

Salisbury, North Carolina
February 16, 2010

REGULAR MEETING

PRESENT: Mayor Susan W. Kluttz, Presiding; Mayor Pro Tem Maggie A. Blackwell, Councilmen William (Pete) Kennedy, William Brian Miller, and Paul B. Woodson, Jr.; City Manager David W. Treme; City Clerk Myra B. Heard; and City Attorney F. Rivers Lawther, Jr.

ABSENT: None

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

ISSUE BADGE AND SIDEARM – SERGEANT PAUL JOHNSTON

Deputy Chief Steve Whitley announced that Sergeant Paul Johnston will be retiring March 1, 2010 after 30 years of service to the City. He asked Council's consideration to award Sergeant Johnston his sidearm and badge in recognition for his service. Deputy Chief Whitley commented that he has had the pleasure of working with Sergeant Johnston for many years and Sergeant Johnston is known for his empathy and compassion throughout the Police Department.

Thereupon, Mr. Woodson made a **motion** to authorize issuing retiring Sergeant Paul Johnston his badge and sidearm. Mayor Pro Tem Blackwell seconded the motion. Messrs.

Kennedy, Miller, Woodson and Mses. Blackwell and Kluttz voted AYE. (5-0)

Mayor Kluttz stated that Council is very aware of Sergeant Johnston's excellent reputation and the service he has given to the City and its citizens. She thanked Sergeant Johnston on behalf of Council and wished him the very best for the future.

CONSENT AGENDA

(a) Approval of Minutes

Approve Minutes of the Regular meeting of February 2, 2010.

(b) Temporary Street Closure

Close a portion of the 1400 block of West Bank Street Wednesday, February 24, 2010 from 9:00 a.m. until 12:00 noon for the Census Road Tour.

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

DOWNTOWN SALISBURY, INC PRESENTATION – 2009 MAIN STREET AWARDS

Mr. Greg Shields and Ms. Betz Bigelow from Downtown Salisbury, Inc. addressed Council regarding the 2009 North Carolina Main Street Awards. Mr. Shields noted that the awards were held January 27-29, 2010 in New Bern, North Carolina and he announced the following winners who were recognized during the ceremony:

- Barbara Y. Perry – Salisbury 2009 Main Street Champion for her civic leadership and tireless dedication to Salisbury
- Ted and Cheryl Goins – Best Adaptive Reuse for 101 South Main Street, Pottery 101
- Geof and Christine Wilson – Best Historic Rehabilitation Project for 128 East Innes Street, Simply Good Natural Foods
- Bill Greene – Best Façade Rehabilitation Project for 110 South Main Street, Literary Bookpost
- City of Salisbury – Best Outdoor Space Improvement for Salisbury Station Passenger Platform
- Downtown Salisbury, Inc. – Best Economic Development Incentive for syndication of historic tax credits with special thanks to F&M Bank, revolving fund sponsor

Mayor Kluttz offered congratulations to all of the winners. She commented that there are many good things taking place in Salisbury and to be recognized Statewide makes Council very proud.

LAND DEVELOPMENT ORDINANCE TEXT AMENDMENT – LDOTA-10-2009

(a) Senior Planner Preston Mitchell addressed Council regarding a proposed text amendment to the Land Development Ordinance (LDO) regarding sidewalks. Mr. Mitchell stated that during the April 21, 2009 Council meeting a text amendment regarding infill sidewalks was presented to Council. He noted that the amendment proposed that sidewalk be required if there is existing sidewalk within 300 feet from either side of the lot line. He indicated that during that meeting a business owner requested this same consideration for businesses. Mr. Mitchell noted that this option was unavailable for businesses because infill only applies to residential development. He stated that Council requested the Planning Board to study industrially zoned properties and how to address sidewalks.

Mr. Mitchell stated that the Planning Board studied the issue and determined that sidewalks should be considered Citywide and not based on zoning districts. He indicated that the Planning Board recommended requiring sidewalks throughout the City, but with the payment-in-lieu option being based on sidewalk prioritization. Mr. Mitchell stated that when this recommendation was presented to Council last summer, Council requested a re-review of the Sidewalk Prioritization Plan and Sidewalk Priority Index.

Mr. Mitchell described when sidewalks are required:

- When building a new street
- When developing a lot on an existing street
- When subdividing a lot on an existing street

He then noted where the sidewalks are required:

- Within the street right-of-way
- Along both sides of new street
- Along lot frontage of an existing street

Mr. Mitchell reviewed alternatives to building sidewalk:

- Seek a variance by Zoning Board of Adjustment
 - Must approve hardship
 - Cannot be financial
- Pay-in-lieu
 - Annual Rate (Engineering)
 - Due before Certificate of Occupancy issued

Mr. Mitchell explained what the amendment proposes to change:

- Does not affect sidewalks along new streets
- Does not affect requirement to build along existing streets
- Changes the pay-in-lieu alternative by prioritizing based on greatest need

He indicated how sidewalks are prioritized:

- Using the Sidewalk Priority Index
- Prioritizes sidewalk need based on pedestrian generating characteristics

Mr. Mitchell explained that the Sidewalk Priority Index creates scores for street segments by totaling the values of pedestrian generating characteristics and these scores indicate a high, medium or low need. He clarified that the pedestrian generating characteristics are the things that produce pedestrians, which increases sidewalk need, such as certain zoning districts, schools, commercial nodes, transit, the Greenway or parks.

Mr. Mitchell displayed a map of several areas in the City and noted how the sidewalks for that area would be scored based on the pedestrian generating characteristics within that area. He noted that all of the pedestrian generating characteristic points are added for a total Street Priority Index (SPI). An SPI score of 0-5 is a low priority, 6-11 medium priority and 12 or greater a high priority. He explained that sidewalks are always required to be constructed but with a low priority zone the sidewalk could be constructed or payment-in-lieu with a 75% discount. For medium priority the sidewalk must be constructed or payment-in-lieu with a 50% discount, and in for a high priority sidewalk must be constructed or payment-in-lieu at 100%.

Councilman Woodson clarified that if sidewalk is estimated to cost \$25 per linear foot and the property scored a medium priority the payment-in-lieu would be \$12.50 with the 50% discount. Mr. Mitchell indicated this was correct. Mr. Mitchell then reviewed areas of the City that would score low, medium and high. He pointed out that the SPI scores are based on need, using the sidewalks as a mode of transportation rather than for recreational purposes.

Mr. Mitchell summarized what the amendment proposed to change:

- Does not affect sidewalks along new streets
- Does not affect requirement to build along existing streets
- Changes the pay-in-lieu alternatives by prioritizing based on greatest need

Mr. Woodson asked to clarify that no areas of the City are exempt. Mr. Mitchell responded that this is correct. He explained that some areas may have such a low score that the cost of the pay-in-lieu will be so low developers will choose that option rather than constructing the sidewalk.

Mr. Mitchell stated that when the payment-in-lieu option is chosen, the money received can only be spent in the planning district where the property is located.

Mr. Mitchell indicated that since submitting the proposed ordinance to Council he has received advice from the School of Government. He noted that on page 3 of the draft ordinance, under low priority, from the word affordable to the end of the sentence should be stricken before adoption.

(b) Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on the proposed Land Development Ordinance Text amendment LDOTA-10-2009.

Mr. Richard Miller, 480 Beck Road, presented a document to Council regarding information presented at Council's April 21, 2009 meeting. He indicated he appreciates the time and effort staff and the Planning Board have put into studying this issue, but he feels the policy still needs an adjustment. He stated he thinks there should be a zero category for areas where there will never be a need for sidewalks. He commented that he thinks asking a business owner to invest in a sidewalk fund in an area where their development has already appreciated the property is an undue burden. Mr. Miller stated that he thinks the work on the proposal is good and has a sound basis, but there needs one more category for a zero score exemption. He added that small businesses are the core economic driver in many communities and to ask them to pay into a fund where sidewalks will never be needed is a disservice.

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

Mayor Pro Tem Blackwell indicated that she worked with the committee studying sidewalks while serving on the Planning Board. She commented that she was very impressed with Mr. Mitchell who found a program to manage the overlays used in the Sidewalk Priority Index and she appreciated him bringing this resource to Salisbury. She also commended Mr. Miller for being an effective advocate for the sidewalk issue.

Ms. Blackwell indicated that this issue was difficult and the Planning Board Committee worked hard studying it and she would not want Council to overturn their 10 months of work. She stated that she appreciates Mr. Miller's outlook, but she trusts the people who served on the committee and she supports the proposed Ordinance.

Mr. Woodson stated that he understands the small business owner's point of view and he thinks Mr. Miller made a valid point regarding the taxes the businesses bring to the City and County. Mr. Woodson commented that he thinks the proposal is an improvement from where the issued started, but he thinks there should be another scoring category for zero.

Councilman Miller noted that while there is a significant discount that occurs for lower need areas, often these areas are larger parcels of land. He stated that even with the discount, because of the size and linear feet, it might double or triple the amount that would be required for a 50 foot infill lot. He asked if the Planning Board considered a monetary cap that could be applied to the larger lot cases. Mr. Mitchell indicated that a cap was not discussed.

Councilman Miller stated that he understands Mr. Miller's comments but the City will never be able to implement sidewalks where they are needed if there is not some form of cost sharing. He commented that having worked on the Land Development Ordinance (LDO) he understands the community's desire for sidewalk. He stated that he was a member of the Planning Board when the original Prioritization Index was developed and he does not want to give up on that work, but wonders if the idea of a cap of some sort could be reviewed so it does not impact a business that scores no priority. Mr. Miller stated that he can support the proposed

ordinance as presented, but would like to ask the Planning Board to review a cap or lower level tier.

Mr. Woodson stated that he likes what has been presented from the Planning Board, but he would like to see one more category for a score of zero.

Councilman Miller commented that even businesses in industrial areas benefit from having sidewalks because even if it is not on the business property, a network of sidewalks is a community benefit. He added that the question is how much the business should be asked to participate if there is no priority for their property.

Councilman Miller reiterated that he supports what has been presented today, but in addition would like to ask the Planning Board to consider a lower tier or a cap and make a recommendation in that regard. Ms. Blackwell noted that she also supports Councilman Miller's suggestion.

Mayor Kluttz commented that she is unaware of the discussion by the Planning Board regarding this particular situation, but she knows that the community has indicated it wants sidewalks and the goal is to eventually have them Citywide. She stated that she supports looking at the question of a lower tier or cap more thoroughly and perhaps the Planning Board is the appropriate place for this review, rather than a Council Committee who has not had the advantage of hearing everything the Planning Board has heard.

Mr. Miller indicated that he would not expect a six month review but would like the Planning Board to respond to this particular piece and how it might be integrated.

Mr. Mitchell stated that the idea of a cap is interesting and he recommended that this be explored versus no payment-in-lieu. He added that once there is no payment-in-lieu it completely removes the sidewalk requirement and it begins the discussion of determining which districts sidewalk will not be required.

Mr. Woodson indicated he could also support a cap, but would rather vote on the issue when he knows exactly what the vote is adopting.

Mr. Mitchell indicated he would take this issue back to the Planning Board for review.

Ms. Blackwell asked Mr. Mitchell to convey to the Planning Board that Council appreciates their 10 months of work and feels they have done a fine job. She added that Council is just asking for this one additional component.

Councilman Kennedy stated he supports having sidewalks throughout the City but also has empathy for the small business owners. He added that he would like to have more information about a cap and to hear the Planning Board's recommendation.

Thereupon, Mr. Woodson made a motion that Council sends the issue back to the Planning Board to study. Mr. Kennedy seconded the motion. Messrs. Kennedy, Miller, Woodson and Mses. Blackwell and Kluttz voted AYE. (5-0)

ORDINANCE AMENDMENT– OVERSIZED VEHICLE PARKING

(a) Code Services Manager Chris Branham addressed Council regarding proposed text amendments to address oversized vehicle parking. Mr. Branham reviewed the timeline for the proposed amendments:

- November 3, 2009 – Council requested staff to follow up on the question regarding oversized commercial vehicle parking codes
- November 17, 2009 – staff presented to Council the current Codes as related to oversized commercial vehicle parking, Council requested that staff look further into effectiveness of violation process for this Code
- January 2010 – Staff took proposed City Code amendments to the Technical Review Committee (TRC) and received feedback
- February 8, 2010 – Staff took proposed City Code amendments to Planning Board for information purposes only

Mr. Branham reviewed the current City Code regarding oversized commercial vehicles

- Section 13-161. Parking of oversized vehicles, trailers. “It shall be unlawful for any person to park any oversized vehicle or trailer on any street within the corporate limits of the city at any time except when engaged in loading and unloading, or when such vehicle is being used for emergency services or for temporary use at construction sites during the period of active construction.”

Mr. Branham noted that an oversized vehicle means any private passenger carrying vehicle which is at least 80 inches in width or at least 30 feet in length. He then reviewed an excerpt from the current Land Development Ordinance (LDO):

- LDO, Section 10-2E “Parking for RVs, Trailers, Commercial Vehicles, and Boats: Parking for Recreational Vehicles, Trailers, Oversized Commercial Vehicles and Boats shall be restricted to the rear yards in the GR, UR, HR, and TND districts.”
 - Oversized Commercial Vehicle: Oversized commercial vehicles shall include any vehicle (except pick-up trucks) or trailer that bears a commercial license plate; and
 1. Has more than two axles or four tires; or
 2. Is designed to carry more than 15 passengers, including the driver; or
 3. Weighs more than 10,000 pounds with or without load; or
 4. Requires hazardous materials placards; or
 5. Is more than nine feet in height; or
 6. Is more than 22 feet in length
 - This definition includes, but is not limited to semi-trailers, tow trucks, buses, limousines, tractors, construction equipment, delivery vans, or similar vehicles

Mr. Branham noted the violation process for the LDO:

- 17.3 Penalties for Violation

- Civil Penalty: In accordance with Section 8.5.1 of the General Code of Ordinances of the City of Salisbury the Administrator may, in addition to other remedies found in this Chapter, issue civil penalties.

1. Penalties for Violation: Any person determined to be in violation of any of the provisions of this Ordinance shall receive a civil citation for a penalty of fifty dollars (\$50.00) for such violation. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by a code enforcement officer. Such notification shall be either through a personal visit or by certified mail. If uncorrected after the notification, a code enforcement officer who observed the violation shall issue a citation requiring the violator to pay the above-stated penalty to the city revenue department. The owner, tenant, or occupant of any building or land or part thereof or any person who participates in or acts in concert, assists, directs, creates, or maintains any condition found to be a violation shall be subject to the penalties and remedies herein provided

2. Uncorrected Violations: (a) When a code enforcement officer finds that a previous violation has not been corrected, he shall issue another citation requiring payment of an additional civil penalty in the amount of one hundred dollars (\$100.00). (b) After a second citation has been issued, no further civil citation shall be issued to the same person for the same continuing violation at the same location unless and until an additional written notice is delivered to the offender by personal service, registered mail or posting of the notice at the location of the violation if reasonable attempts to serve the notice are unsuccessful. The notice shall set forth the nature of the violation and order that corrective action be taken. The notice shall state that failure to correct the violation within the time specified in the notice will result in the assessment of additional civil penalties and other enforcement action. If after the specified time period has expired and corrective action has not been completed, the civil penalty shall automatically activate in the amount of two hundred fifty dollars (\$250.00) per day and shall continue to be accrued at the rate of two hundred fifty dollars (\$250.00) per day until the violation is corrected. The code enforcement officer shall notify the violator by personal service or certified mail of the day of the civil penalty began to accrue and shall state that the penalty will continue to accrue for each day the violation remains uncorrected. Any enforcement action for injunctive relief by the city shall not stay or abate the accruing of the civil penalty, and the penalty shall continue to accrue daily until the violation is finally corrected either voluntarily or by the city as a result of a court order

Mr. Branham then reviewed the proposed amendments:

- Section 8.5 – No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by a code enforcement officer. Such notification shall be either through a personal visit, an on premise written notification, or by certified mail. If uncorrected after the notification, a code enforcement officer who observed the violation shall issue a citation requiring the violator to pay the above-stated penalty to the city revenue department
 - On premise written notification
 - Ability to issue citation, along with a fine, at the time of the actual violation
 - This will NOT take the place of giving a verbal warning for the first time offenses, keeping in mind our process of Communication, Education, Citation
 - This will deter one person(s) who continue to repeat the same violation, even after being told through verbal and written warnings

Councilman Kennedy asked how much time a violator has to move a vehicle once a notice of violation has been issued. Mr. Branham stated that adding an on premise violation gives the ability to issue a citation at the time of violation. He added that this means on the spot ticketing, whereas before staff had to wait a certain number of days after sending a written notification.

- Section 13-161 – It shall be unlawful for any person to park any oversized commercial vehicle or trailer on any street within the corporate limits of the city at any time except when engaged in loading and unload, or when such vehicle is being used for emergency services or for temporary use at construction sites during the period of active construction
- Section 13-161a. Parking restricted on private property – parking for Recreational vehicles, trailers, oversized commercial vehicles and boats shall be restricted to the rear yards in the residential districts of the city – referred to in the LDO as Urban Residential (UR), General Residential (GR), Historic Residential (HR), and Traditional Neighborhood Development (TND) districts
- Section 13.1 Definitions - Section 13.1 Definitions *Oversized Commercial vehicle* means ~~any private passenger-carrying vehicle which is at least eighty (80) inches in width or at least thirty (30) feet in length~~. Shall include any vehicle (except pick-up trucks) or trailer that bears a commercial license plate, and
 1. Has more than 2 axles or 4 tires; or
 2. Is designated to carry more than 15 passengers, including the driver; or
 3. Weighs more than 10,000 pounds with or without load; or
 4. Requires hazardous materials placards; or
 5. Is more than 9 feet in height; or
 6. Is more than 22 feet in length

Mr. Branham noted that the definition of a recreational vehicle will also be added to the City Code because it was not previously defined and he reviewed changes to the definition of a nuisance vehicle:

- Recreational Vehicle means any vehicle or portable structure which can be towed, hauled, or driven and is primarily designed as temporary living accommodation for recreational, camping and travel use. A recreational vehicle shall not be considered as a dwelling unit
- Nuisance vehicle:
 - (9) Any ~~other~~ vehicle specifically declared contrary to public a health and safety and welfare ~~hazard and a public nuisance~~ by the public services director code services manager.

Mr. Branham summarized what the amendments proposed:

- Add existing LDO code about oversized commercial vehicle parking to City Code
- Add on premise notification to violation process
- Update City Code to include necessary definitions of oversized commercial vehicle and recreational vehicle
- Update City Code to reflect changes in code enforcement

Councilman Miller asked if neighborhood complaints led to this issue being addressed. Mr. Branham responded that complaints were received but staff could not adequately address the violations because of the necessary written notification timeframe. He noted that the violator would correct the issue by the time the letter was received but then start the violation process over again within the week. He noted that by moving the enforcement into the City Code from the LDO it gives staff better ability to enforce the violations.

Mr. Miller commented that this is not a change in the rules, but how they are enforced. Mr. Branham responded that this is correct.

(b) Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on the proposed Ordinance amending Sections 8.5-1, 13-1, 13-161 and 13-277 of the Salisbury City Code related to parking.

Ms. Gretta Conner, 1106 Laurel Street, thanked Council for their work to make Salisbury a place where neighborhoods are their concern. She stated that the Code amendments positively address the issue of oversized vehicles and she appreciates the work and thinks it is a step in the right direction. She noted that she remains concerned about allowing tractor trailers to be parked in back yards. Ms. Conner stated that she does not think this should be allowed in neighborhoods because she feels it greatly diminishes property owner's positive attitude about property upkeep. She commented that parking tractor trailer trucks in neighborhoods diminishes property values and she would like this issue to be considered.

There being no one else present to address Council, Mayor Kluttz closed the public

hearing.

Mr. Branham informed Council that he received several emails and letters supporting the amendments and in agreement with Ms. Conner's comments. He further clarified that those who wrote him support the amendments but would like to also prohibit tractor trailers from parking in either front or back yards in a neighborhood setting.

Mr. Kennedy stated that he agrees with Ms. Conner and he does not think tractor trailers should be in any neighborhood. He added that he thinks this ordinance is a step in the right direction and gives the Code Enforcement Officers the ability to issue citations to remove the vehicles immediately. He stated that he supports the ordinance and hopes that Mr. Branham will continue to review the Code to address the back yard parking concerns.

Mayor Pro Tem Blackwell noted that several neighbors were in attendance with Ms. Conner and asked them to stand to show their support. Approximately 12 citizens stood in support.

(c) Thereupon, Mr. Kennedy made a **motion** to adopt an Ordinance amending Sections 8.5-1, 13-1, 13-161, and 13-277 of the City Code of the City of Salisbury, North Carolina. Mr. Woodson seconded the motion. Ms. Blackwell asked if this amendment will still allow the tractor trailers to be parked in the back yard. Mr. Kennedy indicated that it will at the present time but he would like to give staff authority to issue violations now and return with additional amendments. Messrs. Kennedy, Miller, Woodson, and Mses. Blackwell and Klutz voted AYE. (5-0)

AN ORDINANCE AMENDING SECTIONS 8.5-1, 13-1, 13-161, AND 13-277 OF THE CITY CODE OF THE CITY OF SALISBURY, NORTH CAROLINA

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

CONTRACT- \$30,900 – MARTIN STARNES AND ASSOCIATES, CPAs, P.A

Finance Manager Wade Furches addressed Council regarding an audit contract with Martin Starnes and Associates. He explained that every four years the Finance Department solicits bids from qualified Certified Public Accountant (CPA) firms to conduct the City's annual audit. He noted that the North Carolina Local Government Budget and Fiscal Control Act does not require the City to solicit bids, but staff feels it is in the best interest to do so in order to acquire the best price for qualified audit services.

Mr. Furches explained that the City went through the bid process in 2009 and Council awarded a four-year contract to Martin Starnes and Associates, CPA's, P.A. from Hickory, North Carolina. He added that the proposed contract before Council is for the second year of the four-year contract. He noted that even though Council approved the four-year contract in 2009, each annual contract must be approved by Council.

Mr. Furches stated that the proposed contract fee is \$30,900, which is the amount that Martin Starnes and Associates estimated when they prepared their proposal last year. The proposed 2010 fee is a \$900 increase, which represents a three percent increase from fiscal year 2009.

Mr. Furches stated that staff recommends Council approve the audit contract with Martin Starnes and Associates, CPSs, P.A. in the amount of \$30,900 to cover the audit for the fiscal year ending June 30, 2010.

Councilman Woodson asked if any local accountants submitted bids to perform the City's audit. Mr. Furches explained that there are very few CPA firms in Salisbury that are large enough to perform the City's audit.

Thereupon, Mr. Kennedy made a **motion** to award a contract in the amount of \$30,900 to Martin Starnes and Associates, CPA's, P.A. for auditing services for Year 2010. Ms. Blackwell seconded the motion. Messrs. Kennedy, Miller, Woodson, and Mses. Blackwell and Klutz voted AYE. (5-0)

ESTABLISH STOP CONDITIONS – LONE HICKORY VILLAGE SUBDIVISION

Mr. Craig Powers, Civil Engineer II, displayed an aerial view of the Lone Hickory Village subdivision and noted its location off of Morlan Park Road, adjacent to Jake Alexander Boulevard and Faith Road. He reviewed the history of the project:

History

- Developer asked for a variance to use recycled concrete in lieu of aggregate base course (ABC) stone in February 2009
- Council approved request as a test case
- Material was to meet North Carolina Department of Transportation (NCDOT) testing requirements

Mr. Powers reviewed pictures showing streets using ABC stone versus recycled concrete and noted that other than color, both applications looked the same. He reviewed the performance required for NCDOT testing:

Performance

- Test results for liquid limit
 - Specified – less than 35
 - Tested – 37
- All other tests were very good
 - LA Abrasion
 - Gradation
 - Proof Roll – key test
 - Drive a loaded dump truck over the sub-grade to see how it functions

Mr. Powers stated that the Engineering Department recommends extending the typical one year warranty to five years in order to see how the product functions. He added that staff also recommends Council accept the Lone Hickory Village subdivision streets subject to:

- Final subdivision plat being recorded
- Receipt of warranty documents for the streets
- Adopt an ordinance to establish stop conditions on Mathis Avenue and Jared Steele Lane

Mayor Kluttz thanked staff for their flexibility in allowing the developer the opportunity to try the recycled concrete.

Councilman Miller asked about the benefit of using the recycled concrete over the ABC application. Mr. Powers stated that he believes the recycled concrete may be less costly, and explained that this application is not readily available and is typically used for parking lots instead of City or NCDOT streets.

Thereupon, Mr. Kennedy made a **motion** to accept the streets in the Lone Hickory Village subdivision subject to (1) the final subdivision plat being recorded and (2) receipt of warranty documents for the streets, and adopt an Ordinance amending Section 13-332, Article X, Chapter 13, of the Code of the City of Salisbury, relating to stop signs. Mr. Woodson seconded the motion. Messrs. Kennedy, Miller, Woodson, and Mses. Blackwell and Kluttz voted AYE. (5-0)

(The above Ordinance is recorded in full in Resolution Book No. 22 at Page No. 11, and is known as Ordinance 2010-06.)

CHANGE ORDER – TOWN CREEK SEWER SYSTEM IMPROVEMENTS CONTRACT 3

Mr. Jason Wilson, Salisbury-Rowan Utilities (SRU) Engineering Manager, stated that SRU recently completed designs for raw water pumping improvements at the River Pump Station. He added that the improvements will allow SRU increased pumping capacity in order to maintain sufficient raw water storage in the reservoir to avoid on-peak pumping. He added that the improvement will also provide for a more efficient implementation of the Emergency Action Plan in the event of a loss of power to the River Pump Station.

Mr. Wilson pointed out that BRS, Inc. of Richfield, North Carolina, has submitted a bid of \$170,016.25 to construct these improvements. He added that BRS, Inc. is familiar with the special conditions that exist at the City's raw water pump station and is currently working on the Town Creek project.

Councilman Woodson asked if this improvement will alleviate the kind of power loss the City experienced in 2009. Mr. Wilson stated that during that power loss diesel pumps had to be brought in to the pump station while the transformers were being repaired. He noted that these

improvements will put provisions in place to allow immediate plug-in of portable pumps. City Manager David Treme pointed out that this will allow the City to respond to a power outage in eight hours instead of two days.

Thereupon, Mr. Woodson made a **motion** to authorize the City Manager to execute a change order for the additional amount of \$170,016.25 to Town Creek Sanitary Sewer System Improvements Contract 3 and BRS, Inc. for the Raw Water Pumping Improvements Project at the River Pump Station. Mr. Kennedy seconded the motion. Messrs. Kennedy, Miller, Woodson, and Meses. Blackwell and Kluttz voted AYE. (5-0)

UPDATE – FOG CONTROL PROGRAM

Mr. Aaron Otten, Fat, Oil, and Grease (FOG) Program Coordinator, updated Council regarding the FOG program since the program was adopted April 2009. He explained that fats, oils and grease are discharged into sanitary sewer through food preparation activities. He pointed out that as a Utility, Salisbury-Rowan Utilities has been mandated by the State of North Carolina and the Federal Environmental Protection Agency (EPA) to implement programs to regulate commercial food preparation and an education program.

Mr. Otten pointed out that the program's regulation regarding food service establishments include restaurants, schools, nursing facilities, bakeries, delis, ice cream, and coffee shops. He stated that improperly managed, FOG can block wastewater collection and treatment systems.

Mr. Otten stated that since April 2009 the City has focused on providing FOG information to business owners so they will know the requirements and understand the background for the program. He noted that the program implementation has been designed around two phases:

- Phase 1
 - Visited approximately 300 food service establishments
 - Hand delivered an informational brochure
 - Collected contact information
- Phase 2
 - Meetings with facility owners and managers
 - Approximately 95 facility meetings and inspections have been conducted to date

Mr. Otten pointed out that the deadline for compliance is April 7, 2012. He noted that Council approved an incentive program that allows businesses to receive a monetary rebate depending on when they install devices to comply with the regulations. He stated that during the first year facilities were eligible for up to \$1,500; the second year, the eligibility drops to \$1,000; and the last year prior to April 2012, eligibility drops to \$500. He added that to date there are two facilities that have installed approved devices and received money through the incentive program. He noted that there is currently one facility in the process of applying for the incentive and four facilities that have received approved plans.

Mr. Otten introduced the City's FOG mascot, Greasy the Grease Blocker, who sang the City's grease blocker song. Mr. Otten indicated that the mascot will be accompanying FOG staff to schools and community events to educate residential customers on how to keep grease out of the City's systems.

Mayor Kluttz thanked Mr. Otten, who wrote and recorded the song for Greasy the Greaseblocker, and SRU staff for their work on this project.

SALISBURY CULTURAL ARTS FESTIVAL

City Manager David Treme stated that in 2009 a cultural arts festival produced by Mr. George Busby was held in Salisbury and many complaints were received by the City following the event. He read a letter that he recently sent to Mr. Busby as event coordinator, which stated that the event's website contains misleading and patently false information regarding the festival. The letter further stated that the City does not endorse, sponsor or condone any efforts by the Salisbury Cultural Arts Festival to organize or promote any event and Mr. Busby and agents of the Salisbury Cultural Arts Festival are to immediately cease and desist from the use of any trademark brands held by the City of Salisbury. Mr. Treme noted that the letter stated that the Salisbury Police Department has been instructed to deny any application made by the Salisbury Cultural Arts Festival for the use of public property or rights-of-way for the purposes of any event or festival.

Mr. Treme pointed out that the letter was sent to Mr. Busby at the request of Council in response to last year's festival which was an embarrassment to the community. He added that Council felt Mr. Busby's effort needed much more work than was evident with last year's festival and he wanted to make sure Mr. Busby and the event organizers were very clear of the City's position.

Mayor Kluttz explained that Council is always open to new people and new ideas and even though the City Manager had given the event a negative recommendation Council wanted to give this group a chance. She stated that Council had just adopted a Cultural Arts Plan and established a task force and was concerned that there would be confusion because Mr. Busby's group's name was very similar to the City's plan. She indicated that there was indeed confusion and many complaints were received from across the Southeast and the City was even threatened with legal action and told that criminal charges would be sought. Mayor Kluttz noted that all of the complaints were addressed by the Police Chief and herself and that she personally called and wrote letters of apology to everyone who filed a complaint. She stated that she thinks there are many people in the community who work very hard to maintain the excellent reputation the City has across the State, and in fairness to them she wants to make sure this does not happen again. She thanked Mr. Treme for sending the letter and making Council aware of the situation.

Councilman Miller asked if the complaints were received from vendors who had registered to participate in the Salisbury Cultural Arts Festival. Mayor Kluttz responded that the complaints were from people who had paid to be a part of the festival and had lost money. She

added that these vendors were promised many things but did not receive what was promised and were very upset with the situation and with the City, who approved the permit for the event.

PUBLIC COMMENT SESSION

Mayor Kluttz opened the floor to receive public comment.

Mr. William Peoples, 522 North Fulton Street, stated that he did not have an issue with the Shoher Bridge until last week when a train blocked the railroad track at North Fulton Street. He indicated that he realized that if there was a fire, a home would be lost before a fire truck could reach it due to the bridge being closed and the train blocking the railroad track. He stated that from a safety point of view it takes quite a bit of time for a fire truck to get to a fire with the closed bridge and a train is blocking the railroad track at Fulton Street. He indicated that he hopes the City, the preservation community and Norfolk Southern Railroad can reach an agreement and added that he feels safety takes precedence over preservation. He suggested that if the bridge has to be replaced the old bridge should be placed in a park for historic preservation. He concluded by reiterating his concern about the time it would take a fire truck to reach the Jersey City neighborhood.

Mr. Robert Boone, 1605 South Main Street, addressed Council regarding the 1753 City Charter, Coldwell Banker's acquisition of property on Highway 601, and Town Creek property purchased by the City.

Ms. Ann Cave, Rowan Arts Council Director, 300 Confederate Avenue, addressed Council regarding the 2010 Salisbury-Rowan Cultural Arts Festival. She indicated that she was on the telephone today with staff of *Our State Magazine* and she was able to stop two advertisements for Mr. Busby's festival scheduled to run in the April and May 2010 publications. She noted that these ads referenced two websites, one being the Rowan Arts Council as a vendor contact. Ms. Cave added that she has been receiving phone calls and angry emails and she does not want Mr. Busby to be an umbrella for all of the arts organizations in the City. She added that the issues with Mr. Busby continue and asked what other steps Council can take to address the problem. Ms. Cave stated that Mr. Busby took the Rowan Art Council ad space in *Our State Magazine* and listed the 2010 Salisbury-Rowan Arts Festival on the North Carolina State Arts Council website and that although the letter asked him to cease and desist, he has not.

Ms. Sue McHue, 910 North Main Street, stated that she cares about preservation and historic infrastructure and wants to express her concerns about the direction the Shoher Bridge issue is taking. She pointed out that she is concerned that there is a vast history about the bridge that no one knows about. She reviewed the history of the bridge which dates back to a path before the Civil War. She noted that the bridge has been a fiber of the neighborhood for decades and is reflected on the 1882 Sanford maps. Ms. McHue stated that she would like to see the bridge maintained on the Greenway as a visual point or on the Arts and History Trail. She indicated that she is also concerned that there have been only two offers made; the bridge can be fixed, replaced or do nothing. She noted that this issue has been revisited by Council many times over the years and she feels that everyone wants a safe bridge and to preserve historic structures.

Ms. Gwen Matthews, 313 North Ellis Street, presented a packet to Council which included old newspaper articles and old maps that showed how the Shober Bridge neighborhood developed. She asked Council to lead the community in saving the Shober Bridge. She indicated that in October 2009 Council candidates attended a candidate forum and noted that each elected candidate referred to the importance of a clean community and historic preservation. She indicated that the bridge must be made safe for public use and she thinks this can be done through rehabilitation. Ms. Matthews stated that the community must continue historic preservation efforts and she looks forward to working with Council to save Shober Bridge.

Ms. Debra Brazee, 420 North Ellis Street, stated that she is concerned about the attention that the Shober Bridge rehabilitation option is getting. She indicated that she has received information from several groups that is vital to understanding the rehabilitation option, specifically the rehabilitation feasibility study that was performed four years ago by Mr. Fischetti. She pointed out that Council did not receive the study that was to be presented prior to the January 5, 2010 Council meeting, nor was it presented prior to the January 15, 2010 Council Committee meeting. She pointed out that she feels the process is flawed because there is not an opportunity to share information with the Council Committee. She stated that no one was present at the Committee meeting that could represent the rehabilitation option and the City will have to invest in someone from the private sector to do so. Ms. Brazee indicated that she feels this is a long standing issue and is quite a lot for a Council Committee to cover in a short period of time. She noted that she sent an email to the Council Committee regarding what actions were currently being taken, and the only response she received regarded a forthcoming meeting with Mr. Jack Thomson, Director of Salisbury Historic Preservation. She added that she talked to Mr. Thomson and did not feel confident that due diligence could be done for the rehabilitation option. She concluded by stating that she feels the rehabilitation option is in the City's best interest.

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

Mayor Kluttz commented on the question raised by Ms. Cave regarding what else the City can do regarding the 2010 Salisbury-Rowan Cultural Arts Festival. City Attorney Rivers Lawther stated that Mr. Busby has a corporation formed with the North Carolina Secretary of State that entitles him to use the Salisbury-Rowan Cultural Arts Festival name, even though it was a name used by the City as part of its Cultural Action Plan. He added that he is not sure how Ms. Cave was able to have the ads pulled from *Our State Magazine* since they were under Mr. Busby's name. He pointed out that the City will not allow Mr. Busby to use any public streets or rights-of-way, but the City cannot tell him that he cannot speak regarding a corporation that he legally represents.

Councilman Miller asked if Mr. Busby is using other organization's logos in his materials without their permission. Mr. Lawther stated that Mr. Busby was using the City logo and he has been ordered to stop.

City Manager David Treme stated that he had a conversation with the North Carolina State Arts Council (NCSAC) and shared the City's concerns regarding the 2010 Salisbury Rowan Cultural Arts Festival's attempt to include organizations who are unwilling participants. He said that since the letter was sent to Mr. Busby, he has seen emails sent to Mr. Busby with the same concerns. He indicated that the Rowan Arts Council has met with Mr. Busby to discuss these concerns and the message has been shared that they do not support this festival.

Mr. Treme stated that the City has shared its concerns and what legal actions the City will take if Mr. Busby continues to use the City logo. He pointed out that the City will not support the festival's need for public streets, parking lots, police officers and emergency vehicles. He added that the festival can be held on private property and would not need a City permit, but the City will do whatever it can to restrict the festival's activities.

Mr. Treme stated that the City will work with Ms. Cave and the Rowan Arts Council in any way to let people know that the City is not in support of the festival.

Councilman Kennedy commented that he thinks a festival of this nature would be an excellent idea for the arts community to consider in the future in order to bring visitors to Salisbury in the right way.

Mayor Kluttz stated that the Rowan Arts Council sponsors the Art on Easy Street Festival and there has been confusion between that festival and Mr. Busby's festival. Ms. Cave pointed out that Mr. Busby has scheduled his event for the same weekend as the Art on Easy Street Festival this year.

Mr. Treme stated that it appears that Mr. Busby's festival coincides with the Art on Easy Street festival in an attempt to create confusion. He added that he feels Mr. Busby's plans for the 2010 Salisbury-Rowan Cultural Arts Festival are no better organized than last year and he will continue to do what is necessary to let the public know the City does not support Mr. Busby's event.

COMMENTS FROM THE CITY MANAGER

(a) Old Plank Road update

City Manager David Treme called on Mr. Dan Mikkelson, Director of Engineering and Development Services, to update Council on the Old Plank Road improvements.

Mr. Mikkelson stated that approximately two years ago Livingstone College approached the City with a request to close a portion of Old Plank Road that runs through the campus. He noted that Council granted the street closing subject to the construction of a cul-de-sac for the portion of Old Plank Road that would remain open. Mr. Mikkelson referred to an aerial map showing the street and pointed out that once the cul-de-sac is constructed the remaining one-half block would be changed to West Marsh Street with the cul-de-sac becoming part of the Livingstone campus. He noted that the cul-de-sac construction and drainage cost was initially

estimated to cost \$50,000 at the time the request was received. He added that Livingstone College then hired an engineering firm for a more detailed design and a more accurate estimate has been provided of \$100,000.

Mr. Treme stated that when the street closing request initially came to Council, Council indicated that the request would be approved with the requirement that Livingstone College pay for the street improvement. He pointed out that Livingstone College officials have submitted a proposal to offer \$50,000 for the improvements and cul-de-sac and Livingstone College requests the City match their portion with \$50,000. He noted that the street construction would improve the college and the neighborhood and the remaining open portion would be a dedicated street under City jurisdiction and maintenance.

Mr. Treme stated that this request is being shared as information for Council today and he indicated that staff will further review Livingstone's proposal. He noted that when the estimate was initially \$50,000, he thought there might be a portion of the resurfacing budget that could be applied for half of the construction cost, but he is not sure that the City can provide the requested \$50,000. He indicated that he will report to Council with a recommendation at the March 2, 2010 meeting.

Councilman Kennedy asked if the street would be constructed by City employees or an outside construction company. Mr. Treme responded that the City does not have staff or equipment that can do this type of work and an outside construction company would have to be contracted.

Councilman Woodson asked if the portion of Old Plank Road to be closed would be removed and planted with grass. Mr. Mikkelson pointed out that the asphalt will be removed on the closed portion of Old Plank Road and will become private property. Mr. Woodson asked if it will cost \$100,000 to build the cul-de-sac. Mr. Mikkelson responded that the price includes the construction of the cul-de-sac, removal of the asphalt, re-alignment of the travel route and to install storm drainage.

(b) Kannapolis and Concord Water Supply

City Manager David Treme pointed out that one of the City's goals is to explore the sale of water to the City of Kannapolis and the City of Concord. He added that Kannapolis recently signed an engineering contract with the City of Albemarle to determine Kannapolis' water needs. He indicated that Salisbury also submitted a proposal to Kannapolis for Salisbury-Rowan Utilities (SRU) to provide them with water through the Yadkin River.

Mr. Jim Behmer, SRU Director, pointed out that 10 million gallons per day (MGD) from the Yadkin River and 10 MGD from the Catawba River has been approved through an inter-local agreement. He reviewed the proposals made to Kannapolis:

Proposed Albemarle Water Line:

- 100,000 linear feet of water line including three pump stations and an elevated tank
- Finalizing the inter-local agreement

- Total project cost
 - \$19.46 million total
 - \$7.5 million contributed by Kannapolis
- Kannapolis City Council has authorized proceeding with Phase 1
 - \$539,560 Engineering

Salisbury Water Line Proposal:

- Existing 4.5 MGD supply available
- Kannapolis contribution - \$7.5 million
 - Increase WTP capacity from 18 to 24 MGD
- Payment deferred until water is needed
 - Albemarle proposal is for 50% cost up-front with only 40% of water (4 MGD)
- Increase minimum usage to 1 MGD
 - Resolves water quality issues
- Kannapolis to receive reduced rate:
 - \$1.65 per 100 cubic feet (Southern Power rate)

Mr. Treme pointed out that the City can supply Kannapolis and Concord with full water needs today and they would not have to pay for water until it is needed. He added that this agreement could lessen some of the need in requirements with the Town of China Grove and would be beneficial to their community. He indicated that offering a lower rate would contribute \$7.5 million to capital funds. He noted that he feels Salisbury has offered a fair proposal.

Councilman Woodson asked if there would be any up-front capital cost. Mr. Behmer responded that the City can currently provide water on a short term basis but there are improvements that will need to be made with increased water use.

Councilman Miller asked if the proposed contract would require immediate investment from Kannapolis and Concord. Mr. Treme indicated that the contract would be based on different usages and would at some point trigger their contributions for capital improvements. Mr. Miller asked if the contract would remain firm through future City staff and City Council changes. Mr. Treme noted that the contract would remain firm. He pointed out that the City uses a formula that would be used and usage rates would be reviewed each year that fit into the formula. Mr. Miller stated that he feels this is a creative approach and with more customers on the system would keep current customer rates consistent. He thanked staff for their effort.

(c) Shober Bridge Council Committee Report

Mayor Pro Tem Maggie Blackwell presented Council with an update from the Shober Bridge Council Committee. She noted that the committee met three weeks ago and reached no real consensus but did gather more information. She pointed out that the City is waiting for Norfolk Southern Railroad (NSR) to advise the City as to whether the City can proceed with the bridge with two tracks or if they intend to develop three tracks which would significantly change the City's view-point on the bridge. She noted that without this information the committee cannot make a recommendation.

Ms. Blackwell stated that she met with staff to familiarize herself with the past history of the bridge and expressed her appreciation to Mr. Dan Mikkelson, Director of Engineering and Development Services, for meeting with her to bring her up-to-date. Ms. Blackwell stated that in early January 2010, Mr. Mikkelson indicated that Norfolk Southern Railroad (NSR) would advise the City of their decision in early February. She added that Mr. Mikkelson contacted NSR in February 2010 and was told that they did not know when they would be able to advise the City of their decision. Ms. Blackwell reported that in regards to the \$171,000 refund requested by the State, Mr. Mikkelson advised them that the City is in a holding pattern pending the NSR decision.

Councilman Woodson stated that the City needs to do all that is possible to begin the immediate repairs to the bridge in order to get the bridge re-opened. Mr. Mikkelson pointed out that he spoke with NSR and was told that they have the request for repairs to the existing bridge ahead of other requests and hopefully they will soon advise the City of when the repair work can begin.

City Manager David Treme stated that the City has requested quick action on this project. Mr. Woodson asked if the City has to receive permission from NSR to make repairs to the bridge.

City Attorney Rivers Lawther pointed out that with the number of freight trains that pass under the Shoher Bridge, it would not be advisable to start repairs until the City obtains permission from NSR to access their tracks once the trains can be scheduled to stop.

MAYOR'S ANNOUNCEMENTS

(a) Census Road Tour

Mayor Kluttz stated that the Salisbury-Rowan Complete Count Committee for Census 2010 announces that the Census Road Tour will stop at the Salisbury-Rowan Community Action Agency located at 1300 West Bank Street on Wednesday, February 24, 2010 between 9:00 am and 12:00 Noon. She pointed out that attendees will have the opportunity to learn about the 2010 census and understand the benefits a complete count can bring to communities.

(b) Salisbury-Rowan Reads

Mayor Kluttz announced that Council will be meeting with Rowan County Commissioners on Wednesday, February 17, 2010 to discuss the Salisbury-Rowan Reads project and to make a decision as to whether to continue with the program this summer.

(c) City Council's 25th Annual Future Directions and Goal Setting Conference

Mayor Kluttz stated that the City held its 25th Annual Future Directions and Goal Setting Retreat February 10-11, 2010 and thanked City Manager David Treme and staff for an excellent

two days. She also extended appreciation to the Rowan Museum for the use of its facility. She also expressed appreciation to the retreat speakers: Mr. George Khaldun from the Harlem Children's Zone in New York; Charlotte Mayor Anthony Foxx; and Dr. Chuck Ambrose, President of Pfeiffer University.

ADJOURNMENT

Motion to adjourn the meeting was made by Mr. Miller, seconded by Mr. Woodson. All council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 6:34 p.m.

Susan W. Kluttz, Mayor

Myra B. Heard, City Clerk