WEDNESDAY-5:30 P.M. JULY 15, 2009 WORK SESSION

The City Council of the City of Elizabeth City held its first work session on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor S. S. Atkinson presiding. Those members attending were: J. M. Baker, D. B. Evans, L. A. Hummer, R. E. King, B. S. Meggs, J. A. Stimatz and V. C Watts with E. K. Rivers arriving at 5:40 p.m. Staff members attending were: City Manager R. C. Olson, City Manager Intern R. A. Lyons, Deputy City Clerk V. D. White, Human Resource Director K. W. Felton, Fire Chief L. M. Mackey, Electric Director K. F. Clow, Inspections Director S. E. Ward, Parks and Recreation Director J. D. Overman, Finance Director S. E. Blanchard, Police Chief C. E. Crudup and Public Utilities Director P. A. Fredette.

Mayor Atkinson called the meeting to order at 5:30 p. m. and established that a quorum was present. He called upon Councilwoman B. S. Meggs for the invocation after which the Pledge of Allegiance to the Flag of the United States of America was given.

1} APPROVAL OF THE AGENDA:

Mayor Atkinson called for approval of the prepared agenda.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman R. E. King to approve the agenda as presented. Those voting in favor of the motion were: Baker, King, Evans, Hummer, Meggs, Stimatz and Watts. Against: None. Motion carried.

2} DEVELOPER FEES FOR UNDERGROUND ELECTRIC SERVICE:

Mayor Atkinson called upon Mr. Tom Nash for comments.

Mr. Nash said he hoped you had an opportunity to read the July 1st letter that he sent to Mr. Olson. He does not want to rehash that entire letter but he does think it is appropriate to simply present the basics of why he is here. He represents a number of developers who have developed certain sub-divisions. These subdivisions have or will be annexed by the City of Elizabeth City. They will of course be part of the tax base and the question at this point is trying to sell the lots in this environment. He knows you are aware of the current real estate situation and that is something that we all have to deal with but in particular these particular developers have to deal with it on a daily basis. The

loans for real estate development have dried up in the process as well. These developers are in the process of having their subdivisions approved, many of which started back in 2006, and they have a problem that has now become very apparent concerning the policy of the furnishing of the electricity and the materials to these various subdivisions. As many of you may recall, in the past is a basically a quid pro quo in return for a developer asking for voluntary annexation the City would install the electrical equipment and lines for the subdivision. As his letter sets out apparently in May and June in the year 2007 the Council was addressing the budget in general but specifically the electrical costs and unfortunately those costs continue to go up as we all know. But, apparently it was decided at any number of meetings of the Council and in particular June of 2007. The Council decided they would change the policy of the City installing the electrical service and would ask for the developer in any new subdivision to be at least responsible for the materials and that was passed by the Council. At that time there was any number of subdivisions that were in the queue. They had in some cases had preliminary plats approval and certainly some had been through the Technical Review Committee and as you know any developer has to account for its cost ahead of time. That includes the costs of purchasing the property, the projected costs of developing the property and they do that at a very early stage in order to make sure they will be successful. He is most familiar with Hunter's Lake which has been developed by LLC called Half of Elizabeth City LLC. The principals of which are Don Parks, David Parks and Sean Robey. This particular subdivision was in the queue and the preliminary plat was approved by the Council at the end of June 2007. To the best of his knowledge this change in policy was conveyed to the developers but the change in policy was not conveyed in writing. There was no change in the ordinance. It simply didn't get out to the developers. As an example of that, he would say to you as these projects went through to final plat approval, he would anticipate that perhaps as part of the bonding process the cost of the installation of the electrical service would have been part of the bond along with the roads and streets and that kind of thing. That simply didn't happen. While there may be exceptions he is not aware of any exceptions where a letter went out to all of the developers in the queue and said you had better watch out for this because this is coming. In fact, in August 2008, there was some confusion about exactly what the cost would be and how they would apply to the subdivisions. Initially the developers would be allowed to go out and seek their own sub-contractor to install to see if they could do it cheaper than the City. Later on it was if we have got somebody in the queue they only pay for the materials and not for the installation costs and even later than that the City looked at the cost and decided that we will just make it a flat $2000 per lot cost to the developers. Again, this unfortunately was not conveyed to the developers and as a result using again Hunter's Lake as an example, Hunter's Lake got its final approval and in October/November 2008 sold its first lot. It has sold some lots since then but in March of 2009 it received a bill from the City of Elizabeth City for $298,000.

Again in good times maybe this wouldn't be much of a problem and again he knows that developers like everybody else has to anticipate good times and bad times. Because of the manner in which this came about to receive a bill of this size at this stage in the game it is not budgeted for, there was no shopping, no contract and it wasn't included in the bond, there was no mention at the preliminary plat stage of there being a cost, no estimates, no itemization it was just a flat bill. At this point in time unfortunately you don't go to your lender and say you need another $300,000 because it is just not going to happen. He is here before you this evening seeking relief for the developers who were in the queue. Most of the planning goes on during the early stages of these subdivisions and they have asked to be annexed by the City and the word just didn't get around to these developers. He is here tonight respectfully requesting that they receive relief from these bills. He realizes that is asking a lot of this City Council and of the City of Elizabeth City. The alternative is not a good one. While all of the developers are struggling at this point to try to make ends meet and continue to make sure that lots gets sold, it is a difficult time. This has simply been thrown on top of everything else. The manner in which this came about is very difficult. Had you known at the start of your project when you first went to the Technical Review Committee that this was going to be the situation and you were going to be responsible then certainly he doesn't think anybody could say a word.

City Manager Olson said you had received a copy of Tom Nash's letter. He did an excellent job providing you a chronological history of what occurred. To refresh those members of City Council memories that were on the Council back in 2007 the City received a 10% rate increase from the Eastern Agency back in January 2006 and we absorbed that increase. Staff brought forward during the preparation of the 2007 budget that we needed to start passing some of that cost along to our citizens. During the budget process the City Council made a number of different policy changes. Those policy changes included stop giving individuals a credit back for load management switches, we made the load management switches mandatory on all homes. We also eliminated the credit we used to give to developers for underground electricity from the transformer to the house. The big issue item which Tom is here tonight on was we eliminated from the budget process all costs associated with new subdivisions. The City Council elected to say anyone that was in the queue basically was only responsible for the costs of the materials. There would not be any costs for labor because that was considered a sunken cost. If our crews installed the underground electricity within the subdivision because of our crews work load they could not do that then the developer had the option of going out and hiring crews putting it in according to the City's specs. The queue was defined as "anyone who had filed a sketch plan with the City prior to June 30th 2007. At that particular time there was anywhere from 8-10 subdivisions that were in the queue. One or two of the subdivisions the City had already purchased all the

materials for them and in one case we had already started to install it. That particular item was brought back to Council and the Council decided to only charge him the amount over what we had budgeted. The developer agreed to that and has reimbursed the City. The queue was very liberally defined by the City Council. He thinks Mr. Nash makes one minor misstatement and that is people are not annexed into the City of Elizabeth City for our electrical utility. They do it for our sewer utility. That allows them additional density. Right now they get one unit per acre and if they come into the City they can get anywhere from 3-5 units per acre. There is an advantage for them to annex into the limits of the City.

At the request of some developers in 2008, we brought an item to Council that the developers were very concerned that they had no idea what it would cost before they did their subdivision on the electricity. That is when the Council decided to charge a flat rate per residential lot. That rate was $2000 per residential lot and $5000 per commercial. That policy was adopted August 25, 2008. The problem we have right now is we do have roughly $529,000 worth of accounts receivable that at least three of the developers owe us. We do not have the money to absorb these particular costs. They were never budgeted. We did not do a bond as Mr. Nash suggested because we usually bond the underground utilities such was water, streets, sewer, curb and guttering and sidewalks. We have never bonded electricity because we install it ourselves. Those other types of improvements are installed by the developer. Mr. Nash used Hunter's Lake as an example and he pulled the invoices for that particular subdivision and our actual costs just for materials was $305,000. When we switched to $2,000 per lot it ended up saving $7,000-$8,000. We do not charge for any labor associated with that. They had 149 lots at $2,000 per lot. The actual costs of our materials that we put in the ground were $305,237.48. We billed them $298,000. We absorbed $7-$8,000 of our actual costs incurred.

Mr. Nash is correct when saying the development market is suffering. It has hurt the City in a number of areas. Our impact fees are way down, our building inspection fees are way down and we are just not experiencing the growth that we thought that we would three or four years ago. A lot of these subdivisions were created during the peak of that growth period. Staff's concern is that we have already incurred these expenses and we do not have money in the Electric Utility right now. We have roughly $4.8 million dollars right now and cannot absorb $529,000. We sympathize with the developers but we also believe that is money they owe and they should be responsible for paying those funds. If Council wants to work out some type of easy payments plan we do have in our staff memo four possible options for you to consider. The City Attorney has sent you a confidential memo since he is not here tonight concerning some of his thoughts on this matter.

Councilman Stimatz said you gave us a list of all the subdivisions that were on the horizon up through Tanglewood Plaza Commercial. He is not ready to do anything with this tonight because he still has some big questions that he would like answered. He would also like to meet with our attorney before we take any action. What is the status of payment of the other developments? Have they paid?

Mr. Olson said it is reflected in the memo but a number of them have paid. Not everyone has paid but a number of them have paid.

Mr. Stimatz said he remembers he asked the question of why are we in the installing business. Why don't we cut back our workforce? We talk about saving money in the Electric Fund and one of the places where we control it is the number of people who work for us in the Electric Fund. The answer was, we want to make sure we maintain that workforce and maintain their skills and abilities and be attractive and therefore, we will go ahead and absorb that and in essence that is employees time that in one sense people in the City in their electric rates are paying and subsiding these developers. In Mr. Nash's letter it states, "in fact the timing is important for Hunter's Lake and others in that as rumors circulated that at some point developers would have to pay for electric services. The developers of Hunter's Lake and other mentioned subdivisions thought that their subdivisions would be exempt because they were in the queue and not new." That ovulates the question that they didn't know this was coming. They didn't know the details. He finds it interesting that we had three public hearings on this issue and if it was such a big issue and they heard he would think someone would have come in and said what does this actually mean. In particular, Heron's Ridge was part of the group that came in for the $2,000 fixed fee. That clearly infers that Heron's Ridge was aware that they were going to have to pay this fee. In August 2008 they were part of the group that came in and asked that we fix the fee at $2,000. He thinks there is a question here of how much people knew and who's fault it was. We hold public hearings and we have public meetings for a reason. We do as much as we can.

Councilman Rivers asked Mr. Olson when we enacted this was the $528,000 already spent by the City. He thought that we went to this in order that we don't have to put and have millions of dollars sitting in a subdivision because every time we would annex a subdivision prior to this adoption we would have to go out and put the lines, etc. in. All the lots set on the shelf we had that money tied up. He thought these funds were to be collected. We still have those funds already spent and we haven't collected one penny. The reason why we went with this is then the City would not be putting in the electrical up front and then we hit a market like this where we are having subdivisions experiencing the downturn of the market. Those funds were to be collected at the beginning.

Mr. Olson said yes the funds have been spent. These are basically accounts receivable on the City's books. One of the things that we did do is a rebate in our policy change. We did create a rebate program if the developer builds a house on that lot within a period of three years; we would give a $500 rebate so there net cost would be $1500 not $2000. Our biggest concern is that we have a half million dollars tied up in pipe and transformers out in subdivisions that is not generating any money to subsidize the City's overall costs. Under the first policy we never knew what it was going to cost to install that until we actually had the hard costs. That was the policy that was in effect before August 25, 2007. After that we did the flat rate of $2,000 a lot and that was billed once the work was completed and that is what we have done.

Mr. Rivers said he doesn't think that is right because his whole concern and Ms. Hummer always would say that when we had annexations here we go getting ready to take the funds out of our electric department and then if that subdivision went unsold we would have a million dollars sitting there waiting and we wouldn't recoup our money back until houses actually get put on the lots. He thought that the $2,000 would be an upfront cost instead of a backend costs. That is why we are still in the front end costs of paying and having $500,000 sitting out there in developments. It puts us in the same category of August 2008 that we were trying to get out of.

Mr. Olson said we have been billing them once the work is complete and not up front. We do expend the money out of the City's budget first and then we bill the developer and the developer pays us and we put it back into the fund.

Mr. Rivers said we need to try to get away from that because it puts us back again approving annexations and we are taking the funds out of our electric fund depleting those numbers in order to be able to take on annexations. The only reason why he remembers that is because Ms. Hummer was always saying how different developments would sell. It has come to past that this point right now that we have a down turn in our economy and we have $528,000 sitting out there.

Mayor Pro Tem Baker asked when we put this into place there were seven or eight developments in what we called the queue at that time. These are not any of the ones that were in it or are they?

Mr. Olson replied that these are the ones that when you look at TRC Received any of those in that column were considered in the queue if they were before June 30, 2007. That would include Millbrooke, Savin Woods, Mariner's Landing Phase 3 & 4, Tanglewood, Hunter's Lake, The Reserve at Heron's Ridge, Stoney Creek (withdrawn), Halstead Station and Commercial at Tanglewood. All those

were in the queue because they had submitted a sketch plan prior to the policy going into effect. None of them were in the queue when we exempted them.

Councilman King said the policy states that everyone that was in the queue would be exempt from paying the $2000.

Mr. Olson said no, anyone in the queue would only be charged the cost of actual materials; no labor charges would be charged against them. Basically it saves them about half of what the actual cost of installation is. The material was order in August after the policy change on July 1, 2007 and the materials were ordered August 7, 2007.

Mr. Stimatz said the question that gets him is when did we become the purchasing agent for materials? At the time we did the budget we were not going to pay for materials. What in essence has happened is administratively somewhere someone decided that they would order the material. Why didn't they order the materials? Why did we order the materials? He does not want to see us fronting the money for any materials.

Mr. Olson replied that we wanted to make sure what was being installed.

A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman V. C. Watts to table any action on this until we have met with our Attorney and had time to get other questions answered. Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King, Meggs and Rivers. Against: None. Motion carried.

3} CONDITION OF ROSE HARBOR PROPERTY:

Mayor Atkinson called upon Sam Davis for comments.

Mr. Davis said he would like to bring something before you so that each of you will understand where we are living and what we are doing. River's Bend Condos is located at Continental Drive. He wants to show you the location, discuss the property value and your tax revenue and also discuss at the same time the property that separates Yacht Club Villas and River's Bend Condos which is Rose Harbor owned by Frank Habit and Associates. He wants to discuss the property issue and the safety and City Code issues as well as discuss the River City Property Code Requirements to some extent. Also we have addressed the City Manager as to our requests. We would like to go into remedies that we would like to request from City Council. He showed a front view of the condos when you come in from Continental Drive and it circles through. There are currently nine condos owned and four condos that are being sold. The ones on the right

that you see is brand new and/or currently on the market. River's Bend access tax value for occupied condos exceeds $8.0 million. The revenue value of the four unsold units is approximately $2.7 million. The City property revenue generated by Rivers Bend Condo is currently $36,000 a year and the potential tax revenue of the unsold condos is $12,500 a year. This is the value of Rivers Bend and does not include the Yacht Club Villas and not the single property that is owned by the Simpson's that is also part of our Association. The property in between is the property that Mr. Habit owns and is unoccupied and also could be tax revenue for you. He hears you talk about the tax revenue being down and your transfer tax is down and this is why this needs to be addressed. Anyone walking on this property is put in danger as they don't know what is located on this property because of the height of the grass and weeds. We have had a problem with this property for a long time. The Code Enforcement Officer notified the owners to clean up the property in January 2005. They are very concerned about children going on the property and being hurt. There are snakes on the property. We are not angry with anyone we just want this issue addressed.

Mr. Rivers asked Mr. Olson where we stand on this issue.

Mr. Olson replied that he has instructed city staff to only mow the property when it is in violation of our Code. One of the concerns that we have is that to affectively clean the lot you would have to remove a considerable amount of concrete and other type of debris. We also have some environmental concerns with that property. You have received a memo from the Attorney addressing some of his concerns. We have dealt with Mr. Habit on numerous occasions dating back to 2004. He has also appeared before this Council to discuss this property and several other issues that we have. One of the problems that we do have is Mr. Habit about two years ago went in and leveled the site and what has happened is the dirt has fallen down and now the rocks are coming back up as the ground settles. We do not know the depth of the concrete on the lot but we did stop Mr. Habit from doing some questionable clean up work about three years ago. We caught him burying some items that we consider inappropriate? We called the State in here and they did talk with Frank Habit and substantially he has removed some of that material that he buried on the site. Whether or not he removed it all we don't know. The property is a problem for the City to address because of the nature of the cost for a complete clean up of the site plus the possible issues with the environment concerns. It will cost approximately $50,000 to remove all the rebar/concrete off the property.

Mr. Stimatz said the city ordinance doesn't say that we shouldn't take action if the person isn't going to pay. This is a classic case of the City failing to follow its own rules for years. In 2006 we told the guy to do it, we don't follow up. Once again, we don't require people to follow the code. He is of the opinion that we

should pass an ordinance to just throw the City Code in the trash can because obviously it doesn't mean anything. He thinks the question here is not can we recover the costs. The world that he came from if you were made aware of a possible environmental pollution situation then you were personally responsible and couldn't get out of it unless you passed the buck to somebody else. Our own attorney indicates that there are possible asbestos health hazards and hazard material on the property. If we are looking out for the well being of the people of this City then it is up to us to figure out how to get that verified. If we need to report them to the EPA then we need to report them to EPA. He thinks as a minimum we can pick up the loose metal and cut back the rebar that is there. If our attorney is telling us there is potential hazard then he suggests that we call the EPA and have them come in and do an investigation. That is a new set of rules and the owner can't get around it. We can't keep ignoring people that break our rules.

A motion was made by Councilman J. A. Stimatz, seconded by Councilman E. K. Rivers to table action on this issue until the City Attorney is present. Those voting in favor of the motion were: Stimatz, Rivers, Baker, Evans, Hummer, King, Meggs and Watts. Against: None. Motion carried.

4} <u>HUGH CALE RESOURCE CENTER:</u>

Mayor Atkinson called upon Mr. Olson for comments.

Mr. Olson said staff is bringing this particular item before the Council to receive general direction from you concerning the Hugh Cale Community Resource Center that we have at the intersection of Shepherd and South Road Streets. We have put an RFP on the market place on three different occasions. We have only received one response to that RFP and that was very hurriedly done by one of the applicants that are on the memo. They did a fairly good job at that but in reviewing what that entity needs we believe they cannot affectively utilize the whole center. What we are asking the Council to do to see if we can work with Galilee Missionary Baptist Church and possibly the Boys and Girls Club who has also expressed interest in this and see if we can somehow find a way for those two entities to utilize the facility jointly. What that would entail we would no longer lease the property to a third party. What we would have is a sub-recipient agreement with those eligible sub-recipients. The sub-recipient would include some of the provisions that would be normally found in a lease agreement. Staff is seeking general direction to see if we can have a meeting between the Boys and Girls Club and Galilee Missionary Baptist Church to see if we could somehow find a way so that both these entities could possible utilize the facility.

Councilwoman Hummer asked if the Hugh Cale Community would be served since the grant was for the Hugh Cale Community specifically and she thinks that they should be included or is it a city-wide thing.

Mr. Olson said that the original grant was written for the Hugh Cale Center but from DCA perspective anyone who is a low or moderate income we must provide access to the facility. It is not just Hugh Cale it can be city-wide, county-wide or region-wide to meet the goals of DCA. Our primary focus should be Hugh Cale Community because that is what the grant was written for and that is why once we start working with these entities we can report back to the Hugh Cale community and tell them this is what we are looking at and how would you like to see that changed or are we overlooking your needs. Right now we don't have anything to go back to the community to discuss.

A motion was made by Councilwoman B. S. Meggs to go forward with the negotiations that Rich has put forward for the Boys Club and the Galilee Missionary Baptist Church but not to limit the negotiations to these two entities. Councilwoman V. C. Watts seconded the motion. Those voting in favor of the motion were: Meggs, Watts, Baker, Evans, Hummer, King, Rivers and Stimatz. Against: None. Motion carried.

5} COMMITTEE REPORTS:

Mayor Atkinson called for the Committee Reports.

Albemarle Economic Development Commission

Mayor Pro Tem Baker said that we have a meeting a week from today.

Councilwoman Hummer said that we have a finance committee meeting tomorrow and of course the meeting next week.

Councilwoman Meggs said she had nothing further to add.

Central Communications Advisory Board

Councilman King said the city's 911 center made a pamphlet showing their system which is up and running good.

Elizabeth City-Pasquotank County Airport Authority

Councilman Stimatz stated we had two big events. We celebrated the opening of the Aviation Park and Telephonics coming in. We have a meeting next week.

Firemen's Relief Fund Board

Councilwoman Watts said we haven't met so she has nothing to report.

Joint Land Use Planning Committee

Councilman Stimatz said we haven't had a meeting but we are waiting on CAMA on the Land Use Plan.

Joint Redevelopment Committee

Councilman King said they had not met.

North Carolina Eastern Municipal Power Agency

Mr. Olson said that the NCEMPA will meet at 10:00 a.m. next Wednesday in Wilson.

Solid Waste Committee

Councilman Evans said he had no report.

Tourism Development Authority

Councilman Rivers said we have a meeting coming up. The major thing we last talked about was the Fourth of July celebration. He thinks the event was outstanding. We cut our budget by 10%. A lot of events were cut due to funding base off of the occupancy taxes. The request for Port Discover was approved but the County Commissioners did not approve it. They still have some concerns but we did our part and it is now up to them to move the project forward.

ECDI

Councilwoman Meggs said we have a guest here tonight that is helping Peggy and his name is Marcus Brooks. He is an intern from Elizabeth City State University and he is going to be here during the summer and fall and we are delighted to have him working with the Downtown Association.

Water Committee

Mayor Pro Tem Baker said she wasn't able to make that meeting but she knows we had bids to come in that were really in our favor on the construction of the RO plant.

Mr. Olson said there were four or five contracts that the County bid out for the RO plant. They came in below the estimate. We had a couple of pipe lines that feeds out to the sound and all of them came in for the most part below budget. The County is in the process of getting their financing together. They will go to the LGC during August to get their financing approved. He believes they will award the bids at their last meeting in July.

Councilwoman Hummer said she had nothing further to add.

Councilwoman Watts said she had nothing further to add.

6} ADJOURNMENT:

There being no further business to come before the work session at this time, Mayor Atkinson adjourned the meeting at 6:52 p.m.

_____
Dianne S. Pierce-Tamplen, MMC
City Clerk

_____
Stephen S. Atkinson
Mayor