

Salisbury, North Carolina
August 6, 2013

REGULAR MEETING

PRESENT: Mayor Paul B. Woodson Jr., Presiding; Council Members Mayor Pro Tem Maggie A. Blackwell, Karen Kirks Alexander, William (Pete) Kennedy, and William Brian Miller; City Manager Doug Paris; City Clerk Myra B. Heard; and City Attorney F. Rivers Lawther, Jr.

ABSENT: None

Salisbury City Council met in Council Chambers in City Hall located at 217 South Main Street. The meeting was called to order by Mayor Woodson at 4:00 p.m. The invocation was given by Mayor Pro Tem Blackwell.

PLEDGE OF ALLEGIANCE

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

RECOGNITION OF VISITORS

Mayor Woodson welcomed all visitors present.

SUMMER YOUTH EMPLOYMENT PROGRAM

Human Resources Specialist Jason Jones and Human Resources Analyst Milena Sifuentes addressed Council regarding the Summer Youth Employment Program. Mr. Jones explained this is the fourth year of the program. He noted the City received 60 applications and selected nine students to work for six weeks. He stated the Summer Youth Employment Program is funded through a Community Development Block Grant and addresses Council's goal to mentor local youth. He thanked family members and department supervisors who worked to make the program a success.

Ms. Sifuentes recognized the students who participated in the Summer Youth Employment Program:

Ms. Rosalina Blakeney - Communications
Ms. Halle Cowan - Human Resources
Mr. Jayquan Hamilton - Engineering
Ms. Kadajah Jackson - Parks and Recreation
Ms. Victoria King - Solid Waste
Mr. Daniel Lore - Parks and Recreation
Mr. Salvador Nava Guerrero - Solid Waste
Mr. Michael Rustin - Transit
Ms. Marissa Wood - Customer Service

Ms. Rosalina Blakeney and Mr. Jayquan Hamilton shared their experience in the Summer Youth Employment Program. Ms. Blakeney thanked Council for the opportunity to work with the Communications team and noted she plans to major in Communications. Mr. Hamilton stated the Summer Youth Employment Program helped prepare him for the interview process. He thanked Council for supporting the program.

Ms. Sifuentes thanked each student for participating in the program and indicated she hopes they will consider the City of Salisbury for future employment.

Mayor Woodson congratulated the students, and he thanked everyone who worked to make the program a success.

PROCLAMATION

Mayor Woodson proclaimed the following observance:

NATIONAL NIGHT OUT

August 6, 2013

CONSENT AGENDA

(a) Approval of Minutes

Approve Minutes of the Regular Meeting of July 16, 2013 and the Recessed Meeting of July 30, 2013.

(b) 29th Annual Future Directions and Goal Setting Retreat

Adopt February 12-13, 2014 as the dates for the 29th Annual Future Directions and Goal Setting Retreat.

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

FINANCIAL ASSISTANCE – ROWAN COUNTY AIRPORT

Mayor Woodson recognized Rowan County Commission Vice-Chair Craig Pierce, along with Chairman Jim Sides and Rowan County Manager Gary Page who were in the audience.

Mr. Pierce addressed Council regarding the County's request for financial assistance at the Rowan County Airport. Mr. Pierce explained the City and County entered into an Airport Development Zone Agreement in 2009 to establish an Airport Development Fund that invested property tax revenue from aircraft into airport capital improvements. He pointed out the Airport was deannexed July 1, 2013 canceling the agreement, but escrowed funds remain for capital improvement.

Mr. Pierce noted when the hangar was built, Salisbury-Rowan Utilities (SRU) agreed to run a water line for infrastructure on the right side of the tarmac. He indicated the water line could accommodate up to five additional hangars or other projects that might occur. He explained the County submitted a request to SRU for half of the \$78,000 bill from the escrowed funds. Mr. Pierce requested the funds be dispensed to the County, and stated he hopes the City and County can put the problems faced during deannexation behind them and work together for the betterment of the community.

City Manager Doug Paris explained the Airport Development Zone Agreement was active when the airport was in the City limits and the funds were allocated for capital projects. He stated prior to deannexation he discussed sharing the cost of the water/sewer line to serve the hangar with Mr. Page. He added this was an appropriate use as identified in the Agreement.

Mr. Paris referenced a joint meeting held in March with City Council, County Commissioners, and the local legislative delegation. He stated the City presented a plan to assist with airport development and funding, but the County declined the offer. He added

deannexation of the airport nullified the agreement, and he is no longer authorized to approve the request for funding.

Mr. Paris stated the City's Planning Department is working with the owner of the Kesler Mill site to remove debris. He explained for the partnership to work the property owner must hire the firm to remove the debris, the City must waive the fines associated with the debris, and Rowan County must waive the landfill fees. He indicated staff received an email from the County stating the partnership is on hold until the City's cooperation regarding financial assistance at the Airport is determined. He noted the Airport project is now intertwined with the Kesler Mill cleanup, and he recommends scheduling a joint meeting with Rowan County Commissioners to discuss airport funding, Kesler Mill and other items of mutual interest.

Mayor Woodson asked if the City and County would like to have joint meeting to discuss items of mutual interest.

Mr. Pierce stated he does not want to intertwine a project that has not started with one that is complete. He pointed out the water line is finished, and the City will retain ownership. He indicated the County is trying to cooperate and the City is missing the point. He explained he sent the email referenced by Mr. Paris, and it was to let Community Planning Services Director Janet Gapen know that the outcome of the airport project will determine how he is able to move forward with the Kesler Mill cleanup. He added the airport project is \$39,000 versus approximately \$162,000 for the Kesler Mill project, and it is not fair to marry the projects.

Councilmember Kennedy noted Council should keep the item as simple as possible. He pointed out it is a small amount of money, and he would like to extend an olive branch to the County by funding the \$39,691.85 project. He added he looks forward to working with the County on projects in the future and does not want to mix this project with other items.

Councilmember Miller noted it takes trust to build trust, and he is willing to support the project. He added the City and County are co-dependant and must find a way to work together for the betterment of the community. He pointed out Council made a commitment and needs to honor it. He asked everyone to let go of the past and start fresh.

Mayor Pro Tem Blackwell thanked Mr. Kennedy for extending the olive branch. She added Council should give the funds to the County and trust it will respond in kind regarding the tipping fees for the Kesler Mill site. She cautioned the public will be watching.

Councilmember Alexander stated it is time to reach across invisible lines and prove the City and County can work together. She thanked Mr. Paris for his research and insight. She added the County is requesting the money, and Council must honor its commitment.

Mr. Miller stated if there was a new opportunity to build a hangar that would lead to new investment Council would agree to partner. He added this is an economic development opportunity and the right thing to do. He emphasized City Council and the Rowan County Board of Commissioners must work together to make things happen for the community.

County Manager Gary Page thanked staff for partnering with the County. He pointed out the project began in August 2012 and is a \$2 million hangar with multi-million dollar jets. He noted the fire compression system had to be foam, and the larger water system required additional pressure. He stated the County worked with Utilities Director Jim Behmer and staff to design and construct the project which saved the County time and money. He pointed out the \$78,000 bill was paid in full to SRU in order to make it a partnership, with the City reimbursing half from the Airport Development fund. He added the money was collected from the airplane owners for improvements. He indicated the waterline was the first project the County deemed a qualifying project. Mr. Page thanked Council for keeping the projects separate, and noted the difference in the project amounts is substantial.

Mayor Pro Tem Blackwell pointed out the County waived fees for another municipality, and Council appreciates the County's consideration.

Mr. Pierce explained Rowan County set up an account for East Spencer, but the town has yet to tip debris and may take a different approach. He added it was a way to help East Spencer move forward on their project.

Mr. Pierce stated the County wants the Kesler Mill site cleaned up but is not sure how to proceed. He explained the original proposal was to escrow the cleanup and put a tax lien on the property, but the property could be gift-deeded to the City, and the County cannot place a lien on the City. He noted the County is trying to find a way to eliminate up-front costs for the cleanup.

Mr. Pierce explained there are approximately 4,500 tons of debris at the Kesler Mill site, and it will cost over \$162,000 to remove it. He added the landfill is an enterprise fund, and its funds must be handled differently. He stated the email he sent indicated he could not guarantee the outcome for waiving the \$162,000 if the City held back the funds escrowed for the airport. He emphasized three votes are required for an item to pass, and he is currently the only one working on the project. He added until all of the information is compiled and he knows exactly how to move forward, he cannot present the project to the other Commissioners. He explained the email was to let staff know that a negative outcome for the airport project could make it harder to sell a compromise on the tipping fees to the Commissioners. He stated he is working on the issue and looks forward to working with Ms. Gapen on a solution to divert the dollars until the land is sold or developed.

Mayor Woodson noted this is an economic development project, and Council supports economic development. He added the airport deannexation is over and if an item benefits the community and helps the economy, Council will support it.

Thereupon, Mr. Kennedy made a **motion** to approve a request for financial assistance in the amount of \$39,691.85 for the Rowan County Airport. Mr. Miller seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Alexander and Blackwell voted AYE. (5-0)

Mr. Kennedy stated he would support a joint meeting to talk about future projects.

REPORT – ABC GENERAL MANAGER TERRY OSBORNE

Rowan/Kannapolis Alcoholic Beverage Control (ABC) General Manager Terry Osborne addressed Council regarding educational presentations funded from revenues received from law enforcement. Mr. Osborne stated the 2012 school year was the ABC's most successful year of underage drinking programs in local schools. He explained the goal is to promote education regarding underage drinking in colleges and high school with programs targeting middle and elementary school students. He pointed out in the United States 4,000 under age individuals become dependent on drugs, and 8,000 under age individuals become dependent on alcohol each day.

Mr. Osborne noted Rowan/Kannapolis ABC presented 24 programs to students with the assistance of Police Chief Rory Collins and Rowan County Sheriff Kevin Autin. He explained State law requires seven percent of ABC revenues go toward alcohol awareness education. He noted this is the first year ABC had 100 percent participation, and he thanked Council for its support.

Mayor Woodson thanked Mr. Osborne for all he does for the community.

Mr. Osborne thanked Councilmember Alexander for all her work as Council liaison for the ABC Board.

SAFETY- INTERSECTION OF FULTON AND MONROE STREETS

Mayor Woodson explained there have been a number of accidents at the intersection of Fulton and Monroe Streets. He noted staff has studied alternatives to improve safety at the signalized intersection.

City Engineer Wendy Brindle noted a study of the intersection began in October 2009 and was completed in October 2012. She indicated there were 34 accidents at the intersection over the three-year period. She noted 22 accidents were right-angle collisions which should have been prevented by a traffic signal. She stated staff worked with North Carolina Department of Transportation (NCDOT) Spot Safety Group to examine the intersection and the site. She indicated the group reviewed the site, traffic volumes, speeds, and accidents, but an accident trend was not identifiable. She noted staff extended the all-red time for the intersection by one second to try to alleviate the problem with the understanding the signal was scheduled for an upgrade.

Ms. Brindle noted in July there were two accidents that caused staff to revisit the intersection and talk to NCDOT. She pointed out staff was unable to identify a trend and decided to seek public input.

Ms. Brindle reviewed the alternatives being considered:

- Upgrade existing 8 inch signal heads to 12 inch
- Remove existing signal and install an all-way stop with a flashing red beacon
- Explore design of a mini traffic circle

Ms. Brindle reviewed the mini traffic circle and noted it is a proven concept, but the City does not have specific design criteria. She pointed out the biggest traffic circle that could be placed in the intersection is 74-feet, with a 22-foot center median. She stated this is smaller than a cul-de-sac design which is 90-feet in diameter.

Ms. Brindle stated since staff did not have any data for computing capacity it set up a mini traffic circle at the Street Division. She noted the design can allow smaller fire trucks and dump trucks, but larger trucks would require a portion of the median for access.

Ms. Brindle explained the primary area of interest is the intersection of Fulton and Monroe Streets. She noted there are three other signalized intersections in the area, and staff recommends considering a comprehensive plan. She reviewed a map of the area and explained:

- Fulton Street has approximately 7,800 vehicles per day
- Monroe Street has approximately 3,000 vehicles per day
- Ellis Street has approximately 700 to 900 vehicles per day depending on the block
- Horah Street has approximately 1,400 vehicles per day
- Jackson Street has 200 vehicles per day

Ms. Brindle noted the 85th percentile speed for Fulton Street is 36 mph and 37 mph on Monroe Street. She explained this means 85 percent of the people in the study were traveling at that speed or lower.

Ms. Brindle indicated staff received input from the public through email and a neighborhood meeting. She noted the majority prefers an upgrade to the traffic signal versus the other alternatives.

Councilmember Miller noted there are treatments to pavement designed to get drivers attention such as rumble strips or crosswalks. He asked if those treatments are effective in this situation.

Ms. Brindle indicated studies on rumble strips indicate they reduce speed and accidents at intersections by approximately 25 percent. She stated if the best solution is determined to be the upgrade of the traffic signal and it does not prove to be effective, rumble strips could be considered. She cautioned rumble strips are not preferred in neighborhoods due to the noise they generate, and crosswalks do not give advance warning.

Mayor Pro Tem Blackwell noted Council received 14 emails from:

- Pastor Rhodes Wholly
- Ms. Diane Hooper
- Ms. Karen Windate
- Ms. Mona Wallace
- Mr. Lee Wallace
- Ms. Whitney Wallace
- Ms. Barb Surell
- Mr. Greg Shields
- Ms. Elizabeth Trek
- Mr. Brian Davis
- Mr. Dan Graft
- Mr. Dennis Hill
- Ms. Kelly Fisher
- Mr. Tom Tycro

Ms. Blackwell stated two citizens were in favor of the traffic circle and the rest preferred the upgraded signal lights.

Mayor Woodson opened the floor to receive public comments.

Mr. Greg Shields, 415 South Fulton Street, thanked Council for recognizing the safety issue and Ms. Brindle for her research. He indicated he has seen and heard the accidents and prefers the mini traffic circle. He pointed out he served as Chair of the Downtown Salisbury, Inc. (DSI) Parking and Traffic Committee for five years and during that time he researched traffic calming. He explained the most effective traffic calming is consistent enforcement of traffic laws. He added the second most effective method are speed humps, but emergency vehicle operators do not like them, and the third most effective is a traffic circle. He noted the mini traffic circle in this residential neighborhood would calm traffic. He added he is not opposed to an all-way stop plan. He indicated NCDOT feels the traffic level at that intersection dictates an all-way stop. He explained stop signs cost less to implement than a traffic circle, and perhaps they should be considered first.

Ms. Joyce Parra stated she witnessed the light turning green in both directions on Fulton and Monroe Streets, and Ellis and Monroe Streets. She noted the options are interesting, but are directed at drivers. She emphasized the signal lights are malfunctioning. She stated the former City Engineer told her the lights could not malfunction, but with 11 accidents in 12 months something is wrong. She indicated she thinks there is a problem with the wiring, and it should be checked and replaced.

Mr. Brian Davis, 429 Park Avenue, stated he is familiar with the neighborhood and thinks the larger light or an all-way stop would be the best alternatives. He noted a traffic circle could be a detriment to the neighborhood and could cause harm to residents or property.

Ms. Karen Windate, 529 South Fulton Street, thanked Council and staff for its interest in the neighborhood. She noted she has concern with the traffic circle because it would be invasive to the neighborhood and may cause more problems than it fixes. She pointed out there is not enough space or data to support the mini traffic circle. She noted an all-way stop may be problematic because of the volume of traffic. She added, of the three options, the larger traffic signal seems to be best solution, but she is not sure this will independently fix the problem. She encouraged staff to look at the entire neighborhood as well as try to calm traffic at the intersection of Jackson and Monroe Streets.

Ms. Mona Wallace stated she owns a home at the intersection of Monroe and Fulton Streets where the accidents take place. She indicated she is opposed to a traffic circle and noted she would be unable to access her home. She agreed with Ms. Windate and noted sitting on her side porch she sees vehicles speed up to make the light. She noted when she is sitting on her front porch she sees vehicles speeding up to make the light on Fulton Street. She added the larger traffic signal may be helpful, but in her opinion, the speed is too high on Fulton Street.

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

Mayor Pro Tem Blackwell stated when the length of the red light was extended by one second she thought it would fix the problem, but there were more accidents. She thanked the Street Division for trimming the trees to enhance visibility, the Police Department for increasing patrols, and Ms. Brindle who spent a great deal of time working on the study. She recognized Ms. Brindle and Captain Melonie Thompson for attending a neighborhood meeting to address the issue. She noted a traffic circle cannot be undone so if it is not effective it is a poor first step. She indicated she would like to start with the least invasive solution and then move up in intensity until an effective solution is found.

Councilmember Miller agreed with Ms. Blackwell, and he pointed out a stop sign and traffic signal can replace each other relatively easily. He noted a traffic circle is expensive and invasive.

Ms. Brindle noted staff would have to obtain easements for a traffic circle. She stated NCDOT could assist with funding for the upgrades to the center section with Spot Safety Funds. She pointed out there would also be a cost to the City associated with signal upgrades, such as utility relocation.

Mr. Miller stated Council should look for incremental treatments and work to find something that would maintain the historic nature of neighborhood. He added he thinks the larger traffic signal is the best first step. He indicated he did not have a problem with the traffic circle, but he thinks it should be a last resort and not a first step. He noted if the neighborhood is looking for other ways to help calm traffic, Council can take a broader look at the whole neighborhood.

Councilmember Kennedy stated he supports increasing signal heads from eight inches to 12 inches and examining the blocks adjacent to the intersection to see if all-way stops will help.

Councilmember Alexander indicated she prefers the larger traffic signals proposed by NCDOT. She pointed out she is not in favor of the traffic circle because the intersection is not large enough to accommodate it. She added she likes the suggestions to have something done in the Ellis Street and Jackson Street blocks. She stated she supports the larger traffic signals as a first step.

Ms. Blackwell asked how much time is needed to evaluate the effectiveness of the larger traffic signal. Ms. Brindle noted there is an intense study for the first three months following installation, then additional studies at six months and 12 months in order to compare data. She pointed out staff will continue to monitor the situation after the first 12 months.

Ms. Alexander asked if it is possible for the stop light at the Fulton Street and Monroe Street intersection to remain red on all sides for longer than one second. Ms. Brindle noted the light currently has a 2 to 2.5 second all-red time. She cautioned that drivers tend to ignore the light if it remains red longer than that time.

Mr. Miller stated the southeastern quadrant of this intersection has plenty of sight distance. He asked if the accidents are happening at any particular part of the intersection or if they are random. Ms. Brindle stated the accidents are random. She added, out of the 22 right-angle collisions, two were caused by DWI, one was caused by icy conditions, four were drivers running the traffic signal heading east bound on Monroe, four were northbound on Fulton, five were heading south bound on Fulton, and one westbound on Monroe. She added in four of the accidents everyone claimed they had a green light and the cause was undetermined, and one accident was due to brake failure.

Mayor Woodson stated it sounds like speed is a problem and Ellis, Jackson and Monroe Streets need review for traffic calming. He pointed out he did not want to rule out that the lights are turning green on all sides, and staff needs to make sure the traffic signal is dependable.

Ms. Brindle explained the signal has been checked multiple times. She noted there were no indications from data logs that the signals have failed. She pointed out the signals are designed with safety in mind, and they resort to a flashing mode if the signal fails. She emphasized she has not had any indication the signal has failed. She stated each traffic signal has a log that technicians can review for problems, and staff has not seen any indication the signal has failed.

Thereupon, Ms. Blackwell made a **motion** to upgrade the existing eight inch traffic signal heads to 12 inch traffic signal heads and to bring Council a status at six months and a presentation in the near future on Ellis and Monroe Streets and Jackson and Monroe Streets. Ms. Alexander seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Alexander and Blackwell voted AYE. (5-0)

Mayor Woodson thanked the citizens for their comments and Ms. Brindle for her presentation.

ORDINANCE AMENDMENT RELATED TO PUBLIC STREET FESTIVALS AND SPECIAL EVENTS

City Manager Doug Paris explained the City has an Ordinance that allows street festivals and special events only in the downtown district. He noted the proposed change would allow the City to approve events outside of the downtown district allowing for a greater variation of events throughout the City and its park facilities.

Thereupon, Mr. Miller made a **motion** to adopt an Ordinance amending Chapter 22, Article VI, of the Code of the City of Salisbury, relating to public street festivals and special events. Mr. Kennedy seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Alexander and Blackwell voted AYE. (5-0)

AN ORDINANCE AMENDING CHAPTER 22, ARTICLE VI, OF THE CODE OF THE CITY OF SALISBURY, RELATING TO PUBLIC STREET FESTIVALS AND SPECIAL EVENTS

(The above Ordinance is recorded in full in Ordinance Book No. 24 at Page No. 169-171, and is known as Ordinance 2013-34)

UPDATE-SEWER USE ORDINANCE

Salisbury-Rowan Utilities (SRU) Environmental Services Manager Sonja Basinger and Pretreatment Program Coordinator Aaron Otten addressed Council regarding proposed revisions to Chapter 25, Articles I and VIII, and Sections 25-38 of the Code of the City of Salisbury. Ms. Basinger indicated North Carolina recently updated its Sewer Use Ordinance Model to address revisions to the North Carolina Administrative Code Section 0900 that governs local pretreatment programs. She noted the model incorporates minimum Federal and State requirements and optional provisions.

Ms. Basinger stated the City is required to implement the changes into its Ordinance. She indicated staff reviewed Chapter 25 of the Code and worked with environmental counsel to make the necessary updates. She explained the Sewer Use Ordinance establishes safe and proper use of the sanitary sewer by all users. She added SRU currently maintains over 400 miles of sewer lines which are impacted by what goes down the drain. She explained the Sewer Use Ordinance helps protect the infrastructure. She displayed a photograph from the Crane Creek Lift Station and pointed out the debris covering the 100 horse power pump. She stated at SRU's wastewater treatment plants, living organisms clean the majority of wastewater. She indicated the Sewer Use Ordinance helps protect those organisms and SRU's operations from potentially harmful discharges.

Ms. Basinger stated Federal and State law require municipalities with Significant Industrial Users (SIU) to implement an industrial pretreatment program. She noted the City currently has seven SIU's and has permitted 27 SIU's since the pretreatment program began in 1983.

Ms. Basinger explained the City adopted its Sewer Use Ordinance in 1973, prior to the Federal Clean Water Act of 1977. She noted the Sewer Use Ordinance was based on the 1972 amendments to the Federal Water Pollution Control Act. She stated the State developed a model Sewer Use Ordinance in July 1983, and in September 1983 the State approved the City's pretreatment program. She noted the last major update to the Sewer Use Ordinance was adopted by Council in 1999.

Mr. Otten reviewed the proposed amendments to Chapter 25:

- Article I
 - Definitions-removed obsolete/unused terms, clarified others to make them more easily understood
- Article VIII (Sewer Use Ordinance)
 - Prohibited discharges
 - Local limits revised to reflect the State model
 - Sampling and analysis requirements for industrial users
 - Adjudicatory hearings updated
 - Hazardous waste notification requirements
 - Definition of significant non-compliance revised
- Section 25-38
 - Sewer service charges, surcharges and analytical charges

Mr. Otten explained no new fees are being proposed. He noted the State has approved the proposed changes and the changes to the City's Enforcement Response Plan, contingent upon Council approval. He indicated the changes are not expected to have any negative financial or operational impacts on regulated industry.

Thereupon, Mr. Miller made a **motion** to set a public hearing for August 20, 2013 to receive public comment regarding revisions to Chapter 25, Article I and VIII, and Sections 25-38 of the Code of the City of Salisbury. Ms. Alexander seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Alexander and Blackwell voted AYE. (5-0)

SPECIAL USE PERMIT – 5 EASY STREET

SUP-03-2013 – 612 5 Easy Street

Mayor Woodson noted Councilmember Karen Alexander needed to be excused for this item, and he asked for a motion to excuse Ms. Alexander. Thereupon, Mr. Miller so **moved**. Mr. Kennedy seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Blackwell voted AYE. (4-0)

(a) Swearing In

Mayor Woodson indicated anyone who wished to speak for or against this item must be sworn in, and he asked those who would like to speak to come forward. Mayor Woodson administered the oath to the following:

Mr. Trey Cleaton
Mr. Jeremy Gardner
Mr. Henry Alexander

Mr. Ryan Stoltz
Mr. Robert Crum
Ms. Cherie Turner

(b) Ex Parte Disclosure

Mayor Woodson asked Council members if anyone had knowledge of this case they wished to disclose. Mayor Woodson stated Council members received a letter from Mr. Robert Crum on this case. He added he has also received comments at his business, but most of the comments were questions about what a hookah lounge is. Mayor Woodson noted he has made no decision one way or the other but just listened to comments. The other Council members indicated the letter from Mr. Crum was the only communication they had received.

(c) Mayor Woodson convened a public hearing, after due notice thereof, to receive testimony regarding SUP-03-2013.

Senior Planner Trey Cleaton presented SUP-03-2013 and noted the request is to serve beer and wine in an existing business known as King Tut Café and Hookah lounge. He stated the café and hookah lounge use is similar to a cigar or coffee shop and is a permitted retail use in the Downtown Mixed Use (DMX) zoning district. He added the use is also allowed by-right in the DMX district, so businesses such as this do not need additional permitting or review. Mr. Cleaton stated the business has been open for approximately 60 days, and the focus today is beer and wine sales. He noted beer and wine sales and consumption in the DMX district requires a Special Use Permit. He pointed out, for this business, the sale of beer and wine is secondary to the primary use of the café and hookah lounge. He informed Council all land uses within the DMX district are exempt from the parking provisions in the Land Development Ordinance (LDO).

Mr. Cleaton displayed a vicinity map and pointed out the building where King Tut Café is located. He noted the business faces 5 Easy Street and is in a two story building. He clarified the business is only occupying the ground floor of the two story building. He added if the SUP is approved it will only apply to the space occupied by the Café. He pointed out the building's location one block for North Main Street, with the back of the building facing East Council Street.

Mr. Cleaton then displayed site photographs of the current business and pointed out it is located on the first floor of the building. He noted the second floor of the building would not be included in the SUP permit. He then reviewed photographs of various views of the building and its elevations. He noted the building also faces onto East Council Street, where the entrance for the second story of the building is located.

Mr. Cleaton stated the approval or denial of a Special Use Permit are evaluated by the following four criterion:

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

Mr. Cleaton informed Council staff has verified that the business is not located 500 feet from any parcel containing a school.

Mayor Woodson then opened the floor and asked those who were in favor of the SUP to come forward.

Mr. Jeremy Gardner, 721 Hamilton Drive, stated he is an employee inside of Council Street Commons and has been there since King Tut opened. He indicated since King Tut has opened he has been a patron many times and has enjoyed his experience there. He stated he has never felt uncomfortable or unsafe, and it has always been a great experience for him and his friends. He noted he and his friends are a group of 20 to 30 year olds, which is the age range of primary users indicated by the owner at the Planning Board meeting. Mr. Gardner stated the owner asked him and his friends what they would like if the Café is allowed to sell beer. Mr. Gardner noted Salisbury is one of four cities in North Carolina that has four degree making universities with Catawba College, Livingstone College, Rowan Cabarrus Community College, and Hood Theological Seminary. He stated this business is a great place for students from all of these institutions, as well as all Salisbury citizens, to go. He added, based on the four criterion, he does see why the SUP should be denied.

Mr. Henry Alexander, 419 South Fulton Street, stated he rents the building to King Tut. He noted he had never been to a hookah lounge so he visited the business' other location in Charlotte to see what it was like. He indicated the business was very quiet and respectful, and he saw no objection to the business. He noted he wanted to make sure this was the type of clientele he would invite to the neighborhood, and after visiting it, he thought it would be. Mr. Alexander stated the owner rents the space and wanted to include beer and wine, and he did not see a problem with that because the neighborhood already has beer and wine served at Wong's and all of the event venues in the area. He stated in regards to parking, there is plenty of it all around the business, and parking has never been a problem. He noted he thinks beer and wine would be a good way to help the owner increase sales and bring more people to the area. Mr. Alexander stated he thinks it is a great advantage to the community to have new businesses, and he welcomes them here.

Mr. Ryan Stoltz, 7049 Woodbridge Valley Circle, Charlotte, North Carolina, stated he is the General Manager of the Salisbury location of King Tut Café. He referred to the criterion for decision and noted he has confirmed with the City's Zoning, Fire and Police Departments that the space meets all requirements. He referred to the second standard and stated the business will be compatible with the surrounding area because no part of the exterior has been changed or altered. Mr. Stoltz referred to standard three regarding the assurance of public health and safety and stated the business is located in a commercial area and is a commercial use. He stated the public health, safety and welfare are covered by existing systems such as fire protection systems placed throughout the building. He added the building is 100 percent handicap accessible, and the public lighting on Easy Street is more than acceptable. He indicated the business has security and surveillance systems in place to further insure safety. Mr. Stoltz noted at the Planning Board meeting he was asked what steps would be taken to insure safety of customers if wine and beer sales are permitted. He indicated his response is that if a patron does not want wine they can turn their glass upside down and it will be taken away. He stated all employees who will take wine and beer orders will undergo online training to help them use discretion, and what steps need to be taken if a taxi service is needed to make sure everyone leaves the building in a safe manner. He commented the issue today is not parking or signage but beer and wine. He stated the business looks forward to growing with the community and being involved.

Clyde, Bank Street, stated he is the adjoining property owner at 114 East Council Street. He thanked Council for using the Wisdom of Solomon in previous cases this afternoon and indicated he hopes Council will apply it to this case. He stated he is concerned about the procedures for this case. He noted he has a letter dated June 6 and it has been two months that this case has gone through the One Stop Shop. He commented he is concerned this is not fair to the business owner to wait two months, adding there have been several meetings that have lasted over an hour. He reiterated he is concerned about the procedure that this business owner has not been helped. He stated he has attended four meetings that have lasted too long regarding this case. Clyde noted this has not been a one stop because he has been to four different places and spoken to four different secretaries. He stated the owner has waited two months to find out if he can sell beer and wine. He added everyone on the block has beer and wine, and Waterworks even has open bars for their parties. He stated the events at the Depot also have beer and wine and did not have to go through this process. He indicated it is not fair for a new business to Salisbury to have to go through this for two months.

Mayor Woodson then asked those who were opposed to the SUP to come forward.

Mr. Robert Crum, 927 North Main Street, indicated his business is located at 116 East Council Street, beside the building and business in question. He noted when he appeared before the Planning Board he was not opposed to the business, but he had concerns about access to his driveway through Rankin Alley, which runs through 118 and 116 East Council Street. He indicated he has had many problems with the access and has photographs and documentation but sees no need to go through it today. He stated the owner testified at the first Planning Board meeting that he sells tobacco. Mr. Crum indicated he has provided a letter to Council that contains more information and more of his discussion or argument about this. He stated after researching State law and speaking to the North Carolina Department of Health, he questions how City Council can allow alcohol sales in this business. He pointed out there is a law that

states smoking is not allowed in a bar. He stated the Planning Board recommended making this establishment a bar with beer and wine sales, and there are also tobacco sales. Mr. Crum indicated he gave Council two articles that state smoking hookah is just as dangerous to a person's health as smoking cigarettes. He indicated he is addressing standard three regarding public safety, health and welfare and noted the State Legislature has stated smoking is not allowed in bars. He stated this is not a cigar bar, which is the one exception to the law and is required to be in a freestanding business with no other tenants or businesses. Mr. Crum indicated he has presented Council with a copy of the State law, and he had wanted to review it at the last Planning Board meeting but was not allowed to speak. He stated he was dumbfounded how the Planning Board could recommend the use for a property that violates State law. He commented it would be as if every bar and restaurant in the City requested a Special Use Permit to allow smoking in their establishments. He stated the State Statutes indicate a municipality can become more restrictive with this issue, but cannot be more lenient. He noted by Council granting this establishment the sale of beer and wine under a Special Use Permit, where people smoke tobacco, it appears to him to be against the law.

Ms. Cherie Turner, 927 North Main Street, indicated she would like to point out a few things she found while researching this issue. She stated she looked on the North Carolina Department of Health and Human Services website, and it has questions and answers regarding tobacco prevention and the new law. She noted the site clearly states the law prohibits smoking in restaurants and bars. She clarified a restaurant is any establishment that is inspected and permitted by a local health department, and a bar is an establishment that holds a State permit authorizing the sale of malt beverage. Ms. Turner referred to the Department of Health and Human Services and noted it states smoking hookah is only allowed if the establishment is not a restaurant or bar, does not serve food or drink for pay, and is not required to comply with State public health laws. She indicated the website lists several hookah bars that did not comply with the new smoking law and all have closed because they could not, and would not, comply with the law. She commented she is not an attorney but was able to find information that leads her to believe a hookah bar cannot serve alcohol. She encouraged Council to research this issue as well. She noted she is surprised this issue has gone this far and has not been addressed.

Mayor Woodson recognized Mr. Stoltz to speak again.

Mr. Stoltz stated Ms. Turner referred to three hookah bars that were not in compliance and shut down, but he has never heard of those establishments. He stated if a person researches Raleigh, Chapel Hill, Research Triangle Park, Boone, and downtown Charlotte, which has the Epicenter with multimillion dollar establishments that are nightclubs and bars; they have establishments that are serving hookahs. He indicated he can provide a list of business throughout the State that do this now and are expanding. He recommended seeing the actual hookah laws rather than hearsay or something printed off of the internet.

Mayor Woodson asked staff if there were any comments in regards to what Mr. Crum stated. Mr. Cleaton stated he could offer answers to Mayor Woodson's specific questions. Mayor Woodson asked if this use is legal. Mr. Cleaton responded the day-to-day primary use of the building is the hookah lounge, and it is legal in terms of the LDO and is treated as a retail establishment much like a coffee shop or cigar lounge. He added these establishments have

space to enjoy whatever is purchased. He noted this is the model that is used for the permitting process and with the business licensing process. He noted the Health Department does not view this as a restaurant. He indicated the business has some prepackaged food or drinks, but it is not under the regulation of the Health Department. He stated for Alcoholic Beverage Control (ABC) permitting it is also treated as a retail establishment. He commented this is backed-up from the facts found by staff, although he cannot speak to the North Carolina smoking laws in regards to restaurants. He stated staff views the primary use as one that is not a restaurant. He noted today the question is the special use to allow beer and wine.

Mayor Woodson recognized Mr. Crum to speak again.

Mr. Crum indicated he understands the Planning Board's approach to this, and although he is not a lawyer he has worked in that field for several years. He noted he handed Council a copy of the State Statute, not something that was just pulled from the internet. He stated the information regarding the safety of smoking was pulled from the internet from the Centers for Disease Control and the American Cancer Association. He stated since he is not an attorney he contacted the North Carolina Health Department for clarification on this issue. He indicated he found that in 2009 bills were submitted in the North Carolina Legislature to define a hookah bar the same as a cigar bar, but they were unsuccessful. Mr. Crum noted a cigar bar is the exception to the law but it requires the cigar bar to be in a separate building. He indicated he encountered this several years ago when the owner of Havana Knights approached him searching for a freestanding building that would meet the new State law. He stated he did not lease his building to the business. He commented the use was a cigar bar, although it is his understanding they provided hookah. Mr. Crum stated he spoke to the North Carolina Health Department who indicated smoking hookah is as bad as smoking cigarettes.

Mayor Woodson clarified the safety of smoking is not what is being discussed. Mr. Crum stated his point is not the health issues, but that it appears state laws are clear. He added the North Carolina Health Department asked him if he wanted an attorney to represent him to take care of this issue, but he declined. He indicated if Council wants to approve the SUP, he will turn the issue over to the North Carolina Health Department.

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

Councilmember Miller asked about the hours of operation for the business. Mr. Cleaton responded he would defer to the manager of the business. Mr. Miller deferred his question.

Mr. Miller stated the issue before Council is the use, and by the interpretation of the planning professionals, it is a by-right use. Mr. Miller noted if there is a health department component to this issue that is not part of Council's purview. He commented what is before Council is the Special Use Permit. He pointed out the four standards for the decision and noted he cannot find where the permission of alcohol in this place, when there are routinely festivals and events with beer and wine above and surrounding the location, would change the character of what is taking place in this block. Mr. Miller noted the building is not adjacent to a school, and commented this feels more like a dispute between property owners. He stated the task

before Council is if the presence of alcohol would materially change the neighborhood it is in, and he cannot find an answer that it does. He commented he sympathizes with the property owners because he would not want it next door to him, but it is available by-right at this point and time. He stated this is not about whether Council does or does not want a hookah bar, but if this Special Use Permit violates any of the criterion. He added if it does not, then Council must grant the SUP. Mr. Miller commented if there is a complaint or issue that arises after the fact, an SUP can be revoked. He noted this is supposed to bring the person who has the SUP and the person who might be offended by it to try to get along so there is not a disruption in the business. He stated he does not see a reason this should not be approved other than the neighbor dispute.

Mayor Woodson commented he remembered when Havana Knights first opened it was located in one room. Mr. Cleaton agreed and noted the business was forced to move to a freestanding building to meet the law. He added the original location was a multi-story building.

Mr. Cleaton indicated Mr. Miller was correct that the SUP can be revoked at any time. He pointed out the permit runs with the property so if the Café moves out and a business moves in, the new business would be able to take advantage of the SUP. He added Council can also add conditions to the SUP.

Mayor Pro Tem Blackwell asked City Attorney Rivers Lawther his opinion. Mr. Lawther stated the City does not issue ABC permits, and does not make Board of Health inspections, but the City issues zoning permits. He stated this building has applied for a zoning permit that would allow the sale of alcohol, and if Council grants the permit all it has granted is proper zoning for the business to then make an application to the ABC Board in order to sell beer and wine. He added if the business violates the ABC regulations, then the ABC Board would pull the permit. He stated the Board of Health can also become involved if it finds the business is violating health codes. He reiterated, at this stage, the City is not the arbiter on smoking or not smoking.

Mr. Miller asked about the history of placing limitations on the hours of operation for alcohol sales. Mr. Cleaton responded he would have to look into this and does not have the information on hand.

Mr. Miller indicated it appears there is an alley/parking/access issue here and it would be nice if the citizens could get along to make good things happen that would be beneficial to all parties involved. He stated he is entirely sympathetic, but the City is not the Health Department or the ABC Board, and is only discussing the Special Use Permit.

Mayor Woodson indicated he would like to know the hours of operation, and he asked Mr. Stoltz to come forward. Mr. Stoltz stated the business opens at 6:00 p.m. every day, seven days per week. He noted the business is open until 1:00 a.m. Monday through Thursday, and on Friday and Saturday open until 2:00 a.m., and then again until 1:00 a.m. on Sunday.

Mayor Woodson asked if a member of Council would like to provide the Findings of Fact.

Thereupon, Mr. Miller made a **motion** to find the following Findings of Fact:

A. The use meets all required principles and specifications of the Ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit as evidenced by the following testimony:

- The business use has been permitted in the Downtown Mixed Use (DMX) Zoning District, by-right, per the City of Salisbury Land Development Ordinance.

B. The proposal as submitted and approved will be visually and functionally compatible to the surrounding area as evidenced by the following testimony:

- The use is located in an existing building that is visually and functionally compatible to the surrounding area and no exterior changes are being made to the building
- There are no proposed changes to the exterior of the building and the establishment would promote the mix of uses presently in the downtown area

C. The public health, safety and welfare will be assured, and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed as evidenced by the following testimony:

- The close proximity of the Salisbury Police Department could provide a greater “sense” of security by acting as a deterrent to criminal activity in the surrounding area
- No evidence has been submitted by a qualified, licensed property appraiser indicating that this, or other uses with alcohol sales, has been injurious to surrounding property values
- Several security cameras are currently in use to monitor outside activities. Tenant indicates the provision of security measures within the building

D. The proposed establishment is not located within 500 feet of any lot containing a school

- Verified by staff

Mr. Kennedy seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Blackwell voted AYE. (4-0)

Mayor Woodson asked for a motion to issue a Special Use Permit to allow a bar/lounge use at 5 Easy Street.

Thereupon, Mr. Kennedy so **moved**. Ms. Blackwell seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Blackwell voted AYE. (4-0)

CONTRACT – RAMSAY, BURGIN, SMITH ARCHITECTS, INC.

Assistant City Manager John Sofley stated the City has been working towards the construction of a new office building at 329 South Main Street. He pointed out the bids came in

approximately \$1 million less than anticipated. He explained staff has worked with Architect Bill Burgin of Ramsey, Burgin, Smith Architects, Inc. on the project. He noted the contract before Council will cover the completed bidding process and the construction process.

Mr. Sofley explained the City submitted its application to the Local Government Commission (LGC) for financing of the project Monday, August 5, 2013.

Councilmember Kennedy asked if the contract before Council is contingent upon the LGC's approval. Mr. Sofley stated it is not, but noted if the project is not approved by the LGC, the City would only be responsible for the bidding process.

Thereupon, Mr. Kennedy made a **motion** to award a contract in the amount of \$114,312.50 with Ramsay, Burgin, Smith Architects, Inc. for architectural services for a new office building. Ms. Blackwell seconded the motion. Messrs. Kennedy, Miller, and Woodson, and Ms. Alexander and Blackwell voted AYE. (5-0)

MY GOVERNMENT SERVICES

GIS Coordinator Kathryn Clifton introduced Council to a new GIS website application known as "My Government Services." She explained "My Government Services" allows users to enter their address into the system and receive information regarding City Services such as trash, recycling, and yard waste pickup.

Ms. Clifton explained if a user has a tablet, iphone, or android device with GPS the "My Location" feature can be used. She added the information can be shared through email, Facebook or by tweeting it.

Ms. Clifton stated the "My Government Services" application also allows the user to find the closest Fire Station, Police Station, Park, or Municipal Building along with turn by turn directions, if needed.

Councilmember Miller asked if the location of bus stops was available. Ms. Clifton stated staff is working to integrate bus stops through Google Transit.

Mayor Woodson thanked Ms. Clifton for her presentation and all she does for the City.

MAYOR WOODSON

Mayor Woodson indicated a need to leave the meeting, and he turned the meeting over to Mayor Pro Tem Blackwell to preside. Mayor Woodson left the meeting at 6:12 p.m.

APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS

This item was postponed.

CITY MANAGER'S COMMENTS

(a) Our Town Grant

City Manager Doug Paris asked Urban Design Planner Lynn Raker to share exciting news for downtown. Ms. Raker stated at its December 18, 2012 meeting Council authorized staff to apply for a \$25,000 matching Our Town Grant from the National Endowment of the Arts (NEA). She noted staff was recently notified the grant application was successful.

Ms. Raker explained the purpose of the Our Town Program is to engage the arts to help shape the social, physical, and economic character of communities through creative place making. She added the NEA, through the Our Town grants, support projects that transform communities with the arts at their core.

Ms. Raker explained 59 grants were awarded from 254 applications, and the grant requires partnerships with local government and a local non-profit. She noted the City has partnered with the Rowan Arts Council. She stated the grants focus on programming, festivals, performance-based activities, and the design of cultural spaces. She noted the City applied for the \$25,000 matching grant to fund the design of a cultural centerpiece identified in the recently completed Rowan-Salisbury Master Plan Completion and Connection. She stated the proposed centerpiece will be a multi-use cultural plaza located in the parking lot of the 200 block of North Lee Street where the police currently park. She added staff has had preliminary discussions regarding parking options with Police Chief Rory Collins, Lieutenant Andy Efirid, staff and property owners.

Ms. Raker stated the effort compliments City Council's goal to continue planning for the East Square Streetscape Improvements. She indicated the design process will be interactive and will include adjacent business and property owners as well as the general public and various other stake holders.

Ms. Raker explained approximately \$250,000 has been set aside for the implementation of the project, including a \$100,000 grant from Wells Fargo. She stated staff plans to start the design process in early fall and hopes to have a finished plan by spring 2014. She noted fundraising efforts will be continued during the process. She commented the centerpiece project will strengthen the flagship role of Salisbury in the tourism industry and will provide needed downtown public open space.

Mayor Pro Tem Blackwell congratulated Ms. Raker on her work to receive the grant.

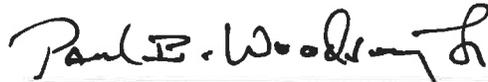
MAYOR'S ANNOUNCEMENTS

(a) Summer Night Out

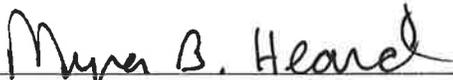
Mayor Pro Tem Blackwell announced the Rowan County Tourism Development Authority will host Summer Night Out Friday, August 9, 2013 from 5:00 p.m. until 9:00 p.m. in downtown Salisbury.

ADJOURNMENT

Motion to adjourn the meeting was made by Mr. Miller seconded by Mr. Kennedy. All council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 6:17 p.m.



Paul B. Woodson, Jr., Mayor



Myra B. Heard, City Clerk