TUESDAY – 7:00 P.M.   MAY 26, 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 Pro Tem J. M. Baker presiding. Council members attending were: D. B. Evans, L. A. Hummer, R. E. King, B. S. Meggs, J. A. Stimatz and V. C. Watts. Mayor S. S. Atkinson and Councilman E. K. Rivers being absent. City Staff members attending were: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, City Attorney W. H. Morgan, City Manager Intern R. A. Lyons, Deputy City Clerk V. D. White, Planning Director J. C. Brooks, Inspections Director S. E. Ward, Fire Chief L. M. Mackey, Finance Director S. E. Blanchard, Electric Director K. F. Clow, Parks and Recreation Director J. D. Overman and Public Utilities Director P. A. Fredette.

Mayor Pro Tem Baker opened the meeting by welcoming those attending. She called upon Pastor Max Edwards for the Invocation after which the Pledge of Allegiance to the Flag of the United States of America was given.

1} <u>APPROVAL OF THE AGENDA:</u>

Mayor Pro Tem Baker called for action regarding the prepared agenda.

Councilman J. A. Stimatz asked to remove ***Item # 8- e Consideration – Budget Amendments*** from the Consent Agenda and place it under the Regular Agenda for discussion.

> ***A motion was made by Councilwoman B. S. Meggs, seconded by Councilman J. A. Stimatz to approve the agenda as presented to include the above noted item. Those voting in favor of the motion were: Meggs, Stimatz, Baker, Evans, Hummer, King and Watts. Against: None. Motion carried.***

2} <u>COMMENTS FROM THE PUBLIC:</u>

Mayor Pro Tem Baker asked City Clerk D. S. Pierce-Tamplen for the number of individuals signed up to speak.

City Clerk Pierce-Tamplen advised that no one had signed up to speak.

3} <u>APPROVAL OF MINUTES:</u>

Mayor Pro Tem Baker called for action regarding the minutes of April 27, 2009 and May 11, 2009.

> ***A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman V. C. Watts to approve the minutes of April 27, 2009 Regular Meeting and May 11, 2009 Regular Meeting. Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King and Meggs. Against: None. Motion carried.***

4} PROCLAMATION:

Mayor Pro Tem Baker presented a proclamation proclaiming Northeastern High School as a "Safe School" to Donald Sisson, Principal of Northeastern High School. Mr. Sisson and Anthony Alexander made brief remarks.

5} CONSENT AGENDA:

Mayor Pro Tem Baker asked City Manager Olson to read the items on the Consent Agenda. Following the reading she called for action from Council.

> ***A motion was made by Councilman D. B. Evans, seconded by Councilman R. E. King to approve the following Consent Agenda as presented. Those voting in favor of the motion were: Evans, King, Baker, Hummer, Meggs, Stimatz and Watts. Against: None. Motion carried.***

Consent Agenda

a} Call for a public hearing to be held on Monday, June 8, 2009 at 7:30 p.m. in the City Council Chambers of the Municipal Administration Building for notify the citizens that the City intends to apply for several CDBG grants.

b} Authorized the execution of an Agreement to provide water service to the Rivers Edge at Elizabeth City Crossing Development.

c} Approved and accepted an amendment to the Fiscal Contract with Elizabeth City Housing Authority for 2007-2008.

d} Approved live burn training at 1714 Peartree Road.

End of Consent Agenda

6} PUBLIC HEARING:

a}	RZ-02-09 to rezone 206 West Broad Street from General Business to Residential R-6.

Mayor Pro Tem Baker called upon Planning Director Brooks for comments.

Ms. Brooks advised that the proposed rezoning request is consistent with the Joint Pasquotank County and Elizabeth City Land Use Plan and is consistent with the development patterns of the surrounding neighborhood. The site has always been used for residential purposes and a residential zoning designation would be more consistent with the existing land use. According to the application immediate future plans include residential use as a family care home. The Planning Commission is recommending approval of this rezoning.

Mayor Pro Tem Baker declared the meeting into public hearing. Since there was no one present who wished to speak for or against the proposed rezoning, Mayor Pro Tem Baker declared the public hearing closed. She called for the pleasure of Council regarding RZ-02-09.

> ***A motion was made by Councilman J. A. Stimatz, seconded by Councilman R. E. King to approve the rezoning request Application RZ-02-09 as presented. Those voting in favor of the motion: Stimatz, King, Baker, Evans, Hummer, Meggs and Watts. Against: None. Motion carried.***

**7}	<u>REGULAR AGENDA:</u>**

a}	Budget Amendments:

Mayor Pro Tem Baker called upon Councilman Stimatz for comments.

Mr. Stimatz said his question involves around the issue of the Hugh Cale Audit. The last time we talked with the auditors was on December 15, 2008. In response to what was presented at that time, he has many questions, many of which have been answered and a number that haven't been answered. His expectation is he will wait until after the budget to bring this back. He would like to bring the auditors back some time in July or August. He has some very specific questions he would like to ask about some of the things that came up in their audit and some other reference material that makes him think their answer was the wrong answer. He just wanted to make it clear that he does not consider the Hugh Cale Audit closed. We haven't had a final report from them and he hasn't had the opportunity to ask his questions.

A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman V. C. Watts to approve all three amendments with the "to record the interim billing for the Hugh Cale Audit". Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King and Meggs. Against: None. Motion carried.

BUDGET AMENDMENTS
NUMBER 2009-5
MAY 26, 2009

BE IT ORDAINED, by the City Council of the City of Elizabeth City that the following amendments be made to the annual budget ordinance for the fiscal year ending June 30, 2009:

SECTION I. That the General Fund Balance Appropriated (103990.0000) and the Planning Professional Services (104900.0400) be increased by $4,187.

(To record final billing for Hugh Cale audit – total cost $51,979.)

SECTION II. That the General Fund Housing Demolition Assessment (103920.0020) and Inspections Housing Demolitions (105400.4600) be increased by $27,450.

(To record demolition expenses.)

SECTION III. That the Electric DOT Reimbursement Revenue (303490.4505) and Highway 158 Distribution Line Relocation Project (308300.7336) be increased by $81,623.

(To record cost to relocate electric lines on 158 to be reimbursed by DOT.)

ADOPTED, this 26th day of May 2009.

Jean M. Baker
Mayor Pro Tem

Dianne S. Pierce-Tamplen, MMC
City Clerk

b}	Remove Knobbs Creek Basin Drainage Interlocal Agreement from the table.

Mayor Pro Tem Baker advised that she would entertain a motion to remove from the table the proposed Knobbs Creek Basin Drainage Interlocal Agreement.

> ***A motion was made by Councilman J. A. Stimatz, seconded by Councilman D. B. Evans to remove from the table for consideration the Knobbs Creek Basin Drainage Interlocal Agreement. Those voting in favor of the motion were: Stimatz, Evans, Baker, Hummer, King, Meggs and Watts. Against: None. Motion carried.***

c}	Knobbs Creek Basin Drainage Interlocal Agreement.

Mayor Pro Tem Baker called upon City Manager Olson for comments.

Mr. Olson advised that when he brought before Council a proposed Knobbs Creek Drainage Interlocal Agreement, Council table action and asked for additional information. During the past week, he has met with County officials and Greg Johnson from Patton Harris Rust Associates. Mr. Johnson reviewed the additional information developed with his office and expressed concern about our ability to improve the conveyance of Knobbs Creek to address upstream flooding. It was agreed by all parties that the proposed scope for the next phase of the Knobbs Creek study should be changed to be more focused on the section of Knobbs Creek at the Main Street Extended crossing and the changes that were made when the bridge was replaced with culvert pipes. PHRA is preparing a modified scope of work and fee in response to last week's meeting. The Interlocal Agreement has been pulled from further consideration and will need to be redrafted to incorporate the change in scope.

The City's original concern dealt with the cost apportionment of the study. The City of Elizabeth City's total area within the Knobbs Creek drainage basin is only 17%. Staff has not yet been able to determine what share of impervious area within the drainage area lies within the City and County. Although we don't have an agreement to review at this point, it would be appropriate to inform the Board of County Commissioners the percentage for which the City will participate.

Mr. Stimatz said that he thinks the 17% is a great starting point but the question would be how do you think we should handle the impervious area.

Mr. Olson said that is more of a technical question that Mr. Fredette should address. There are two different ways to look at it. The original part of Elizabeth City includes Oxford Heights was basically designed to pull its part of the Stormwater retention. Then you look at the Tanglewood area they do have Stormwater pre-imposed requirements in that area. He does not believe that we are adding any more drainage into the area than a normal farm field would have.

Mr. Stimatz said if you look at the County's property and say the average of imperviousness of five and then we look at the property within the City, where ever the property was higher than five we would pro rate our share a little higher. He thinks that is fair. More fair than the County would do. His thinking is if Tanglewood is the same as an acre of land in the county then that is 3% and then we would pay that 3% equally, however if we had some place where we are going to find that the impervious of the property is so high as to generate a sufficient deferential he would be willing to go there. It is a little difficult to figure it out. We could look at the 17% and say that is it.

Mr. Fredette said improving Knobbs Creek will certainly improve or enhance the ability for additional land to be developed. Improving Knobbs Creek may be a larger benefit to the City by helping those residents in Oxford Heights. Who is to be the stakeholder?

It was the consensus of the Council to instruct the City Manager to take back to the Board of County Commissioners that we are willing to go up to 17% and anything above that would have to come back to the City Council for approval as would any type of Interlocal Agreement and that is when we would discuss any type of percentage switch.

d} Water Agreements with Pasquotank County:

Mayor Pro Tem Baker called upon City Manager Olson for comments.

Mr. Olson advised that the City staff has been working with the County staff and County Water Committee for over two years on three separate water agreements. These agreements have been through multiple revisions during this period of time. The three agreements are the Halstead Boulevard Extension Area Agreement, the Water Purchase Contract and the Water Boundary Agreement. The Board of Commissioners approved the three agreements at their April 21, 2009 meeting. Those agreements, in staff's opinion were not ready for execution. A letter was sent to the County Manager outlining staff's concerns with the agreements. We met with County staff on May 8, 2009 and discussed further changes to the three documents. The versions before you have yet to be approved by the Commissioners. City and County staff agree in principle to the Water Boundary Agreement and the Water Purchase Contract but there is still one outstanding issue with the Halstead Boulevard Extension Area Agreement. That is the reimbursement of the sixteen inch transmission line along Halstead Boulevard.

The Water Boundary Agreement has no changes in several months. The City would have exclusive right to service all new customers within the yellow area on Exhibit "A". If the City cannot directly service the area, due to distribution network constraints, the County would be allowed to service those customers. The City would purchase the water, via a master meter, from the County at either 90% of the County's prevailing base rate or 90% of the City's retail rate, whichever is less. All impact fees would be paid to the City. If the City elects to service customer/customers outside the yellow line, we would be required to purchase the water from the County via a master meter. The City would collect the County's meter fee, which is presently $1,800 per unit, at the time of final plat approval and reimburse the County that fee. At the time of the building permit is issues, the City would collect an additional $1,200 (total fee is $3,000). $700 would be sent to the County, while the City would keep $500.00. All customers would be City customers and the City would be responsible for upkeep of the lines within the development and for reading the meters.

The Halstead Boulevard Extension Area Agreement is the second agreement which covers the area within the red section of Exhibit "A". Within this area, all customers would be the City customers and we would purchase water from the county's proposed Reverse Osmosis (RO) plant. The City would be responsible for paying one-half of the costs associated with building a distribution line from the RO plant to the Halstead Boulevard/US 17 intersection. The estimated cost to the City would be $1.75 million.

The Water Purchase Contract covers the City's purchase of water from the soon to be built RO Plant. The contract calls for the City to receive 250,000 gallons of water per day from the Plant. Although the exact cost of water is still to be determined, the contract outlines what costs will be included in the County's wholesale cost of water. The City's take or pay obligation will begin when the County notified the City that the RO Plant is operational. It is anticipated that the RO water will only supply the Halstead Boulevard area due to the inert chemical composition of the water. The City will not be able to utilize the 250,000 gallons "take or pay" obligation along the Halstead corridor until the corridor develops more substantially. The city will receive the balance of the water from the County at several delivery points in the City. The contract is for a term of twenty (20) years with an option for two (2) five-year extensions. The water metering section of the agreement is similar to that found in the Halstead Boulevard Extension Area Agreement.

A motion was made by J. A. Stimatz, seconded by Councilman R. E. King to authorize Mayor Atkinson to execute the Water Boundary Agreement and the Water Purchase Agreement as presented, furthermore, authorize the Mayor to execute the Halstead Boulevard Extension Area Agreement which has been revised to reflect the City only paying $147,507.27 which represents one half of the County's cost to upsize the Halstead Boulevard transmission line and all agreements must be executed simultaneously. Those voting in favor of the motion were: Stimatz, King, Baker, Evans, Hummer, Meggs and Watts. Against: None. Motion carried

e} Resolution regarding the distribution of Sales Tax Revenue from the State.

Mayor Pro Tem Baker called upon City Manager Olson for comments.

Mr. Olson stated this particular item has been discussed numerous times over the five years that he has been city manager. It deals directly with the distribution of sales tax and how the County makes the determination of whether or not the sales taxes should be distributed on per capita or ad valorem method. As the Council is well aware, there are four different sales taxes. The are as follows:

1} Article 39 One Cent Tax – net proceeds are allocated to the county of origin – distribution is made based on a point of delivery basis.

2} Article 40 One-half Cent Tax – net proceeds are allocated on a per capital basis amount all counties instead of on a point-of-delivery basis.

3} Article 42 One-half Cent Tax – allocated on the same basis as Article 40.

4} Article 44 One-half Cent Tax – allocated 50% per capita and 50% point-of-delivery – food is exempted.

Mr. Stimatz said this is how the County gets its money. It is being allocated per capita, per capita, per capita and point of deliver or where the money is originated.

Mr. Olson said that the County has chosen that the distribution be done on the ad valorem method. Based on the point of leverage Pasquotank County would receive 75% of all sales taxes and the City would get 25%. If that distribution method would be changed to per capita the County would receive 67% and the City would receive 33%. Annually the City loses based on the distribution method of $709,451. One of the issues that concerns staff and members of the

City Council is that it is pretty evident that the Board of County Commissioners is going to have some sort of ad valorem tax increase to balance its budget. Unfortunately the County is a creature of the State and the State is having financial problems that are going to trickle down to Pasquotank County. There was a newspaper article recently that said Pasquotank is looking at a 6% tax increase. What that does to the citizens of Elizabeth City is that would change the formula of the ad valorem distribution method. Should the County increase its tax rate by six cents and the City maintains the current tax rate, the ratio would change to $.77 and $.23. This would result in a loss of approximately $250,000 in sales tax revenue to the City. When we start looking at our 2010-2011 budget we would be receiving $250,000 less in sales tax. We would have to increase our ad valorem tax 1.75% to offset the loss in revenue.

What you have in your package is a resolution basically asking that the County hold us harmless and if they do have to raise their ad valorem taxes that they keep us at the same rate as we are presently at. We also request this particular item be put on the Joint City/County June 29th meeting agenda so we can have this discussion. As Council is well aware this particular item has been discussed at least three or four Joint City/County meetings in the past and has gone no where. The Board of County Commissioners has the sole discretion to determine how the sales taxes will be distributed.

Mr. Stimatz said he has done some research on this issue. He originally tried to get it from the County Manager and he didn't know where to find it. The most startling thing is the total amount of taxes collected. They range from the 77.5% to a high of 90% of the taxes that were collected were collected within the City. The share of taxes collected on an average 86% were collected within the City. We are the sales tax generator. We are the engine that fuels this thing. They keep forgetting that. Citizens within the City are also citizens of the County. We have seen this many times that they like to share costs as we just discussed tonight on the Knobbs Creek Drainage Basin issue. To him it is very significant since the County shows very little interest or contributes nothing to projects within the City for economic development, things such as Streetscape, the Conference Center initiative, etc. When they do talk about this they say well we will split the cost. In fact, when we talked about the Conference Center the sales tax would be about $300,000. They would have gotten around $210,000 of that and yet they wanted to split the cost of doing the conference 50-50. That is the constant ratio that keeps coming up. We need to add some language that reflects the fact that we are the sales tax engine in this County. Again, we work very hard and the County is kind of lazy. Jump on the band wagon. He doesn't see the County leaders, even the ones elected within the City, promoting the City.

A motion was made by Councilman D. B. Evans, seconded by Councilman R. E. King to adopt the following resolution and instruct the City Clerk to forward a copy to the County Manager. Those voting in favor of the motion were: Evans, King, Baker, Hummer, Meggs, Stimatz and Watts. Against: None. Motion carried.

RESOLUTION #0953
REQUESTING A CHANGE IN THE DISTRIBUTION METHOD OF SALES TAX REVENUE BY THE PASQUOTANK COUNTY BOARD OF COUNTY COMMISSIONERS

WHEREAS, the State of North Carolina has authorized the basic state tax of four and one-half cents under Articles 39, 40, and 44 of the State Tax Code; and

WHEREAS, under North Carolina State Statues, counties are authorized to select the method of sales tax distribution among local governments by using either a per capita or ad valorem method; and

WHEREAS, the current method for distribution of sales and use taxes in Pasquotank is based on the ad valorem method; and

WHEREAS, it has been determined that 58 counties in North Carolina use the per capita method of distribution compared to 42 counties that use the ad valorem method; and

WHEREAS, under the per capita method, the City would receive approximately $700,000 more in sales tax proceeds; and

WHEREAS, the vast majority of sales taxes are generated within the city limits of the City of Elizabeth City;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Elizabeth City that a formal request is hereby made to the Pasquotank County Commissioners to change the method of distribution tax receivables to the point of collection, due to the fact that the bulk of the revenue is collected within the corporate limits of the City of Elizabeth City;

BE IT FURTHER RESOLVED, that if Pasquotank County determines that it will need to raise its ad valorem tax rate for fiscal year 2009-2010, the City will loose additional sales tax revenue in the fiscal year 2010-2011; and

BE IT FURTHER RESOLVED, that the City requests that Pasquotank County hold the City harmless for any loss of sales tax revenue resulting from an increase in the Pasquotank County Ad Valorem Tax Rate; and

BE IT FURTHER RESOLVED, that the City Council request that this matter be discussed during the Joint City/County meeting scheduled for June 29, 2009, which will hosted by the Council.

ADOPTED, this the 26th day of May 2009.

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Jean M. Baker
Mayor Pro Tem

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Dianne S. Pierce-Tamplen, MMC
City Clerk

8} <u>COMMENTS AND INQUIRES ON NON-AGENDA ITEMS:</u>

Mayor Pro Tem Baker called upon City Manager for comments.

City Manager Olson stated he had no further comments.

Councilman Evans stated he had no further comments.

Councilwoman Watts thanked Mr. Fredette and Mr. Olson for the work they have done on the Oak Grove work. She also offered congratulations to Lisa Winslow on her recent retirement from the Arts Council.

Councilman King requested that a list of the streets being proposed for improvements be faxed to him. He thanked Mr. Fredette for the work he has done on Roanoke Avenue.

Councilwoman Hummer said that she would like to see some of the $100,000 for street repair located in the Second Ward. She also advised that she recently received a complaint that every time there is a need for a towing company that we go out of town to solicit one instead of using the towing companies located within the City limits.

Councilwoman Meggs said that the ¼ mile of payment in her Ward looks nice.

Councilman Stimatz said that the Potato Festival was very good this year. He also inquired as to why the City does not place a wreath during the Memorial Day Celebration.

Mayor Pro Tem Baker showed the new Historic Walking Tour signs. She advised that the new Walking Tour Booklets will soon be available.

9} **ADJOURNMENT:**

There being no further business to come before the Council at this time, Mayor Pro Tem Baker adjourned the meeting at 7:55 p.m.

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Dianne S. Pierce-Tamplen, MMC
City Clerk

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Jean M. Baker
Mayor Pro Tem