

**City Council Special Meeting
February 27, 2014**

The City Council of the City of Elizabeth City met for a Special Meeting on Thursday, February 27, 2014 in Council Chambers, located on the 2nd floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor Joe Peel
Councilwoman Jean Baker
Councilman Ray Donnelly
Mayor Pro Tem Anita Hummer
Councilman Tony Stimatz
Councilman Michael Brooks (Arrived at 5:35 p.m.)
Councilman Darius Horton
Councilman Montravias King

MEMBERS ABSENT: Councilman Kem Spence

OTHERS PRESENT: City Manager Rich Olson
City Attorney Bill Morgan
Assistant to the City Manager Angela Cole
City Clerk Vivian White

The City Council Special Meeting was called to order by Mayor Joe Peel at 5:30 p.m. Mayor Peel welcomed everyone to the meeting and recognized Councilman Darius Horton to give the invocation, after which the Pledge of Allegiance was recited by those in attendance.

1. Agenda Adjustments and Approval:

Mayor Peel called for any adjustments to and approval of the agenda.

Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilwoman Jean Baker, to accept the agenda as presented. The motion carried by Baker, Donnelly, Hummer, Stimatz, Horton and King. (Brooks had not yet arrived.)

2. Discussion – Investigation of Mayor and City Manager:

Mayor Peel recognized Councilors King and Horton for their comments.

Councilman King stated that he wanted to make perfectly clear that the investigation of the Mayor and City Manager was not intended now and had never been intended to be a “witch hunt”. He said that the Council was not present to judge the politics or policies of the Mayor or anyone else, but that the matter was about precedence. Councilman King referenced the City’s Code of Ordinances, Article IV, Section 2-110 - Code of Ethics and cited the responsibility of government officials to act in accordance with the public’s trust. He stated that everyone cared about the students in Elizabeth City and Pasquotank County and that the Mayor’s intentions were good (referring to a recent Pasquotank County Golden LEAF grant application for charter STEM school funding); but, he said, what came into question was the manner in which it was done. He stated that regardless of the manner in which it was done, he was willing to move forward because he could not see spending upwards of thousands of dollars on an investigation when he already knew all the facts. He further stated that there were too many other challenges

facing the City and the investigation was only a distraction. He pointed out that the City had no legal responsibility for education and that the Council, as a body, was not involved with the Mayor's initiative to secure a charter school.

Councilman Horton stated that he had major concerns that made him want to be a part of calling the special meeting with Councilman King. He stated that he had been troubled by the discussion of the investigation in recent weeks because he felt the facts were already on the table. He referred to an article published in *The Daily Advance* that reported roughly \$555 in staff time expense was incurred by the City in preparation of submitting Pasquotank County's Golden LEAF Foundation grant application requesting funding for an aviation-based charter STEM school and a generator for the College of the Albemarle. He stated that it was not the City of Elizabeth City requesting the funding for the charter school - it was Mayor Peel and his consortium. He reiterated that it was his opinion that the City did not need to spend any funds on an investigation when the facts were already known. He stated that he was prepared to take action to move the City forward, whether it involved asking the Mayor to repay the money or firing the City Manager; but whatever action was taken was up to the City Council. He stated that the NAACP did nothing wrong in requesting the investigation; that they are just a concerned organization that came forward and presented facts.

Motion was made by Councilman Darius Horton, seconded by Councilman Montravias King, that the Council suspend said investigation on the City Manager and the Mayor.

Mayor Peel called for discussion of the motion.

Councilman Stimatz stated that until the Council looks into the authority of the City Manager - what he is allowed to do, what he has done in the past and how he and the County Manager work together in sharing resources to benefit everyone in the community - you cannot sit in judgment on what the action was. He further stated that he felt the City Manager was within his authority to direct the City's grant writer to assist the County with its grant. He said that he disagreed that all the facts are known in order to judge the case. He pointed out that if the Council did not want to spend money on the investigation, the option of using the City Attorney was available. He stated that the Council could not take further action if the investigation was suspended; and he would not support suspending the investigation unless there was an apology made to the Mayor and City Manager by several people, including the NAACP, for bringing this up in the first place without having concrete evidence of wrongdoing. He stated that he voted to conduct the investigation to prove there was not any wrongdoing.

Councilwoman Baker stated that she agreed with Councilman Stimatz and said that she, too, felt the investigation should move forward. She pointed out that a previous goal-setting session of the Council included improving our schools. She stated that nothing would do that better than educating our children for good paying jobs in local businesses and industries. She said that she voted for the investigation in order to clear the names of the Mayor and City Manager of any wrongdoing. She further stated that if the Council moves forward with the investigation, she would like to amend the motion to state that the person/organization that brought the charges should pay for the investigation, namely the NAACP.

Councilman Donnelly stated that he was confused regarding the change in attitude, since the Council previously voted unanimously to conduct the investigation. He said that he voted in favor of the investigation because both the Mayor and City Manager agreed that they had no problem with it. He further stated that the Council then decided that the City Attorney was unable to conduct the investigation appropriately and a vote was taken to pursue that, which he voted against. He stated that he also voted against hiring outside legal counsel with a \$4,500

limitation. He further stated that the Council had assassinated two characters and that had upset him immensely. He said what is done is open to discussion, but that the Council cannot throw people's names around inappropriately and expect everything to go away. Councilman Donnelly suggested that the Council pass a resolution to vindicate both parties and the entire situation. He indicated that if that cannot be done, the investigation should go forward; but specified that he did not think the money should be spent in this manner, but rather be used to benefit the community.

Mayor Pro Tem Hummer pointed out that the Council could spend money for the investigation, but that it would ultimately come back to the Council as to what to do. She stated that she had tried to analyze the situation; and it appeared evident to her that the City Manager had acted on a request from the Mayor and that the Mayor should have acted on advice from the Council. However, she stated that the Mayor had apologized to the public during a previous meeting and that the City Manager had written a memo on November 15, which provided an explanation to the Council. She pointed out that no one had seemed to have a problem at that time and no questions were raised. She stated that the Council had been very unprofessional regarding this matter and that it was very embarrassing for her. She said that when the Council unanimously voted for the investigation, she received many calls asking what the Council hoped to achieve. She stated that the Councilors must ask themselves what the remedy is for this matter. She concurred with Councilman Donnelly that the Council could adopt a resolution; and then make expectations known for the future regarding how things should be carried out by the Mayor and City Manager. She pointed out that the NAACP is a national organization with attorneys on staff and could afford the cost of the investigation. She reiterated that she did not want to spend taxpayer money for this investigation.

Councilman Brooks stated that he did not think the Council could hold the NAACP accountable for paying for the investigation because the Council voted unanimously to do the investigation. Councilman Brooks referred to past investigations and made the point that money had never been a consideration. He stated that the current situation is nothing unique. He pointed out that the Mayor and City Manager welcomed an investigation and that they have a right to clear their names. He said that he would not go back on the previous unanimous decision of the Council to order an investigation because the Council does not have all the information, the "who, what, why, where, and when". He stated that the City does work with the County on certain issues, but he wanted the facts to see if this case held true. He stated that the only issue he had was the attorney chosen to do the investigation. He said his homework revealed that the attorney is a municipal defense attorney and that Mayor Peel did not need a defense attorney. He pointed out that the investigation's facts will come to the Council and Council will determine the outcome. He further stated that the attorney recommended had previously defended the City on a claim and that in his mind that was a conflict.

Mayor Peel stated that he wished to pass the gavel to Mayor Pro Tem Hummer in order to make a statement.

Mayor Peel referred to the previous statement by Mayor Pro Tem Hummer that he directed the City Manager to write the grant; and to Councilman Horton's statement that he and his consortium had requested that the grant be written for the charter school. He stated that at no time did he ask Pasquotank County to write the grant for the charter school - as that was a decision that was made by the Board of County Commissioners. He further stated that he never had a conversation with any of the Commissioners asking that they include the charter school in their application. He said that County Commission Board Chairman Jeff Dixon had been involved in the charter school discussions and very likely supported the school during their deliberations. Mayor Peel further stated that although this situation may have tarnished his

legacy in the eyes of a few, he was more concerned about the potential damage it could have on Mr. Olson since he is still in the prime of his career. He pointed out that when you Google his name, one of the things that appears is that he is under investigation. He stated that because of that, the matter needs to be cleared up either by the Council exonerating himself and the City Manager or by conducting the investigation.

Councilman Stimatz pointed out that he made the motion to conduct the two previous investigations, one concerning deviation from policy by staff and the other concerning the handling of a zoning issue by staff, and that the City Attorney had conducted those investigations for the Council. He said that this is the first investigation not being conducted by the City Attorney. He suggested that there were two paths that could be taken by the Council: to pass a resolution of exoneration making it clear that there is no finding of any wrongdoing by the Mayor or the City Manager or to conduct the investigation. He stated that there was a choice as to who conducts the investigation: the City Attorney or continue with outside legal counsel. He stated that he could not vote to discontinue the investigation without taking action to exonerate.

Councilman King stated that no one had assassinated the Mayor's or the City Manager's character. He reiterated that the decision to do the investigation was a unanimous vote. He further stated that the City Attorney had said that he did not feel comfortable conducting the investigation. He said that it was his opinion that the Council could not exonerate the Mayor and City Manager since the Council had not accused them of wrongdoing. He also pointed out that it was his opinion that regardless of what had happened; he felt it was time to move beyond the issue. He stated that if the Council chose to move forward, he would not agree to engage the attorney that had been selected because that attorney was tainted.

Councilman Donnelly responded that the Council does need to clear the names of the Mayor and City Manager because it had been all over the press and the internet. He asked how their names could be cleared if the investigation was abandoned, other than by the Council taking action to exonerate.

Mayor Pro Tem Hummer stated that she felt the Council needed to accept some blame because it didn't bother anyone in the beginning and now there is an enormous issue and two individuals are unfairly facing an investigation. She pointed out that the City Charter provides for the Council to direct the City Attorney to investigate matters and that he could not turn down the directive even if he felt uncomfortable. She reminded the Council that the results would come back to the Council for disposition. Mayor Pro Tem Hummer applauded Councilman Horton for stating that it is time to move forward; however, she said that the Council needed to be clear on what moving forward meant. She stated that the Council needs to have a goal in order to clear everything up.

Councilman Horton said that although he respected the Mayor, the Councilors, the City Manager and the City Attorney, he was elected by the residents of the Fourth Ward and was accountable to them for his decisions. He stated that his constituents did not agree with spending money for an investigation since, in his opinion, all the facts were known. He said that he did not think an investigator could conclude that the Mayor and City Manager were not wrong in what they did. He further stated that the only way he would agree to an investigation going forward is if the Mayor was censured and the City Manager was fired after the results of the investigation were obtained.

Councilman Brooks stated that once an individual becomes an elected official, that person is no longer his own – he is a servant of the people. He said that what he has been saying is what his constituents of the Third Ward have told him. He stated that he understood the point of clearing

the Mayor's and City Manager's names because he had been in the same situation; however, he felt the issue of money could not be used as a fear tactic to avoid pursuing the investigation. Councilman Brooks expressed that although he would not waiver in his opinion that the investigation should go forward, he too agreed that the attorney that had been suggested was tainted.

Councilman Stimatz pointed out for those Councilors who have said there were no accusations; the Council could not have proceeded without a written charge of violation, which was presented by the NAACP. He said that by agreeing to have an investigation, the Council acknowledged that there may have been an alleged violation. He further stated that the issue of the attorney being "tainted" was not mentioned when the information regarding his qualifications was provided two weeks prior. He stated that if the Council wanted to do away with the investigation, it must adopt a resolution of exoneration because the Council accepted allegations of violation of the City ordinances, so the persons and the record must be cleared. Lastly, he stated the Council couldn't make a decision without first having a hearing. Once the investigation is completed, the City Code requires a hearing in a quasi-judicial manner.

Councilman King stated that "since the senior members of Council seem to know everything" the Council could go forward with the investigation. But he stated that as he saw it, if the investigation revealed wrongdoing he agreed that the Mayor should be censured and that the Manager should be terminated.

City Attorney Morgan asked to make a brief comment regarding the attorney, Mr. Blanchard. He stated that he did not want anyone to have the impression that Mr. Blanchard is "tainted" in some way because that implied something bad. He indicated that Mr. Blanchard had previously represented the City once before in addition to representing a former African-American police chief of the City in a personnel issue. Mr. Morgan stated that Mr. Blanchard had done a good job for the City previously and he did not believe he was tainted in any way. He provided the Council with the reference statement sent to him by the North Carolina League of Municipalities when they made the recommendation for Mr. Blanchard to handle the investigation. He stated that he had spoken with Mr. Blanchard and that Mr. Blanchard had stated that he would have no conflict.

Mayor Peel stated that the Council had been debating this issue for some while and that there was a motion on the floor.

Councilman Donnelly stated that as he had pointed out, he supports a resolution to exonerate or vindicate the two parties that the Council voted unanimously to investigate. He said that after listening to the discussion he leaned more toward conducting the investigation.

Councilman Stimatz asked to amend the motion on the floor as follows:

Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly, that if the Council votes to terminate the investigation, that a resolution of exoneration be prepared in the case of both the City Manager and the Mayor.

Those voting in favor of amending the motion were: Baker, Donnelly, Hummer and Stimatz. Those against: Brooks, Horton and King. Motion carried.

Mayor Peel called for a vote on the amended motion that the Council terminate the investigation of the City Manager and Mayor and in so doing, adopt a resolution of exoneration.

Councilwoman Baker asked if the City Manager would like to make a statement. Mr. Olson responded that each member of the Council had received a written statement from him at the beginning of the meeting and that he had no further comment.

Those voting against the motion were: Baker, Brooks, Donnelly, Horton Hummer, King and Stimatz. Voting for the motion: Donnelly. Motion failed.

The City Attorney asked for clarification on whether Attorney Norwood Blanchard would conduct the investigation. Mayor Peel advised that there was no change in the previous vote to engage his services.

There being no further business to be discussed, Mayor Peel adjourned the meeting at 6:50 p.m.

Joseph W. Peel
Mayor

Vivian D. White, NCCMC
City Clerk