**MONDAY – 7:00 P.M. APRIL 27, 2009 CITY COUNCIL**

The City Council of the City of Elizabeth City held its second regular meeting of the month on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor S. S. Atkinson presiding. Council members present were: J. M. Baker, D. B. Evans, L. A. Hummer, R. E. King, B. S. Meggs, E. K. Rivers, J. A. Stimatz and V. C. Watts. City staff members attending were: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, City Attorney W. H. Morgan, Deputy City Clerk V. D. White, Planning Director J. C. Brooks, Human Resource Director K. W. Felton, Police Chief C. E. Crudup, Fire Chief L. M. Mackey, Finance Director S. E. Blanchard, Parks and Recreation Director J. D. Overman, Electric Director K. F. Clow and Director of Public Utilities P. A. Fredette.

Mayor Atkinson called upon Councilwoman B. S. Meggs for the invocation after which he led the Pledge of Allegiance to the Flag of the United States of America.

## 1} APPROVAL OF THE AGENDA:

Mayor Atkinson called for approval of the prepared agenda.

Councilman J. A. Stimatz asked to remove ***Item D- Adoption of Resolution opposing State mandate to merge ABC Stores*** and ***add it to the Regular Agenda.***

There being no further changes Mayor Atkinson called for a vote of approval.

> ***A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman V. C. Watts to approve the prepared agenda as presented to include the above noted change. Those voting in favor of the motion were: Baker, Watts, Evans, Hummer, King, Meggs, Rivers and Stimatz. Against: None. Motion carried.***

## 2} PUBLIC PARTICIPATION:

Mayor Atkinson called upon the City Clerk for those wishing to speak under this section of the Agenda.

Pastor Kevin Senn, 107 Chadburn Avenue, Pastor of Emmanuel Baptist Church located at 109 Chadburn Avenue, Elizabeth City, NC, addressed the Council

concerning the letter he recently received regarding a fence around the dumpster. The question that he has, we have tried in the past to adopt the city street, Chadburn Avenue and we were told by the City that we are not in the City limits and we cannot adopt that street because it is not a City Street. How come we have to do what you are asking us to do with the dumpster if we are not classified as being in the city limits at that point and we are now? He has no problem with complying but his question is why it was for one and not the other? He would like to know when they come and remove the trash and we put a fence around it, are they liable if they knock the fence down?

## 3} PROCLAMATIONS:

Mayor Atkinson presented a proclamation proclaiming May 7, 2008 as National Day of Prayer. Reverend David Turner accepted the proclamation and made brief remarks afterward. He invited the Council to attend the different festivals planned to celebrate the National Day of Prayer.

Mayor Atkinson presented a proclamation proclaiming April 7-30, 2009 as Arbor Days in Elizabeth City. Alan Moore. Rob Davis and Debbie Sauls came forward to receive the proclamation.

Mr. Rob Davis presented the Mayor the first Tree City USA Award. Elizabeth City is one of 70 cities and towns in North Carolina and one of over 3,000 in the nation today that have received the Tree City USA designation. He also presented the Mayor with a Tree City flag along with a hat.

Ms. Debbie Sauls also made brief remarks and introduced members of the Urban Forestry Committee that were in attendance.

## 4} APPROVAL OF THE MINUTES:

Mayor Atkinson call for approval of the Minutes of the Regular Meeting held on April 13, 2009.

***A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman L. A. Hummer to approve the minutes of the regular meeting held on April 13, 2009. Those voting in favor of the motion were: Baker, Watts, Evans, Hummer, King, Meggs, Rivers and Stimatz. Against: None. Motion carried.***

## 5} CONSENT AGENDA:

Mayor Atkinson called upon the City Manager to read the items on the Consent Agenda. Following the reading, Mayor Atkinson called for action on the Consent Agenda.

> ***A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman L. A. Hummer to approve the following Consent Agenda as presented. Those voting in favor of the motion were: Baker, Hummer, Evans, King, Meggs, Rivers, Stimatz and Watts. Against: None. Motion carried.***

**Consent Agenda**

**a}** Approved an amendment to the Travel Policy for Council Members by adding to the Travel Authorization Request – The Travel Authorization Request for all trips exceeding an estimated $200, ***which are not approved during the annual budget process***, will be approved by City Council ten (10) days prior to the travel"

**b}** Authorized Mayor Atkinson to Execute Agreement: The Lease Agreement with DRS.

**c}** Adopted the following ordinances – approving condemnation and demolition of structures located at 616 Parsonage Street and 1110 Parkview Drive.

**ORDINANCE #0941**
**DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED**

**WHEREAS,** the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all of the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS,** said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS,** the owner of said structure has been given a reasonable opportunity to bring the premises up to the standards of the subject codes in

accordance and pursuant to an order issued by the Building Inspector on October 19, 2008; and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED,** by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the building located at 616 Parsonage Street, a sign containing the legend:

"This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful."

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated the 19th day of October, 2008 and with the Code; and

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED,** this the 27th day of April 2009.

_____
Stephen S. Atkinson
Mayor

_____
Dianne S. Pierce-Tamplen, MMC
City Clerk

**ORDINANCE #0942**
**DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED**

**OR THAT THE STRUCTURE BE DEMOLISHED**

**WHEREAS,** the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all of the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS,** said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS,** the owner of said structure has been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on October 20, 2008; and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED,** by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the building located at 1110 Parkview Drive, a sign containing the legend:

"This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful."

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated the 20th day of October, 2008 and with the Code; and

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED,** this the 27th day of April 2009.

_____

Stephen S. Atkinson
Mayor

_____

Dianne S. Pierce-Tamplen, MMC
City Clerk

**d}** Called for a public hearing to be held on Monday, May 11, 2009 at 7:30 p.m. – to receive public comment regarding potential CDBG funded projects in Elizabeth City

**End of Consent Agenda**

**6} REGULAR AGENDA:**

**a} Adoption of Resolution opposing State mandate to merge ABC stores:**

Mayor Atkinson called upon Councilman Stimatz for comments.

Mr. Stimatz stated the reason he took this item off the Consent Agenda was he thinks the idea of State or somebody else telling us how to run our ABC or liquor licenses is not a good idea. It appears that there is some effort in here to streamline the operation of the stores. He would ask this question; why is the State still in the business of having ABC Stores? There is no need for it. We collect cigarette taxes without having cigarette stores. We collect beer and wine taxes without having beer and wine stores. We collect gas taxes without having gasoline stations. Why do we still have ABC Stores? He can understand why we have an ABC Commission or Council and that is important because you are talking about liquor licenses and compliance with the laws. He would just ask that the Council consider maybe that we have a second resolution or somehow pass on to our legislators that maybe we ought to get out of the business. He sees no reasons to have State employees running the stores selling liquor. It goes against the grain if you think about it. He just wanted to take this off to make that comment and let everybody think about that concept and that idea and if they are having trouble making money maybe we shouldn't be running businesses. Maybe we should think about approaching our members on the Legislative Committee on the League of Municipalities and our legislators and say, maybe it is time to get out of the business and not run them at all.

***A motion was made by Councilwoman V. C. Watts, seconded by Councilman J. A. Stimatz to wait on this until the City Manager gets back with the information as requested.***

Councilman Rivers said that the adoption of the resolution and from the comments that Councilman Stimatz stated as he made it very clear that he was not in opposition to the resolution. He just had some additional concerns that in the future we might need to come up with or ask our legislators to study if we need to be in the ABC business. That has nothing to do with this resolution. He thinks that was brought out by Councilman Stimatz. To table it to get information back is going to have nothing to do with this resolution. He would urge Council not to vote for the table and let's go ahead and get this passed on and then the City Manager will come back with the information or see if there are any other bills that shows the State might be trying to get out of the ABC business.

Ms. Watts said that she would also like to take into consideration if we hereby adopt this resolution that we do stand in jeopardy of North Carolina taking the portion of the overage. She is in total agreement with Mr. Stimatz and she thinks that the City should be running it.

Mr. Stimatz said he wasn't trying to make a big deal about this resolution because he doesn't think it is worth the paper it is written on. The reality is he doesn't technically agree with what is written here. He doesn't want to hold up the adoption of the resolution as he just wanted to make some comments. Ms. Watts has some other questions and she would like to table it, there is no rush to do this.

Mayor Atkinson called for the vote on the motion.

***Those voting in favor of the motion were: Watts, Stimatz, Baker and Meggs. Against: Evans, Hummer, King and Rivers. Mayor Atkinson voting in the negative thereby defeating the motion to table the resolution.***

***A motion was made by Councilman E. K. Rivers, seconded by Councilman R. E. King to adopt the following resolution opposing State mandate to merge the ABC stores. Those voting in favor of the motion were: Rivers, King, Evans, Hummer and Meggs. Against: Baker, Stimatz and Watts. Motion carried.***

**RESOLUTION #0941**
**SUPPORTING LOCAL CONTROL OF LOCAL**
**ABC BOARDS AND OPPOSING FORCED MERGERS**

**OF LOCAL ABC BOARDS**

**WHEREAS,** the citizens of Elizabeth City voted to permit the sale of spirituous liquor through the establishment of the Pasquotank County ABC Board, which is a part of the North Carolina's state control system; and

**WHEREAS,** ***SB 839/HB 768 – Modernization of the ABC System*** would require all ABC Boards in a county to merge, allow the state ABC Commission to merge county-wide boards into regional boards, require the ABC Commission to develop performance standards allow the ABC Commission to close or merge ABC boards, close ABC stores with low profitability, contract directly with agency stores for the sale of spirits where ABC stores are authorized but not in operation, and require an ABC Board to contract with an agency store; and

**WHEREAS,** it is a local decision to establish and operate an ABC store, and any decision to merge an ABC Board should be made by the local government based on local circumstances, and not by the State; and

**WHEREAS,** a local government balances control, profits and availability of spirits in operating ABC stores; and

**WHEREAS,** the decision by a local government to operate with a low profit margin does not reduce the amount of liquor exercise tax received by the State, so the State does not have a financial interest in the profitability of ABC stores; and

**WHEREAS,** an "agency store" is a private retail seller, and the citizens of Elizabeth City, when voting to permit the operation of ABC stores, did not vote to allow liquor to be sole in such private off-premises retail establishments; and

**WHEREAS,** sales of liquor may not be well-regulated in agency stores, thereby potentially creating law enforcement and other problems, Elizabeth City's desires to retain North Carolina's control system over the sales of spirits and to continue to make spirits available to its citizens only through its ABC store;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of Elizabeth City that the establishment and operation of the Pasquotank County ABC store through the control system should be a local decision and that the City Council of Elizabeth City, opposes any state mandate to merge ABC Boards, mandate the merger or closing of ABC stores and opposes the establishment of agency stores.

**ADOPTED**, this the 27th day of April 2009.

_____
Stephen S. Atkinson
Mayor

_____
Dianne S. Pierce-Tamplen, MMC
City Clerk

**b}** **<u>Sandwich Boards Signs – Downtown Historic District:</u>**

Mayor Atkinson called upon Planning Director Brooks for comments and asked that Attorney Morgan assist as needed.

Ms Brooks stated that at the last Council meeting there was discussion whether the Historic Preservation Commission had authority to approve and require a Certificate of Appropriateness for sandwich board signs. Article 12-8.2(b) of the Unified Development Ordinance states, "no exterior portion of any building or other structures including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features, or any above-ground utility structure or any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished within the Historic District until after an application for a Certificate of Appropriateness as to exterior architectural features has been submitted to and approved by the Historic Preservation Commission." Then in the second paragraph of that Article it says, "in cases where outdoor advertising signs, 'exterior architectural features' shall be construed to mean the style, material, size and location of all such signs.

In addition, Article 12.8.2(d) states: the standards and procedures delineated in the historic district pamphlet entitled, "*The Elizabeth City Historic Preservation Commission and Certificate of Appropriateness* shall be followed."

If you look in the pamphlet where it talks about minor work it says, "Minor work items require a Certificate of Appropriateness, however this work can be approved on behalf of the HPC by the Planning Director. Items included in this list are, Item #10 – Installation of appropriate advertising

signs within the downtown historic district requires a certificate of appropriateness.

There were also questions about whether they could be charged in the Budget Hearing of 2004; City Council established a $20.00 processing fee for all Certificates of Appropriateness.

She has taken the interpretation that in 12-8.2(b) that when it says, for any type of outdoor advertising is a generic term and it does not refer to the outdoor advertising/billboard as refer to in Article 11 so this refers to all signs in the Downtown Historic District.

Councilman Rivers asked Ms. Brooks to define outdoor advertising.

Ms. Brooks asked if he was referring to outdoor advertising/billboards definition. Outdoor advertising is a general term refer to in the Planning profession as any type of signage that you may have advertising a product or your business or anything that you may have to promote a business or an item that you sell.

Mr. Rivers asked about when a sign is erected in front of a building in the historic zone for the sale.

Ms. Brooks replied that a real estate sign is exempt under the UDO. They are considered temporary exempt signs.

Mr. Rivers said that an outdoor advertising sign is a temporary sign because it is only there from eight to five or however long the establishment is opened. That is a temporary sign and that is the reason he asked for the definition of an outdoor advertising sign. The statement that you went by when you said 12-8.2 and when you read, it says a type of outdoor advertising sign shall be erected, altered, moved, restored or demolished within the historic district shall received a certificate of appropriateness. Every time you move an outdoor sign because of the definition that we are applying to this you would have to get a certification of appropriateness. It says every time it is moved. When it says moved and if he put it here today and moved it down twelve feet then he has moved it. That means that he would have to do a certificate of appropriateness if we use your interpretation. He has a problem with the sandwich boards being classified as an outdoor advertising sign because most of the time that is considered to be a billboard, stationary sign and not a sandwich board sign. When we had this long discussion over and over meetings, the $20 was not meant to be applied to businesses downtown. He made it specifically in his motion that we asked to remove

the $20 fee for businesses downtown. He had a merchant go downtown and have his sign approved they told him that it would cost $20. When he read it he wondered where that came from because we just dealt with that issue and he did not want to bring it back before Council to have another three or four meetings in order to get this resolved. He does not think that this should be classified under that section unless you take out the word "moved".

Mr. Olson said that he totally disagrees with your interpretation. First of all sandwich boards by its nature is a moveable sign. If you look at the definition of a sandwich board sign and how it is supposed to be working, it is a moveable sign that you take in every night. The nature of that particular sign makes it moveable and since you get a COA the first time you get the sandwich board then it is basically taken that the sandwich sign once you get the original COA is basically approved from that day forward. You can place it within the preamble of a sandwich sign. If the issue is that the Council doesn't want to charge the $20 then we can take that back and have a code amendment where we change the fee so there is no charge associated with a COA for a sandwich board sign. If that is a concern of Council then that would be easiest way to fix it. He thinks you are arguing semantics here. The bottom line is sandwich signs are moveable signs. By the definition you take it out in the morning and you take it in when you are done. It is a moveable sign. Once you get your COA that sign which is the structure itself has been approved. The location just needs to be in front of your business. I think the whole thing has been since 1999 when the UDO was approved that these signs have always been approved by the HPC. Now if Council wants to change that then we just need to do a zoning text amendment to alter it. But historically and most jurisdiction in past practices you would be required to have a COA on any type of outdoor advertising sign whether it is on the exterior part of your building wall or whether it is a sandwich board sign. If you want us to come back with further clarification we can do a zoning text amendment to modify this but how we are interpreting this and how June is interpreting this is what we believe is what is included in the UDO and how it should be interpreted.

Mr. Stimatz said that is your interpretation. It is nice but we are the Council and we will decide what the interpretation is. He disagrees with you Mr. Olson. This is no different than the definition of opaque. Opaque has a very clear meaning. If you are going to say something in an ordinance then you had better stick with it. The definition in our ordinance is, "advertising signs (billboards)" It is one of the reasons why he asked us to go in and adopt the Small Business Administration sign definition so that we could clarify this and nobody wanted to do that.

That is fine but he will also note within that same section of the ordinance we specifically discussed advertising signs (billboards) in four different sections. Not only that he would offer that staff is ignoring its own table of permitted signs by type of sign. The sandwich sign is listed as a separate type of sign and it is not listed under advertising (billboards). If you are going to make the broader analogy that any sign outside is an advertising sign then barring past practices just because you have been doing something wrong for ten years doesn't make it right. Then every sign that goes up banners, temporary signs, anything to put the paper containers for the newspapers that have signage on it everything will have to come in for a COA. He does not think that is our intent. Not only that here is the really ludicrous part, the only part that the HPC can actually rule on is the three inch boarder around the sign area. They are not allowed to deal with the sign area. That is covered under free speech, etc. time, place and manner only. We already cover all aspects of sign design and we talk about it can't have bells and whistles, it can't have light, it can't move and all this other stuff. Those rules still apply. And, further research and he knows it is very interesting your pamphlet, not his, your phamplet talks about "the Commission reviews plans for work". What work is involved in placing a sign outside? COA's are to be obtained for exterior work other than routine maintenance and repair as maintenance and repair of exterior features. There is no place where a sandwich board is an exterior feature of any building. It has nothing to do with the building. It has everything to do with the business but not the building. In addition, in your pamphlet you quote the UDO and the Secretary of Interior standards for rehabilitation. He went and looked those up. No where do they talk about signs. No where on their web site. No where in the statutes. They do refer you to the National Park Service Guide for preservation. It is interesting because that guide doesn't particular talk about signs. The problem is you end up with a mishmash and it is not really very affective and what you end up doing is killing anybody's desire to keep historic signage. You are better off leaving it to the businesses to decide. Staff has looked at it one way and he thinks that you are wrong. It is like opaque. Opaque has one meaning. Advertising signs has one meaning in our ordinance. The State defines an outdoor sign. Section 136-126 of the Outdoor Advertising Control Act specifically says, "Outdoor advertising is a legitimate commercial use and the direction and maintenance of outdoor advertising sign in devices and areas of city right of way need to be controled". They define the term outdoor advertising and until you show me a definition in our UDO which we don't have, then he will go with the State definition. Lacking any other authority he will go with the State. When he went into 12-8 of the Historic Preservation Commission, every thing in there screams that they are concerned about the structure. Here is the final

point that he would like to make. What standard is the HPC going to apply to those three inches around that frame? Are they going to decide, well, here in front of this building it has to be art deco? Who are they to decide whether your style of framing is art deco or not? Are they going to come up with a list of approved colors for art deco signs between this period and this period that were used in the southeast verses the northeast? It is ridiculous. He doesn't see how sandwich signs fall under the HPC in any way, shape or form. They don't. It doesn't make sense to do it and it creates an administrated nightmare and if you are going to apply that standard and say that outdoor advertising fall under a general category and that is what Mr. Morgan has tried to tell him. It is a general category then every, every single outside sign needs to go and get a COA and if they haven't done it then they need to come get one. Now that is not very business friendly. It is not very smart either.

Councilwoman Hummer said first of all she thought that we had settled all questions about the sandwich boards. Secondly, she raised the question of conflict of interest since we are talking about fees. She believes Mr. Stimatz just purchased a business that has used sandwich boards in the past. She just wanted to point that out.

***A motion was made by Councilman E. K. Rivers that we adopt an administrative ruling of Council that sandwich board signs do not fall under the preview or the review of the Historic Preservation Commission and therefore do not require a Certificate of Appropriateness. Councilman J. A. Stimatz seconded the motion.***

Mr. Morgan said he does not believe that we have the legal authority to do that. He thinks that the options that Council would have would be to direct staff to go back and try to clarify the UDO and if the will of Council is that there will not or should not be the $20 fee associated with the COA for sandwich boards signs then he thinks that could certainly be handled by text amendment, but as far as going around that process by adopting a motion to do what Mr. Rivers proposes he thinks that would fly in the face of the general statute because Ms. Brooks is the Zoning Administrator. She has issued her opinion. She has rendered her decision and the only way that can be appealed is through the Board of Adjustments by State Law. That would involve a private land owner going beyond Ms. Brooks in her capacity as Zoning Administrator to the Board of Adjustments to seek a ruling there. He thinks that certainly Council is well within its rights to seek a text amendment to clarify the situation. Mr. Stimatz is correct as he and I spoke at length of this today and he raised good points. In Chapter 11 of the UDO, everywhere where the word "Advertising Signs"

are used, four times, four different places, billboards them follow immediately in parentheses, so one could certainly conclude that those two words are seen as interchangeable at least in that section or that chapter. Then you go to Chapter 12 and he has to agree with what Ms. Brooks and Mr. Olson have said previously when we have a provision in the UDO that says, "Or any type of outdoor advertising sign". He thinks the only way to read that phrase logically is to make that a generic phrase- outdoor advertising sign. Sandwich boards are advertising signs because they advertise a product. The UDO defines billboards as signs that advertise something at a different location than the location of the billboard, so there are problems with the UDO, but to have Council administratively or otherwise try to rescind Ms. Brooks determination would be contrary to the General Statutes as he understands them.

Mr. Rivers said that Council sets policy. When we set policy staff follows the policy. At any point if there is a difference of opinion in terms of Council and staff you verify it by just adding to the text if it is not there or do you change the text. Here the question is there is no direct wording as it has just been applied and place because we just put sandwich boards in effect there months ago when we voted this in. If there was no intent for it to go there then you have placed everything with the Zoning Administrator. If it was not meant to go there or if there is not direct verbiage to place it in a place where we just spent four months on signs and he doesn't want to go back four months and deal with more signs. Then you are telling him that we need to do a text amendment and his question would be you are asking him to go deal with a text amendment in a place where he doesn't think sandwich boards are not even defined. It doesn't specifically say sandwich boards. It is an opinion of where you would like to have it placed. Ms. Brooks did her job. She applied it to 12-8.2. He is just saying it should not be applied to 12-8.2. If you read the word moved it says that you have to apply for a COA every time you move a sign. That is what 12-8.2 says. We can do a text amendment and take out the word "moved" and then that would mess up for all the other signs what 12-8.2 was written for so he is not for doing a text amendment because then that would change the purpose of that. His thing is that the standard of sandwich sign should not be applied to 12-8.2.

Mr. Morgan said that is what the text amendment should say in so many words because the law requires the UDO and the State Statutes require that the Zoning Administrator as the initial person ruling on these questions. She has done so. So Council's role at that point in his opinion anyway would be to direct staff to come back with the proper language to

either exclude or include sandwich board signs under this provision of Chapter 12 that deals with the Certificate of Appropriateness.

Mr. Rivers said then we can't do an administrative ruling. He is not going against her ruling. He is asking does the Council have the right to take a ruling. She applied the standards that we have set. What he is saying is that Council has a ruling and we don't want it to be applied to that standard.

Mr. Stimatz said that we can say, that as we can say anything that we want.

Mr. Rivers said he is not trying to tie the Zoning Administrator. He understands the rules that we have set. By no means is he going that far. That is the only reason why the motion was an administrative ruling saying that we do not want that standard to be applied.

Mr. Morgan said he thinks that a text amendment has to be the way to accomplish that.

Mr. Olson said that the only thing that a text amendment sould say is that sandwich boards are exempt from the COA. That is it. One sentence is everything that has to be done.

Mr. Stimatz said here is his problem Mr. Attorney. If you are going to ignore the UDO as a whole and take only specific parts and you are going to ignore the definitions in other parts of the UDO and in particular Table 11-1-1 which specifically separates sandwich board signs from advertising billboards and on premise signs and wall signs and identification signs and menu signs and construction signs and real estate signs and temporary signs and exempt signs. It is a separate category. He thinks that is pretty clear what the intent of Council is, so his problem is he has got an administrator that makes a decision that doesn't make any sense. We should be able to at least say that if Council wants to say that we don't agree we can say that and to correct it we need to go further. His point would be this, if that is the ruling from this administrator now he wants to see every sign with a COA that is downtown. Every banner, every poster, you had better have one or you haven't been applying it correctly. If you haven't been applying it correctly to everybody in the City then you have violated the Constitution for equal protection under the law. You can't have it both ways. You can't say we are going to lump everything under outdoor advertising signs and they all have to have a COA. If you do that then he wants to see the COA for every sign on every building. If you don't have one, we are in deep trouble. His feeling is that maybe the

Administrator may want to go back and reconsider her decision and that makes life easier. It doesn't prevent Council from saying that we think that they are wrong. We can do that if we want.

Mr. Olson said a point of clarification. The COA's are only applicable in the historic district and no other place in the City. You only need COA's in the Historic District and no other parts of the City.

Councilwoman Watts said that our City Attorney has consulted with us and told us that he doesn't think that it is a good idea. Now, although Ms. Meggs went against her a few minutes ago she has to go with her as almost all that she does is with the advice of our Attorney, Manager and staff. She would like to remind Council on who are we following and these persons certainly have a lot of education and they are here because they deserve to be here.

Mr. Rivers said that he would withdraw his motion and hold it until the next meeting to give the Attorney time to make sure of the legality.

Mr. Morgan said that is his legal opinion and he would appreciate you giving him the extra time to verify that for you but he believes that would be contrary to the provisions of GS 160-388 which makes it clear that the only appeal from a decision of the Zoning Administrator and in this case, Ms. Brooks, is through the Board of Adjustments.

Mr. Rivers said but that is if we had a problem if we were applying that Statute specifically speaks if he is the owner and the Zoning Administrator rules against me then he has the right to appeal it to the BZA. He is just asking for the wording to not take place. Just so we don't continue to go forth but what you are reading from if he applied for a sign permit and the Zoning Administrator rules against him he has to appeal to the Board of Zoning. Here he had not applied for a sign so how can he take an administrative rule that only this City Council can deal with to the BZA.

Mr. Morgan said that he would agree with you but she has issued her decision. She has ruled on the decision. Typically the appeal would be by a private individual and he is with you 100% but he doesn't think that Council would be within its rights to essentially supersede her ruling by adopting an administrative rule or whatever you want to call it. He thinks the only clear way to deal with it once and for all is to spell out in the UDO to everyone's satisfaction and he guesses Mr. Olson would like direction from Council as to what the feelings are among the eight members regarding the $20 fee but the only way to clarify this in his

opinion would be to spell it out verbatim in the UDO as to which way it is to be handled.

Mr. Rivers stated that he would remove his motion. He would like to ask that Council brings this back with a text amendment.

Mr. Stimatz said he has a comment to make before that. He agrees with Mr. Rivers. She has not made a decision. She has offered an opinion. We are disagreeing with her opinion. If there was a plaintiff in front of us he would agree with you. He thinks it is very clear and it is not about the $20 fee. It has nothing to do with the amount of money. The very idea that everybody that wants to put a sandwich sign downtown is going to have to complete a COA which is pretty lengthy, about five pages long. Not only that if you are leasing a building you will have to get the owner to sign it. That is a lot of problems. In the interim you can't put your sandwich board out there and then you have to get it scheduled in front of the HPC. Then what are they going to tell you. What are they going to tell you about your sign and its historic correctness? Sandwich board signs have been in existence since at least the 19th century. He is sure that they come in every shape, form, flavor and color you can image. What possibly is the HPC going to do? He thinks that we are going to create an administrative nightmare and he would agree and if that is her opinion he thinks Council has a right or if they want to, to disagree with that opinion. If we want too. It is not a ruling. Secondly, if that's the opinion that term of outdoor advertising signs applies to anything outside. He would like to see the COA for every sign in the historic district over the last ten years. He will go around and check it against all the signs on all the buildings and if there is a building with a sign that doesn't have a COA he is going to raise the question why haven't we been carrying out our own ordinances all this time. No less than the dumpster, no less than signage, no less than following up on non-profits, pick a subject—not following our own rules, code enforcement, go down the list. He will withdraw his second.

Mr. Morgan asked to add in response to Mr. Stimatz regarding the five page application or what have you. As he understands the pamphlet which is of course made a part of the UDO, Ms. Brooks and her staff have the right to approve signage. That does not have to go before the full HPC. That is defined as, "minor work provisions". It includes installation of appropriate advertising signs within the downtown historic district.

Mr. Stimatz said he has a question of Ms. Brooks. Ms. Brooks can you come up here right now and tell us what an appropriate signage is? If she has been doing this for ten years or we have been doing it for ten

years and they have already got this standard and she is running an opinion then he would think that she could tell me right now. What is an appropriate signage, tell me.

Mayor Atkinson said he thinks what we are going to do or need to do as we have been discussing this for months at this point in time and he thinks what we will do is we will have that answer forthcoming. We are not going to be able to rewrite the UDO tonight. The motion has been removed.

Mr. Rivers said that he is asking for intent of it coming back.

***A motion was made by Councilman E. K. Rivers to bring a text amendment to our next meeting that would exempt sandwich board signs from the requirement of a Certificate of Appropriateness. Mayor Pro Tem J. M. Baker seconded the motion. Those voting in favor of the motion were: Rivers, Baker, Evans, King, Stimatz and Watts. Against: Hummer and Meggs. Motion carried.***

**b} <u>Bridge Loan to the Airport Authority:</u>**

Mayor Atkinson recognized Mr. Olson for comments.

Mr. Olson stated that the City has multiple funding sources that are involved in the development of the Aviation Park. The City had originally included in our Aviation Park Budget $600,000 from the Airport Authority to pay for part of the taxiway. The Airport Authority was going to utilize part of their Vision 100 money. At the present time, the Airport Authority has $555,000 of Vision 100 money available that it can use on this particular project. The Airport Authority gets roughly $130-$150,000 a year every year from Vision 100 money and that money needs to be spent on eligible expenses as defined by the State. The Aviation Park is one of those eligible expenses. Based on our most recent review of the Budget for the Aviation Park, specifically the taxiway component of the project and now it has been determined that we only need $400,000 of money from the Vision 100 money. The Airport Authority because it has a specific time limit on the usage of the Vision 100 money he would like the City to utilize all $555,000 of money available for this particular project. The Vision 100 money unfortunately is a reimbursable grant which means the Airport Authority must pay the bill before they can get reimbursement from the State. This process takes anywhere from three weeks to one month. We have had extensive discussions with DOT-Department of Aviation concerning this. What the Airport Authority is requesting is for

the City to advance the Airport Authority $495,000 as a reimbursable agreement for this particular project. It would be his plans to take that $495,000 out of the Aviation Construction project. That would be a bridge loan. Once the Airport Authority did get back the Vision 100 money then they would provide us the $555,000. Since we do not need all $555,000 what the Airport Authority is requesting is that we utilize $400,000 of that and the remaining $155,000 be given back to the Airport Authority so they can make improvements to the airport terminal which includes handicapped restrooms and other ADA compliance issues that we have at the airport.

Ms. Hummer said that we have already entered into a Bridge Loan for $1.5 million while waiting for aviation monies. First of all she would like to know as you told me more than a month ago that money was in and has that loan been paid off?

Mr. Olson answered no. The $1.5 million loan for NCDOT-Division of Aviation has not been paid off. We did get a funding approval letter today for $500,000 and we will be receiving another $500,000 after July 1st so that is a million of the $1.5 million. The third installment would occur in Fiscal Year 2010-2011.

Ms. Hummer said her second question is our unrestrictive General Fund balance tonight is $3.3 million. That is an all time low. She just can't see entering into another bridge loan.

Mr. Olson said that he shares your concern and that is why he is saying that we specifically take the money out of the Aviation Construction Account instead of out of the General Fund. He cannot support taking the money out of the General Fund especially with the tough economic times but we do have money in the Aviation Construction Budget to give them this loan. Looking at what our cash flow is going to be to pay the contractors over the next sixty days there is adequate funds to pay this particular loan.

***A motion was made by Mayor Pro Tem J. M. Baker that we authorize the City Manager to provide a 30-day bridge loan in the amount of $495,000 to the Airport Authority; and further that we provide a grant out of the Aviation Park Construction account in the amount of $155,000 for documented airport terminal building and associated airport improvements. Councilwoman V. C. Watts seconded the motion. Those voting in favor of the motion***

***were: Baker, Watts, Evans, King, Meggs, Rivers and Stimatz. Against: Hummer. Motion carried.***

## 7} COMMENTS AND INQUIRES ON NON-AGENDA ITEMS:

Mayor Atkinson advised that he would go around the table for comments.

City Manager

Mr. Olson stated he had no other comments.

Councilman Evans

Mr. Evans stated he had no other comments.

Councilwoman Watts

Ms. Watts said that she has one comment. Is there any way perhaps on the next agenda, we can talked about the policies in which Council follows the guidelines of employees. She would like to know how many policies there are that Council is under the gun so to speak following the employee policy handbook.

Councilman King

Mr. King stated he had no further comments.

Councilwoman Hummer

Ms. Hummer stated she had no further comments.

Mayor Pro Tem Baker

Ms. Baker said she had a couple of things. One is could we fix the speaker's microphone so it wouldn't be quite so floppy. No one can speak into that microphone. Everybody has an issue with it. The other thing is she just wanted to say that a couple of weeks ago down at the waterfront at the Waterfront Market, it is very frustrating and very rewarding at the same time to see some people being ticketed and being stopped and being educated about the North Carolina State Law that says you will stop for a person at a crosswalk. It is absolutely frustrating to sit there and watch people trying to cross the street and cars coming up and blowing the horn as if the person in the crosswalk is wrong. She just hopes it doesn't take somebody getting killed at that crosswalk or some other crosswalk before we take it seriously. She appreciates the officers that are

trying to enforce the law down there. It is not a matter of stopping traffic for the pedestrians it is a matter of enforcing the law. She thinks it needs to be more in the forefront and more of a priority in this City. She wants to have the reputation that if you come to Elizabeth City you will be fined if you don't stop for the crosswalk. She wants that reputation like a lot of other cities have. You have all been to them. You have been in the crosswalk and you had better come to a screeching halt and throw out that anchor because you are going to get fined if you don't. She understands that we had of the thirteen people fined the first week we only had six crosswalks and the rest were in addition to other problems that they found in violations within those stops. It is not only about that enforcement it is about breaking the law period.

Councilman Rivers

Mr. Rivers stated he had no further comments.

Councilwoman Meggs

Ms. Meggs said she would like to say one thing. If any of you would like to be a propter for the end of school testing it will be May 19 through 26th. Please call one of the principals.

Councilman Stimatz

Mr. Stimatz stated he had no further comments.

Mayor Atkinson

Mayor Atkinson said that he has a couple of things that he would like to say. There are a lot of things going on in this City. A lot of positive things and he has been fortunate enough to attend many of those outings. It is just too many to name. But, there are a lot of good things happening here. He does want to follow up on a couple of things. As most of you know or don't know the signs have been placed on Road Street lowering the speed limit to 25 mph. They are in place so be careful. The Chief has assured him that his department is going to enforce the speed limit.

He would like to follow up on what Mayor Pro Tem said in regards to the pedestrian in a marked crosswalk. It is imperative that we follow the State Law that says you will yield or stop for a pedestrian in a marked crosswalk. That is not only down at Mariner's Wharf. It is all over town. The Chief has assured him that the police department will be actively stopping people every time if there is a police officer there and he has assured him that there will be. We had three policemen down there Saturday. Two on bikes and one in a car and a lot

of the stops were for pedestrian violations and the others were no license, suspended license and there are benefits far beyond this. He hopes Council will support this effort to insure that the City Manager and the Chief follow what the precedent we are setting here. It is new and different and he knows it will be hard to change but we have been talking about it for a year and it has been on your electric bill and on Channel 11 and he has brought it up numerous times at Council. Be careful, drive slow and stop for the pedestrians.

## 8} **ADJOURNMENT:**

There being no further business to come before the Council Mayor Atkinson adjourned the meeting at 8:20 p.m.

_____
Dianne S. Pierce-Tamplen, MMC
City Clerk

_____
Stephen S. Atkinson
Mayor