inc. for the installation of water and sewer improvements to serve Phase 2 of the 2006 annexation areas. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

## **UPDATE ON COGSDALE SOFTWARE INSTALLATION**

Ms. Merenda Overcash, Systems Analyst, stated that the City purchased the Cogsdale Financials System; CSM (Utility) System; Work Order Management System; and Citizen Resource Management System. She reviewed the history of choosing the Cogsdale Systems and the progress of implementation to date:

### Implementation

- Hardware/Software Installation - Complete
- Data Mapping and Setup design
- Detailed walkthroughs
- Project Organization

Ms. Overcash reviewed the progress of the four (4) systems:

- Financials
  - Data Conversions
    - General Ledger
    - Company Information
    - Tax Schedules
    - Bank Reconciliation & Security
  - Training April - May 2008
  - Go Live Date – July 2008
- CSM – Utility Billing
  - Setup – May – July 2008
  - Data Conversion – May – September 2008

- Training and Cutover – October 2008
- Work Management
  - Setup – August – October 2008
  - Training – November 2008
  - Cutover – December – January 2009
- Local Government / Citizen Resource Management
  - Setup – February 2009
  - Training – March 2009
  - Cutover – March 2009

Mayor Kluttz thanked Ms. Overcash for the report.

### **COMMENTS FROM THE CITY MANAGER**

#### (a) 2008-2009 Council Goals and Outcomes Assignments

City Manager David Treme stated that City Council adopts a strategic plan each year which includes outcomes, strategies and goals. The goals are assigned to staff members, outside agencies, and members of City Council and he added that he likes to periodically review these goals with Council.

Mr. Doug Paris, Assistant to the City Manager, stated that new goals were developed for Fiscal Year 2008-09. He reviewed the new goals and their team assignments and asked Council for direction on which goals they would like to participate:

**Outcome 3** – Safeguard our youth and proactively address gang activity in Salisbury through gang awareness education, information sharing, enforcement, and implementation of the Salisbury-Rowan United Action Plan.

- Goal 1 – Build and implement an employee mentoring policy in support of the action agenda.
  - Red Team Leader – Doug Paris
  - Team Members – Dan Mikkelson, Renay Caldwell, Karen Wilkinson, Kenny Roberts, Kareem Puranda - Mayor Kluttz volunteered to work with this team.
- Goal 2 – Study and expand summer youth employment programs through Parks and Recreation and in possible partnership with Rowan Joblink
  - Red Team Leader – Kathy Seybold
  - Team Members – Gail Elder White, Debbie Davis with Rowan Joblink, Doug Paris - Councilman Kennedy volunteered to work with this team.

Mayor Kluttz asked if the City could create jobs at the Salisbury Community Park to employ individuals through the summer youth program goal. Mr. Paris stated that

Goal Number 2 is intended to explore offering jobs through the City and what funding would be required.

- Goal 3 – Explore expansion of summer youth programs and travel options to Salisbury Community Park
  - Red Team Leader – Kenny Roberts
  - Team Members – Gail Elder White, Rodney Harrison, Karen Wilkinson, Advisory Board – Councilman Kennedy volunteered to serve with this team.

**Outcome 5** – Provide quality Parks and Recreation services

- Goal Number 1 – Complete Master Plans for individual parks
- Goal Number 2 – Collaborate with the community in a needs assessment and Master Plan for Lincoln Park
  - Red Team Leader – Gail Elder White
  - Team Members - Parks and Recreation Board, Mayor Pro Tem Paul Woodson, Councilman Kennedy

**Outcome 7** – Attract, retain and develop high quality City employees

- Goal 3 – Prepare a compensation study plan with financial analysis and recommendation to City Council
  - Red Team Leader – Joe Eagle
  - Team Members – Management Team

**Outcome 8** – Partner with Rowan-Salisbury Schools

- Goal 2 – Enhance the teaching of the arts within our school system
  - Red Team Leader – Joe Morris
  - Team Member – Councilman Burgin

**Outcome 10** – Improve and enhance Downtown Salisbury

- Goal 2 – Develop a downtown parking lot maintenance improvement plan
  - Red Team Leader – John Sofley
  - Team Members – Deborah Young, Tony Cinquemani, Dan Mikkelson, Randy Hemann
- Goal 3 – Develop a downtown streetscape maintenance improvement plan
  - Red Team Leader – Joe Morris
  - Team Members – Lynn Raker, Steve Weatherford, Mark Martin, Randy Hemann - Councilman Lewis volunteered to work with this team.
- Goal 4 – Define feasibility and costs of a rail-walk within Downtown Salisbury
  - Red Team Leader – Joe Morris
  - Team Members – Lynn Raker, John Sofley, Dan Mikkelson, Steve Weatherford, Randy Hemann, Patrick Kennerly, Councilman Lewis

Mr. Treme stated that with Council's consensus staff will prepare game plans and develop implementation schedules.

## **PUBLIC COMMENT**

Mayor Kluttz opened the floor to receive public comment.

Mr. Larry Wright, 170 Heritage Lane, stated that he felt the annexation was a done deal and that City Council was not listening to the citizens. He indicated that he was wrong and thanked Council for listening and for the vote to not move forward with the annexation proceedings.

Mr. Harold Poole, 310 Winterlocken Drive, stated that earlier today Council approved a contract for water and sewer improvements to serve Phase 2 of the 2006 annexation area. He pointed out that State Statutes require that the City sign contracts within one (1) year, with improvements to be completed within two (2) years of the annexation, which was effective June 30, 2006. He indicated that this contract is over nine (9) months late and questioned what affect this may have on the legal validity of the 2006 annexation. Mr. Poole concluded by stating that he feels the State annexation laws need to be changed.

Mr. Bill Owens, 290 Bonaventure Drive, stated that City Clerk Myra Heard has been very polite throughout the annexation proceedings and apologized to City Manager David Treme and the Council members for accusing them of having a personal agenda. He indicated that he feels the state annexation law forces taxation without representation.

Mr. Wayne Reamis, 550 Timberlane Trail, thanked City Council for voting against annexation. He pointed out that the citizens in the proposed annexation area were informed that if their well pumps failed they would be required to connect to City water and sewer, and if they had not completed the water and sewer extension form the cost to connect would be extremely costly to the annexed citizen. He feels this is the reason so many of the citizens completed the water and sewer extension forms.

Ms. Tina Hall, Rowan County Commissioner, thanked City Council for their vote to stop the annexation. She stated that citizens across the State of North Carolina are opposed to the State law which allows forced annexation. She reviewed the national statistics versus the State's statistics on annexation. She indicated that the Rowan County Commissioners support reform of the State's forced annexation law. Ms. Hall stated that the Commission looks forward to working with the Council and hopes that next time it will be a two-way street.

Mr. Harry Rivera, Summerfield resident, stated that some unpleasant words have been exchanged during the annexation issue, and this has been a learning experience for both sides. He feels that it is important to remember that we are all Rowan County residents and depend on each other to progress and grow in the future.

Mr. Bruce Kolkebeck, thanked City Council for voting against the annexation and stated that he feels that the process was a waste of time and money.

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

### **MAYOR'S ANNOUNCEMENTS**

(a) Earth Night Out

Mayor Kluttz announced that Downtown Salisbury, Inc. will host Downtown Earth Night Out in downtown Salisbury Friday, April 18, 2008 from 5:00 p.m. until 10:00 p.m.

(b) Salisbury-Rowan Farmer's Market Opening

Mayor Kluttz announced that the season opening of the Salisbury-Rowan Farmer's Market will be held Saturday, April 19, 2008 from 7:00 a.m. until 2:00 p.m. The Farmer's Market is located at the corner of South Main and East Bank Streets.

(c) "Salisbury's Got Talent"

Mayor Kluttz announced that the Salisbury Cultural Action Plan Committee will host the "Salisbury's Got Talent" finale Saturday, April 19, 2008 at 4:00 p.m. at the F&M Trolley Barn located at 125 East Liberty Street.

Councilman Lewis stated that the "Salisbury's Got Talent" event will begin at 2:00 p.m. and the finale will be at 4:00 p.m. and pointed out that the Amadeus Youth Choir will be performing. He indicated that between 2:30 p.m. to 2:45 p.m. the Community Action Plan consultant will make a presentation and engage in a community discussion regarding the cultural arts in Salisbury.

(d) Cancellation of April 21, 2008 City Council Meeting

Mayor Kluttz announced that the City Council meeting scheduled for Monday, April 21, 2008 will not be necessary.

**ADJOURNMENT**

**Motion** to adjourn the meeting was made by Mr. Burgin, seconded by Mr. Lewis. All council members agreed unanimously to adjourn. The meeting was adjourned at 6:32 p.m.

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Mayor

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City Clerk