

**City Council Regular Session
May 12, 2014**

The City Council of the City of Elizabeth City met in regular session on Monday, May 12, 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
Councilman Kem Spence
Councilman Darius Horton
Councilman Montravias King

MEMBERS ABSENT: None

OTHERS PRESENT: City Manager Rich Olson
City Attorney Bill Morgan
Finance Director Sarah Blanchard
Planning Director June Brooks
Chief of Police Eddie Buffaloe
Electric Department Superintendent Karl Clow
Assistant to the City Manager Angela Cole
ECDI Director Rebecca Cross
Public Utilities Director Paul Fredette
Fire Chief Larry Mackey
Inspections Director Stanley Ward
Parks and Recreation Director Bobbi White
City Clerk Vivian White

The City Council regular session was called to order by Mayor Joe Peel at 7:00 p.m. Mayor Peel welcomed everyone to the meeting and recognized Councilman Tony Stimatz to give the invocation. Mayor Peel announced that Boy Scout Troop 162 and Boy Scout Troup 151 were attending the meeting because the scouts are working on their Citizenship Badges. He invited the members to come forward and lead the Pledge of Allegiance.

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 Councilman Kem Spence, to approve the agenda as presented. Those

voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.

2. Statement of Disclosure:

City Clerk Vivian White read the Statement of Disclosure. Mayor Peel inquired if any Councilor wished to report on an agenda item. Councilman Donnelly advised that he is the current president of Paths of Pasquotank, a bicycle organization. He stated that Paths of Pasquotank is willing to contribute matching funds toward the PeopleForBikes Grant Application. He said that he did not think he should be excused from voting on the matter, but wanted to be upfront with the Council regarding his membership in the organization.

3. Proclamation:

Mayor Peel read and presented a proclamation designating the week of May 18-24, 2014 as “Public Works Week in the City of Elizabeth City” and called upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contribution, which public works officials make every day to our health, safety, comfort, and quality of life.

Public Utilities Director Paul Fredette accepted the proclamation on behalf of the Public Works Department and thanked Mayor Peel and the City Council for their support.

4. Comments from the Public:

Phyllis Bosomworth, 301 Breezewood Drive, Elizabeth City, NC thanked the City Councilors for their service to the City. She stated that she is the owner of Long and Foster Real Estate Company, which has 20 full-time realtors and five support staffers employed. Ms. Bosomworth shared real estate report information for the period May 2011 to May 2014, which indicates that the median sales price of homes in the area dropped from \$129,000 to \$111,000. She reported that first quarter home sales had also decreased by 13% over last year; and that there is 13 month supply of homes on the market. She said that lower priced home sales have increased, while higher priced home sales have decreased and that the people who normally purchase higher priced homes are not moving to the community. She pointed out that all of these factors affect tax collections and ultimately the projects that the Council wants and needs to do. She stated that positive leadership is needed now more than ever and that development of the downtown must continue in order to offer the amenities that people are looking for when they consider a new community in which to settle. She said that civility and respect on the Council and from the public is essential. She advised that she often hears business owners question continuing to keep their businesses here due to the actions of some on Council; and that real estate agents have reported to her that potential homeowners have decided not to locate in Elizabeth City for the same reason. She complimented the Vision 2020 initiative as well thought out and inclusive and commented that it is necessary for everyone to work together to see the plan through.

Johnnie Walton, 401 New York Avenue, Elizabeth City, NC stated that the Statement of Disclosure, which was read by the City Clerk, should explain more about the sections of the City Code that are referenced. He complained that he had been unable to secure DVD copies of Council meetings from the public library, because he wanted to review a discussion of a conflict of interest policy held when he was a member of Council. He said that he had addressed four of the five “Ps” during his comments at the last Council meeting; and wanted to talk about the fifth “P”, which is “practice.” He stated that “if you don’t practice something, why would you put it in the newspaper or put it in the meeting?” He said that “it is good to have perspective, which is a vision; you should have programs, it’s good to have personnel, but if you don’t practice it, why are you going to write it?” He asked why The Daily Advance writes something that is not happening. He stated that if there is a conflict of interest, the Councilors should take themselves out of the picture, but that is not what has been going on. He alleged that people are being brought to the podium that “join in” with Councilors’ interests and say positive things. He stated that “a person can say a lie so long, everybody will start believing it.” He said that the truth will set everyone free.

5. Approval of Minutes:

a. City Council Work Session – April 28, 2014

Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Montravias King, to approve the minutes of the April 28, 2014 City Council Work Session as presented. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.

b. City Council Regular Session – April 28, 2014

Motion was made by Councilman Darius Horton, seconded by Councilman Montravias King, to approve the minutes of the April 28, 2014 City Council Regular Session as presented. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.

6. Consent Agenda:

Mayor Peel recognized City Manager Olson to detail the items on the Consent Agenda. Mr. Olson recommended approval of all items, as follows:

Consent Agenda:

- a. Consideration – Authorization for the Elizabeth City Fire Department to use the structure owned by Emily Hurdle at 109 W. Broad Street for live fire training;

- b. Consideration – Approval and award of application received from Twiford EC Main, LLC for a Downtown Improvement Grant Program request in the amount of \$19,455.00;
- c. Consideration – Approval of amendment requested by Pasquotank County to the Third Amendment to the Parks and Recreation Interlocal Agreement, as presented;
- d. Consideration – Adoption of Ordinances declaring the applicable structures at 512 Edge Street, 406 E. Burgess Street and 703 Herrington Road condemned and authorization to demolish same, as follows:

ORDINANCE # _____
CONDEMNATION AND DEMOLITION
512 Edge Street

AN ORDINANCE 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 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 owners of said structure have 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 November 27, 2013 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 house at 512 Edge 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 November 27, 2013 and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

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 12th day of May 2014.

Joseph W. Peel
Mayor

Vivian D. White, NCCMC
City Clerk

ORDINANCE # _____
CONDEMNATION AND DEMOLITION
406 East Burgess Street

AN ORDINANCE 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 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 owners of said structure have 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 November 21, 2013 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 house at 406 East Burgess 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 November 21, 2013 and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

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 12th day of May 2014.

Joseph W. Peel
Mayor

Vivian D. White, NCCMC
City Clerk

**ORDINANCE # _____
CONDEMNATION AND DEMOLITION
703 Herrington Road**

AN ORDINANCE 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 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 owners of said structure have 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 February 12, 2014 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 house at 703 Herrington Road 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 February 12, 2014 and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

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 12th day of May, 2014.

Joseph W. Peel
Mayor

Vivian D. White, NCCMC
City Clerk

End of Consent Agenda:

Motion was made by Councilwoman Jean Baker, seconded by Councilman Montravias King, to approve the above Consent Agenda as presented. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion passed unanimously.

7. Regular Agenda:

- a. Report on Investigation requested by the City Council on involvement/authority of Mayor Peel and City Manager Olson in Pasquotank County Golden LEAF Foundation grant application – Norwood P. Blanchard, III, Attorney at Law

Mayor Peel recognized City Attorney Morgan. Mr. Morgan said that in March 2014, the City Council directed him to ask Mr. Norwood Blanchard, a partner with the firm, Crossley McIntosh Collier Hanley & Edes, P.L.L.C. of Wilmington, NC, to investigate the facts and circumstances surrounding a grant application by Pasquotank County to the Golden LEAF Foundation, which included among other things, funding for a proposed STEM school in Pasquotank County. Mr. Morgan reported that Mr. Blanchard had conducted the requested investigation; and that he had prepared a written report, a copy of which had been provided to the Council at the beginning of the meeting. Mr. Morgan introduced Mr. Blanchard to report his findings.

Mr. Blanchard provided an overview of the following written report to the City Council.

Beginning of Blanchard Report:

**INVESTIGATION FOR
CITY OF ELIZABETH CITY**

TO: CITY ATTORNEY WILLIAM MORGAN
HONORABLE JOSEPH W. PEEL
CITY COUNCIL

FROM: NORWOOD BLANCHARD

SUBJECT: REPORT ON INVESTIGATION

DATE: 5/28/2014

Earlier this year, I was contacted by City Attorney William Morgan about possibly conducting an investigation for the City of Elizabeth City. Mr. Morgan indicated that the City Council wanted to look into the actions of Mayor Peel and City Manager Olsen in seeking a grant for the creation of a STEM school. More specifically, Mr. Morgan indicated that the

Council was interested in an independent probe into whether Mayor Peel and City Manager Olsen's activities had possibly violated the City Code or the provisions of City's Ethics policy dealing with impermissible conflicts of interest.

On March 13, 2014, Mr. Morgan informed me that the Council had decided to proceed with the investigation. Mr. Morgan sent me a package of documents, including a copy of the City's Code of Ethics, minutes from the November 12, 2013 Council meeting and other meetings, photocopies of statements/documents presented to the City Council by Mr. Keith Rivers (President of the Pasquotank County Branch of NAACP), a memorandum prepared by City Manager Olsen, and articles from the local newspaper regarding the proposed investigation.

I subsequently spoke with Mr. Morgan and was given a list of contact numbers for witnesses believed to have knowledge of the circumstances surrounding the grant application. I was asked to prepare a report detailing what the witnesses reported and my conclusions.

In addition to the documents provided by Mr. Morgan, I located and reviewed the following documents:

1. Minutes from July, August, September, October and November 2013 meetings of the Pasquotank County Board of Commissioners.
2. Minutes from the August, September, October and November 2013 meetings of the Pasquotank County School Board.
3. Articles of Incorporation for the Northeast Academy for Aerospace & Advanced Technologies, a North Carolina non-profit corporation (located on N.C. Secretary of State's website).
4. Various provisions contained in Chapter 160A of the North Carolina General Statutes.
5. Article 31 of Chapter 14 of the North Carolina General Statutes, dealing with criminal sanctions for various forms of misconduct in public office.
6. City of Elizabeth City Charter (from City's website).
7. City of Elizabeth City Code (from City's website).

After reviewing these documents, I interviewed the following witnesses: Mr. Keith Rivers, City Manager Richard Olsen, Mayor Joseph Peel, County Manager Rodney Bunch, County Commissioner Jeffrey Dixon, Ms. Morgan Jethro (grant writer for Elizabeth City) and Ms. Jean Brooks (Planning Director for Elizabeth City). Based on these interviews and documents, I was able to prepare a brief "time line" of the events:

August 29, 2013	Meeting with Golden LEAF President Dan Gerlach, attended by Mayor Peel, City Manager Olsen, Morgan Jethro, County Commission Chairman Jeff Dixon, and County Manager Rodney Bunch.
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September 21, 2013	Proposed STEM school idea reported in Daily Advance article.
September 30, 2013	STEM school idea discussed at joint meeting of City Council and County Board of Commissioners.
October 7, 2013	Pasquotank County Board of Commissioners votes to approve and submit grant application.
October 15, 2013	Deadline for submission of grant proposal to Golden LEAF.
October 21, 2013	Mayor Peel and Commissioner Dixon meet with School Board committee.
November 8, 2013	Golden LEAF President Gerlach quoted in Daily Advance article as stating that LEAF will not award grant funds to proposed STEM school.
November 12, 2013	Discussion at City Council meeting about involvement of City staff and Mayor Peel in preparing grant application.
November 18, 2013	Mayor Peel and Commission Chairman Dixon prepare Articles of Incorporation for non-profit Northeast Academy for Aerospace & Advanced Technologies.
November 25, 2013	N.C. Secretary of State accepts Articles of Incorporation for filing.

Here are summaries of the interviews and some observations about the incidents.

SUMMARIES OF WITNESS INTERVIEWS:

Keith Rivers

Mr. Rivers currently serves as the President of the Pasquotank County branch of the NAACP. Mr. Morgan indicated that it would be a good idea to interview Mr. Rivers before speaking with some of the other witnesses because Mr. Rivers might be able to give me additional insight into what he perceived to be the potential problems with Mayor Peel and City Manager Olsen’s involvement in the grant application. I also reviewed Mr. Rivers’ November 25, 2013 memo to the City Council prior to speaking with him.

Mr. Rivers indicated that his organization’s position was that it was improper for a city employee (Ms. Jethro) to assist in the preparation of a grant application for a non-profit charter school. He stated that he believed that the process of preparing the grant application “lacked transparency” because he believed that it had not been disclosed to the Pasquotank County Board of Commissioners or the Pasquotank County School Board. He also stated that he believed that Mayor Peel should not have acted (offered assistance with the grant application) without getting express approval from the City Council and that he believed that Mayor Peel was “acting on his own” and not for the benefit of the City.

We discussed, in particular, the City's ethics provisions dealing with conflicts of interest. When I asked Mr. Rivers if he thought that Mayor Peel had a direct or indirect pecuniary interest in the proposed charter school, Mr. Rivers indicated that he did not have any idea of whether Mayor Peel was planning to work for the charter school, but that he thought it was "possible" that Mayor Peel might be paid for being the school's "registered agent."

With respect to Mr. Rivers' concerns about a "lack of transparency," we discussed the fact that the STEM school grant had been discussed at public City Council meetings and County Board of Commissioners' meetings prior to the submission of the grant application. In particular, the minutes from the September 30, 2013 joint meeting of the City Council and County Board of Commissioners indicate that the proposed STEM school was proposed at that meeting. Also, the grant application was voted on and approved by the Pasquotank County Board of Commissioners at their October 7, 2013 meeting.

Mr. Rivers stated that while the idea of a STEM school had been discussed, he did not believe that the corporate governance of the proposed STEM school (and the fact that it would be a charter school organized as a non-profit corporation) had been adequately disclosed. He stated that he also believed that the plan had not been discussed with the Pasquotank County School Board prior to submission of the grant application.

City Manager Rich Olsen:

Since Mr. Olsen had already prepared a memorandum (dated November 15, 2013) addressed to the City Council outlining his involvement in the grant application, my interview with Mr. Olsen was shorter than it would have otherwise been.

Mr. Olsen stressed that he did not believe this grant application was handled any differently from a number of other grant applications in the past. He stated that the City's staff routinely assisted community non-profits with grant applications because those grants would benefit the City's residents. He also stated that the reason the initial grant application was prepared by the City's staff was that the County did not have a grant writer on staff, so County Manager Bunch had requested the City's assistance.

Mr. Olsen said that at the August 29, 2013 meeting, Golden LEAF's instructions were that only applications from County governments were being accepted, so the City was not listed as a sponsor of the application. Mr. Olsen noted that the City would have assisted with grant application even if the STEM school had not been proposed because the other proposed project contained in the grant application (the emergency generator for College of Albemarle) would directly benefit the City.

I also asked Mr. Olsen about whether he was aware of any potential financial conflict of interest. Mr. Olsen stated that, to the best of his knowledge, Mayor Peel did not have any actual or planned financial stake in the proposed STEM school.

Mayor Joseph Peel:

Mayor Peel disputed several of Mr. Rivers' assertions about the grant application and the process behind it. First, he stated that Mr. Rivers' contentions about a "lack of transparency" were unfounded.

Mayor Peel stated that the Pasquotank County Board of Commissioners had been apprised of proposal. He noted Chairman Dixon had been involved with the proposal all along and that Dixon and County Manager Bunch were present at the August 29, 2013 meeting with Golden LEAF. Mayor Peel also stated that he and Dixon had discussed the proposed STEM school with representatives of the School Board (most notably Superintendent Williams) even before the meeting with Golden LEAF.

Mayor Peel also mentioned the fact that there was a relatively short period of time between the Golden LEAF meeting (August 29, 2013) and the initial deadline for the grant application (October 15, 2013). He said that there had never been any intention to hide any part of the process from anyone. He also noted that charter schools are all considered "public" entities for the purposes of North Carolina open meetings and public records laws, so every aspect of the school's operations would have been made public.

I specifically asked Mayor Peel about potential conflicts of interest. He stated that he did not have any financial interest in the proposed STEM school, and that he did not have any interest in working for the school in any capacity. He also said that he never anticipated collecting any sort of fee for being the registered agent of the school. He noted, as an aside, that he was already retired and did not want to return to work at his age.

Mayor Peel also stated that he did not personally request or direct the City's staff to assist with the grant application.

County Manager Rodney Bunch:

County Manager Bunch verified Mr. Olsen's account of the events. He stated that he had attended the Golden LEAF meeting on August 29, 2013 and that Golden LEAF had indicated that any grant applications would need to be submitted by the County government. Mr. Bunch also verified that he had asked City Manager Olsen for the City's assistance with the grant application because Pasquotank County did not have a grant writer on staff.

June Brooks and Morgan Jethro:

I spoke with Ms. Brooks and Ms. Jethro about the process for grant applications. More specifically, I asked them about Mr. Rivers' assertion that the City Council was typically consulted before grant applications were submitted, particularly when a non-profit was involved.

Both Ms. Jethro and Ms. Brooks stated that Mr. Rivers was incorrect. Ms. Jethro said she had only been employed by the City for approximately one year, so she could not remember the circumstances surrounding many of the other grant applications that had been submitted in the past, but that she believed that the Council was typically consulted only when a grant would require matching funds. She also verified that she frequently assisted non-profits and the County with grant applications. Finally, she verified that City Manager Olsen, not Mayor Peel, had asked her to help prepare the application.

Ms. Brooks stated that she had been working for the City for several years and she could recall a number of grant applications over the past few years that were not discussed with the City Council prior to being submitted. In fact, she provided the following representative list:

NC Cooperative Extension office for a Tobacco Grant

Healthy Carolinians

Northeastern CDC

River City CDC

ECDI (Elizabeth City Development, a 501(c)(3))

Community Relations Committee (applied for Z. Reynolds/Carnegie Grant)

PAL (police athletic league)

Both Ms. Jethro and Ms. Brooks stated that they did not believe that the grant application at issue in this situation was handled any differently from other routine grant applications.

County Commission Chair Jeff Dixon:

Mr. Dixon verified Mayor Peel’s account of the events, including that he and Mayor Peel had discussed the proposed STEM school with representatives from the area Boards of Education. Mr. Dixon also verified that the County had asked for assistance from the City’s staff in preparing the grant application because the County did not have a grant writer on staff. Finally, Mr. Dixon stated that he was not aware of Mayor Peel having any financial interest in the proposed STEM school.

Observations/Conclusions:

My understanding of this assignment was that I was tasked with two primary goals: (1) Document what happened and when; and (2) determine whether the actions of Mayor Peel and City Manager Olsen violated City’s code provisions on ethics (conflicts of interest) or other provisions.

The short answer is that I did not find any evidence that Mayor Peel or City Manager Olsen violated the City Code or otherwise acted inappropriately. None of the evidence suggests that Mayor Peel had any sort of direct or indirect financial interest in the proposed STEM school. Also, there was no indication that the grant application for the STEM school was treated any differently from any other routine grant application.

The City’s Code of Ethics prohibits, in general terms, any City official from using his or her position for financial gain. The general idea is that City officials cannot use their positions to benefit any business entity in which they have a financial interest. The Code defines a “business entity” as any “business, . . . trust or corporation which I organized for financial gain or for profit.” An “interest” is defined as any “direct or indirect pecuniary or material benefit. . . .” *See*

City Code § 2-111. This is in accord with North Carolina’s criminal laws, which also prohibit public officials from using their offices for personal financial gain. *See* N.C. Gen. Stat. § 14-234 (class 1 misdemeanor for public officials to benefit from public contracts).

In this case, the proposed STEM school was not a “business . . . organized for financial gain or profit.” Also, there is no evidence that Mayor Peel stood to realize any “direct or indirect pecuniary or material benefit” from the charter school.

I also believe that the allegations that using a city employee to prepare a grant application for the County or a non-profit was an improper “personal” use of City property are unfounded. It is entirely routine and customary for the City’s grant writer to assist other local government entities and non-profits with grant applications. This practice is entirely consistent with North Carolina law and common practice in other cities and towns. For example, North Carolina law expressly allows municipalities to donate goods or property to other units of local government *or non-profits*, either with or without consideration. *See, e.g.*, N.C. Gen. Stat. §§ 160A-279, 160A-280.

Finally, there is no indication that Mayor Peel violated the City Code’s provisions dealing with the supervisor/subordinate relationship. The City Code, consistent with North Carolina’s general statutes, defines the City Manager as the chief administrative officer for the City. *See* City Code § 4.7 (stating that city manager “shall have direct supervisory authority over all officers, department heads, and employees. . .”); *accord* N.C. Gen. Stat. § 160A-148. All of the witnesses involved verified that Mr. Olsen, not Mayor Peel, asked the City’s staff to assist with grant application.

I hope that this will suffice to answer any questions you may have about this matter. Thank you, again, for referring this matter to me. Please feel free to contact me if you have any questions or concerns.

End of Blanchard Report

Mr. Blanchard offered to answer any questions or concerns the Councilors had regarding the investigation report.

Councilman King stated that he thought everyone would agree that the Council wanted to bring closure to this matter. He advised Mr. Blanchard that the Council did not pay him to come and “scold the Council” and tell them what the responsibilities of the City Manager are or what the City’s Charter says. He stated that the Councilors already knew those things. Councilman King instructed Mr. Blanchard that the Council only asked for him to report his findings; and he pointed out that it was difficult for the Council to bring closure to this matter when the vast majority of the investigation report included Mr. Blanchard’s personal opinions. Councilman King inquired of Mr. Blanchard when he conducted the interview with Mr. Keith Rivers to which Mr. Blanchard responded last “Wednesday or Thursday”; however, Mr. Blanchard stated that he did not have the exact date because his file was in his office in Wilmington. Mr. Blanchard reported that he recalled his conversation with Mr. Rivers lasted for approximately 85 minutes.

Councilman King asked Mr. Blanchard when he completed his investigation. Mr. Blanchard responded that he had prepared summaries of what all witnesses said, put them together and submitted the report to Mr. Morgan that day (May 12, 2014).

In a response to Councilman King's comments, Mr. Blanchard stated that according to the minutes, part of what was discussed during the Council meeting in February was essentially whether Mayor Peel and City Manager Olson overstepped their authority or their boundaries, in particular the subordinate/supervisor relationship. He said that the reason he addressed that in detail in his report was because it was one of the concerns raised by the Councilors. He stated that he did not intend to come across as lecturing, but felt that many of the people who had been waiting for the report may not be privy to the information that the Council already knew. He stated that he had given his honest opinion that proper channels were followed by staff according to the witness accounts.

Councilwoman Baker advised Mr. Blanchard that many on Council wanted the investigation only to clear the name of Mayor Peel and City Manager Olson because "forgiveness" could not be reached on Council. She stated that she felt the investigation was a waste of Mr. Blanchard's time and was frivolous.

Councilman Brooks asked Mr. Blanchard if he had a copy of the allegations brought forth by the NAACP. Mr. Blanchard responded that he had a copy of the November 25, 2013 memo prepared by the NAACP and that he had addressed everything contained in the memo. He said that during his conversation with Mr. Rivers, Mr. Rivers seemed to be genuinely concerned about whether there had been a proper use of City staff; and also had the impression that the grant may have been handled differently than in other situations. Mr. Blanchard stated that according to information provided to him that was not the case. He said it was nice that the City had adequate staff and support available to help both Pasquotank County and non-profit organizations with grant applications.

Councilman Brooks stated that he did not think the investigation was frivolous. He said that he understood that what lawyers do is give opinions. He said "you could take four more attorneys and come up with a different conclusion". He stated that it was well worth the Council's time to ask for the investigation and for the citizens of the City to see the results of the investigation as Mr. Blanchard's opinion states.

Mr. Blanchard said that one of the interesting things about this matter is that everyone agreed about what happened. He stated that because of that, he did not have to make any credibility determinations as there was no dispute. He said his charge, as he understood it, was to determine if there was a violation of the City's Charter or Code; and he believed that if other attorneys were asked - based on the facts of the matter - the same opinion would be given. He stated that the issue regarding whether there was enough transparency in the question of the grant application was a judgment call that he would agree others may review and reach a different conclusion.

Councilman Stimatz thanked Mr. Blanchard and stated that he appreciated the manner in which the report was prepared. He pointed out that it was the "NAACP's position" on this issue; and he asked if Mr. Blanchard had found discussion in the minutes of a

NAACP meeting or a resolution by the Board of the NAACP setting out the allegations presented. Mr. Blanchard responded that he did not validate that it was indeed the position of the NAACP as an organization as to the allegations presented by Mr. Keith Rivers. Mr. Blanchard said that Mr. Rivers represented to him that it was the organization's position, and he took him at his word.

Councilman Horton asked Mr. Blanchard when he spoke with the witnesses he interviewed for his report. Mr. Blanchard responded that he had spoken with most of the persons over the previous week or the past weekend. He said that he first read all the documents and put together a timeline of events before speaking with the witnesses in order to verify that what the documents said was accurate. He stated that his witness questions centered on a very narrow scope: "how did you get told to do this?" and "was this different than what you did in the past?" He indicated that it was a luxury in this investigation that everyone agreed on the historical facts. Mr. Blanchard stated that Mr. Rivers' concerns were the basis for the questions he asked the witnesses, because the Council had the same concerns.

Councilman Horton asked Mr. Blanchard if he was aware that the investigation came about because of the allegations presented by the NAACP. Mr. Blanchard stated that he did not know that up front, but it appeared that way after he reviewed the minutes of the Council meetings. Mr. Blanchard said that it also appeared to be a matter of public debate during previous Council meetings.

Councilman Horton stated that it was his opinion that before Mr. Blanchard interviewed the other witnesses, he should have interviewed Mr. Rivers first since he was the one who primarily had brought forth the allegations. Mr. Blanchard responded that Mr. Horton was absolutely correct; and said that was exactly the manner in which he conducted the investigation - as he did interview Mr. Rivers first before the other witnesses.

Councilman Horton asked Mr. Blanchard if it was his opinion in the STEM school matter if Mayor Peel had acted as an individual or as the Mayor of Elizabeth City. Mr. Blanchard responded that he thought it was "a little bit of both." Mr. Blanchard explained that he thought Mayor Peel had a personal interest in a STEM school – but that it was not an "interest" as defined in the City's Conflict of Interest Policy, but an interest "as in - this is an idea that he believes in." Mr. Blanchard stated that as far as attending the Golden LEAF pre-grant application meeting, he thought Mayor Peel was wearing his "mayor's hat" because he attended the meeting with two City employees. He pointed out that Chairman Jeff Dixon did the same thing in attending with County staff. He stated that in order to attend that meeting, you had to be there in a governmental function. He reported that he was unsure if City representatives knew going into the pre-grant meeting if applications could only be submitted by counties; however, he stated that everyone was certainly clear on that at the conclusion of the meeting. He further stated that there was another component of the Golden LEAF application, which was the COA generator, and that generator was a core concern to the City.

Councilman Horton pointed out that the Articles of Incorporation, which had been filed with the Secretary of State, had been signed by Mr. Peel as “mayor.” Mr. Blanchard stated that the organization was listed as a non-profit under Chapter 55A; and that if it was dissolved all funds would go back to Perquimans and Pasquotank County schools. He described the Articles as being “fairly bare bones” that did not include by-laws.

Councilman Horton asked Mr. Blanchard if it was appropriate for Mayor Peel to sign the paperwork filed with the Secretary of State as “mayor”. Mr. Blanchard replied that it was clear in this situation that Mayor Peel did not have the ability to pledge any town funds; and suggested that Mayor Peel would have to be queried as to why he signed the document that way. He pointed out that Mr. Dixon did not sign the document, because only one of the incorporators had to sign. Mr. Blanchard pointed out that the form did not reference the City in “any way, shape or form”.

Councilman Horton asked if Mayor Peel’s use of his title of “mayor” had any bearing on the approval of the organization by the Secretary of State. Mr. Blanchard responded “no” and explained that if the document is correct as to form, it is simply an administrative task for approval, as long as the incorporator signs and pays the fee.

Mr. Blanchard stated that it was interesting to note that the paperwork for the non-profit corporation, Northeast Academy for Aerospace and Advanced Technologies, was not filed with the Secretary of State until after notification that the grant application had not been funded had been received.

Councilman King stated that he did not appreciate Mr. Blanchard’s nonchalant attitude towards this matter. He pointed out that the timeline of the investigation was from August 29, 2013 to November 25, 2013 and he questioned if that time period was truly comprehensive. Mr. Blanchard responded that it was not in totality - but it was as far as the City’s involvement was concerned. He stated that as far as the STEM school idea was concerned, it was apparent that Mayor Peel and Chairman Dixon had been working on the idea of the school well before the Golden LEAF grant application and it was still ongoing. He reminded the Council that his task was to look at the City’s connection; and when the grant money was not received, that was the end of the City’s involvement.

Mr. Blanchard stated that he did not see any violations of the sort as had been described or had been a concern of the Council. He said the other judgment calls that had been discussed earlier, “whether it could have or should have been handled differently”, were outside the scope of what he had been tasked with. He said that he understood that he would not be here if there had not been a disagreement, and it was his hope that the report would help get the matter resolved.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly, to accept the report of Mr. Blanchard and close this matter before Council. Those voting in favor by show of hands were: Baker, Donnelly, Hummer, Stimatz, and Spence. Against by show of hands: Brooks, Horton and King. The motion passed.

b. Consideration – Authorization to Submit PeopleForBikes Grant Application:

Mayor Peel called on Mr. Olson for an explanation of this item. Mr. Olson explained that staff is requesting authorization to submit a PeopleForBikes Grant application. He said that staff has determined the need for 40 additional bike racks for city and county parks, as well as the downtown area of Elizabeth City. He said that the cost of the bike racks will be \$12,465, with shipping charges of \$600.00, making the total project \$13,065. He reported that the grant application is for roughly one-half of the cost, or \$6,500. He stated that the City has received commitments from Elizabeth City Downtown, Inc., Paths of Pasquotank and the River City Cycling Club to partner with the City to apply for this grant. He stated that if the City is successful with the application, a grant agreement will be brought back to the Council for approval.

Motion was made by Councilman Montravias King, seconded by Councilman Tony Stimatz, to authorize the PeopleForBikes grant application. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion passed unanimously.

c. Consideration – Adoption of Resolution authorizing financing for the Roanoke Avenue Phase III Project:

Mayor Peel called on Mr. Olson for a review of this item. Mr. Olson explained that this item was a part of the discussion on the fiscal year 2014-2015 budget. He reported that City staff had originally taken bids on the financing for the Roanoke Avenue Phase III Project for a five year period; but had determined that a five year financing period would hinder the City's ability to do other projects in the Stormwater Utility over the five year term. Therefore, he stated that the Finance Committee had recommended exploring a ten year term. He said that the only bid received by staff for the ten year financing was from BB&T and stated that staff recommended adopting the resolution approving the terms of the BB&T bid proposal.

Motion was made by Councilwoman Jean Baker, seconded by Councilman Tony Stimatz, to adopt the following resolution authorizing financing with BB&T Bank for ten years for the Roanoke Avenue Drainage Project Phase III. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion passed unanimously.

**Resolution # 2014 _____
Approving Financing Terms**

WHEREAS: The City of Elizabeth City, North Carolina (the "City") has previously determined to undertake a project for the financing of the construction of Phase III of a

stormwater management program servicing the Roanoke Avenue area, (The "Project"), and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated May 9, 2014. The amount financed shall not exceed \$1,341,330.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 2.35%, and the financing term shall not exceed (10) years from closing.
2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request.
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.
4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).
5. The City intends that the adoption of this resolution will be a declaration of the City's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be

advanced, from the City's general fund, or any other City fund related to the project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of the City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Adopted, this 12th day of May, 2014 by the City Council of the City of Elizabeth City, NC.

By: _____
Joseph W. Peel
Mayor

ATTEST:

By: _____
Vivian D. White, NCCMC
City Clerk

8. Comments and Inquiries on Non-Agenda Items:

Councilman Donnelly reminded everyone about the upcoming Potato Festival and cautioned about the street closures associated with the event.

Councilman Spence extended congratulations to Councilman King for graduating from Elizabeth City State University. He saluted all graduates and wished them the best for the futures.

Councilwoman Baker thanked the Baptist Men for helping the community with storm recovery. She reported that she had represented the City during an event at ECSU that recognized early 20th century graduates, whereby six ladies ranging in age from 92 to 100 were honored as the oldest living graduates of ECSU. She reported that it was a wonderful tribute to some very lovely ladies and she was proud and honored to attend. In recognition of Tourism Week, she provided statistics that evidenced the importance of tourism to the State of North Carolina as well as the City of Elizabeth City. She encouraged everyone to take tourism seriously as a major impact to our economy.

Councilman King said it was unfortunate that the Council could not bring closure to the investigation; and stated that he was not satisfied personally and did not like the attorney's nonchalant attitude. He said that regardless of the findings, he would move forward and he stated that he had a working relationship with both Mayor Peel and City

Manager Olson, which he stated is all that matters. He said that there is no government – local, state or federal – where everyone agrees on everything. He said that the statements made by people that the Council is “stopping business” “is a lie.” He said that contrary to popular belief, there are other factors that are hindering growth in Elizabeth City that have nothing to do with the City Council. He acknowledged that everyone has an opinion, and stated that he thought Elizabeth City is so small that people took things personally. He said his job was to represent his constituents to the best of his ability and that is what he would continue to do.

Mayor Pro Tem Hummer congratulated all graduates from all institutions of learning. She thanked all the City employees who continue to be involved in the cleanup and tornado recovery efforts, as well as all the volunteers who continue to help with this difficult task. She complimented the Farmers Market and all its new offerings for this season.

Councilman Horton congratulated Councilman King on his graduation from ECSU. He thanked all those who participated in the event held at Holy Trinity Community Church to help victims of the recent tornado and reported that it was a tremendous success. He stated that so much was donated that there will be another event held to provide donated items to those in need.

Councilman Stimatz congratulated Councilman King on his graduation and welcomed him to the world of the working. He stated that he continues to receive calls from people expressing their appreciation for the response of the City and other municipalities who came to our aid to our assistance after the recent tornado.

Councilman Brooks had no comments.

Mayor Peel said that he would be participating in a lock-up to benefit the Police Athletic League during the Potato Festival and requested donations to help him get out of jail. He congratulated Councilman King on his graduation and stated that he had the pleasure of attending the graduation ceremony. He also congratulated “Hipp” Barclift of the City’s Parks and Recreation Department on his graduation from ECSU and referenced the nice article published in The Daily Advance about Mr. Barclift and his daughter graduating together.

9. CLOSED SESSION – as allowed by:

- a. NCGS § 143-318.11(a)(4) To discuss matters related to the location or expansion of business/industry;
- b. NCGS § 143-318.11(a)(5) Acquisition of Property;
- c. NCGS § 143-318.10(e) Approval of Closed Session Minutes

Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Darius Horton, to go into Closed Session as per NCGS § 143-318.11(a)(4) To discuss matters related to the location or expansion of business/industry; NCGS § 143-318.11(a)(5) Acquisition of Property; and

NCGS § 143-318.10(e) Approval of Closed Session Minutes. . Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion passed unanimously.

(City Clerk Notation: The record shall show that Councilman Brooks left the meeting at the start of the Closed Session at 8:42 p.m.)

Motion was made by Councilman Tony Stimatz, seconded by Councilman Kem Spence, to come out of Closed Session and return to Open Session. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Spence, Horton and King. Against: None. The motion passed unanimously. (Councilman Brooks' unexcused absence is recorded as an affirmative vote.)

Motion was made by Councilman Tony Stimatz, seconded by Councilman Montravias King, to authorize the Manager to negotiate with the current land owners for an amount up to \$300,000 for land purchase and continuing of options for Phase II of the Aviation Research and Development Park. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Spence, Horton and King. Against: None. The motion passed unanimously. (Councilman Brooks' unexcused absence is recorded as an affirmative vote.)

10. Adjournment:

There being no further business to be discussed, Mayor Peel adjourned the meeting at 9:35 p.m.

Joseph W. Peel
Mayor

Vivian D. White, NCCMC
City Clerk