

**MONDAY – 5:30 P.M.**

**AUGUST 25, 2008**

**WORK SESSION**

The City Council had its regular work session meeting on the above date and time in the City Council Chambers 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. E. K. Rivers arriving at 5:40 p.m. Staff members attending were: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, City Attorney W. H. Morgan, Deputy Clerk V. D. White, City Manager Intern R. Lyons, Finance Director S. E. Blanchard, Electric Superintendent K. F. Clow, Human Resource Director K. W. Felton, Parks and Recreation Director J. D. Overman, Interim Fire Chief B. Overman, Utilities Director P. A. Fredette, Planning Director J. C. Brooks and Police Chief C. E. Crudup.

Mayor Atkinson opened the meeting and welcomed those attending. He called upon Councilwoman B. S. Meggs for the invocation. He then led the Pledge of Allegiance to the Flag of the United States of America.

**1} APPROVAL OF THE AGENDA:**

Mayor Atkinson called for action regarding the prepared agenda.

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

**2} UNDERGROUND UTILITIES FEE:**

Mayor Atkinson called upon City Manager Olson for comments.

Mr. Olson stated the City Council previously paid from the 07-08 Budget the cost of underground utilities. As the Council is well aware in January 2006 we received a ten percent rate increase from Electricities and we decided to absorb that rate increase and when we started looking at the budget the Council did whatever they could to cut back on the amount of expenditures paid and taken the Electrical Fund. Part of that process you cut \$2 million out of the budget that was used for capital construction in new subdivisions. Council subsequently adopted a policy that required developers to pay 100% of the cost of underground electricity in a development. After over a year of this policy change there has been a change in the economy and a great deal of disparity in the amount being charged developers. The variation being charged is dependent

not just on the subdivision being served, but also the City's future expansion plans in that area.

Several of the developers have approached the City expressing concerns that they have no way of knowing the cost of underground electricity until the work is completed and billed. This makes it difficult for them to price their lots.

Staff would like the City Council to adopt a policy where developers would be charged on a "per lot basis" with one-half of that amount due at the time the preliminary plat is approved; and, the other half due once the work is completed by staff. There would be no charge for labor unless the developer cannot wait for city crews to install the underground and the City is forced to have outside contractors to perform the work. The following is the proposed developer fees:

Single Family Residential Subdivision	\$2,000.00 per lot
Multi Family Residential Development	500.00 per lot
Commercial Development/Non-residential	5,000.00 per lot

A developer will receive a credit back of \$500 per single family lot, \$100 per multi-family unit and \$1,000 per commercial/non-residential lot if a structure is built and power is received within three years of the final plat approval.

Mayor Pro Tem Baker asked how many developers have used the existing fee structure.

Mr. Olson replied three so far. He doesn't think anyone has paid yet. Those have been billed are Mariner's Landing Phase II, Herrington's Ridge Phase II and Creekside Phase I, but to date none have paid.

Councilman Stimatz asked if this was to pay us for doing the work. Before we did the work and we paid for it. What you are doing now is setting the fee schedule for us to do the work.

Mr. Olson replied that is correct. Right now what we are doing is the actual costs of the materials are needed in that subdivision we charge to the developer. We are still using our people to do the work.

Mr. Stimatz said he is confused. He thought we were out of the business as of last year; totally out of it as in we weren't doing it at all.

Mr. Olson said the way the policy was adopted is anyone that was in the queue at the time and all of these subdivisions were approved about the time Council changed the policy.

Mr. Stimatz said these are the people that are in the queue? After this we are out of the business, is he right?

Mr. Olson responded no, we would be proposing that we would provide this to carry forward.

Mr. Stimatz said so we are going to be in essence a construction company; an electrical contracting company.

Mr. Olson answered yes.

Mr. Stimatz said we need to talk about that later because he has a real issue with this as he thought we were out of the business because otherwise we have to keep – he is not saying we are going to get rid of anyone on staff, don't take it wrong all you public works employees – he is not trying to get rid of you but is it a question of overhead for keeping staff around to do this work. That goes toward our operating costs and it is one of the few things we as the Council control when it comes to our cost in electricity. He thought we were out of the business. He questions why you would get a rebate of 25% on single family residences and only 20% on duplexes and commercial. Is there some reason why they get a better rebate?

Mr. Olson said it is done by routing numbers.

Mr. Stimatz questioned who has the least impact on the City. We all know commercial development has the least impact on city services. He is not sure tax wise if they are better or worse but if they are even then that's a better deal because we have to put out less to get the same amount of money. Make the discount the same percentage across the board so it would be \$400 for single family residences.

Mayor Atkinson said that it sounds like we need to work on this further.

Mr. Olson asked what else does the council need.

Mr. Stimatz said this is for the ones we have already consented too. He does not have a problem with it for the people we are already committed too because we knew there were developments in the process. His concern is further down the road and if some new developer comes in and says he wants to do this. He didn't think we were going to be in the contracting business but that we were fazing ourselves out of it.

Ms. Hummer said she has the same concerns because we did decide not to put that money up front because it took a chunk out of our electric fund. She is

willing to vote for those in the queue but not to change the policy without further study.

Councilman Rivers said he wished he could have all the same privileges to the information that everyone has but he just can't seem to get a package. What is the problem? Why can't he get a package with all the information? He asked last meeting, he brought it up and he just can't get a package.

Mr. Olson asked where the package was being delivered.

Ms. Pierce-Tamplen stated to the Hampton Street address. We will need to check with the police department.

Mr. Olson said it was sent to the Hampton Road address, correct.

Ms. Pierce-Tamplen replied Hampton Street, 706 Hampton Street.

Mr. Olson said he will talk with the Chief and see exactly what the status of the package is. After we had our conversation after the last meeting, he talked with the Chief and told him that is where it needs to be delivered. He is not sure where the package was delivered.

Mr. Rivers expressed his concern over not having the information that everyone else is being given and yet he is asked to vote on issues. He feels the last time was an oversight but what is it this time?

Mayor Atkinson asked Mr. Olson to look into this.

Mr. Stimatz asked if that was the right address for you Kirk. Is that where you are living now?

Mr. Rivers said that he has no idea. He means---you all know what his situation is so he guesses it is just part of the city's ploy to play games or do things to find out what his address.

Mr. Stimatz said he thinks we are all under the impression based on where you registered to vote that you were living on Hampton and you have the CO but if that is not true if you tell them where you live or what address you want it delivered to they will deliver it.

Mr. Rivers said he is at 706 and he is not getting a package at 706.

Mr. Olson said Councilman Rivers told him and we had a conversation with Dianne and the last two packages were address to 706 Hampton. Why he didn't

get the one for tonight's meeting he does not know but he will check into it and find out what the problem might be.

Mr. Rivers said if it was going to 512 Magnolia Street, then why is it still going there.

Mayor Atkinson asked Mr. Olson to find out what the deal is with Mr. Rivers' package and be sure he gets a packet and Mr. Rivers you may want to verify they have the correct address. You have a current package that Ms. White provided and he is sorry it happened and we will do everything we can to see that it doesn't happen again.

***A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman L. A. Hummer that we approve the above rate structure as presented for those developments in the queue at this time. Those voting in favor of the motion were: Baker, Hummer, Evans, King, Meggs, Rivers, Stimatz and Watts. Against: None. Motion carried.***

Mr. Stimatz said he would like to ask for discussion on whether we are going to remain in the electric contracting business for developers be place on our agenda either on the next work session agenda or in October.

### **3} TREE ORDINANCE:**

Mayor Atkinson called upon Mr. Lyons for comments.

Mr. Lyons said he would like to bring to Council's attention that the City is trying to become a Tree City, USA, sponsored by the Arbor Day Foundation in cooperation with the USDA Forest Service and the National Association of State Foresters. He presented a slide show that showed some of the trees in Elizabeth City. Trees enhance the beauty of our City and we should have something in place that will protect them. One way we can do that is by becoming a Tree City. Many cities across the United States are Tree Cities. Becoming a Tree City designation would increase the positive image of Elizabeth City as well as increase the environment. It would help the education, increase community pride as well as gain the possibility of grant funding in the future. Many grants are funded for agricultural issues. It also increases the Green Image and that is something people are looking for these days.

There are some requirements for becoming a Tree City. One is an Arbor Day observance. The official Arbor Day is in April but the planting season for this area is in October and November. Another one is the establishment of a Tree Commission. That is listed inside the proposed tree ordinance. The third is the proposed tree care ordinance. This is a forestry program with a budget of \$2 per

capita. \$2 per capita for Elizabeth City would be approximately \$40,000 which is the amount the City budgets for tree maintenance which is already in the electric budget as well as in the public utilities budget.

The proposed tree care ordinance would fulfill two of these requirements with the tree commission being created in the document, as well as the ordinance itself. The adoption of this proposed ordinance would not only bring Elizabeth City closer to the goal of becoming a tree city, but also set some standards for the trees, shrubbery and other arbor that make the City beautiful, improve the environment and potentially increase property values.

The Tree Commission is something every Tree City has. It has many names but what it would basically have in Elizabeth City as proposed now would be five citizens chosen by the Council. They would have staggered three year terms. The Commission would request reports from Public Works and Planning on tree related issues in and around the City. The Commission will also formulate and adopt rules under which it will operate.

Trimming, pruning and planting will not be allowed on city property by private citizens without a permit. Public and private utilities will have special specifications for trimming and pruning around city property.

Trees and shrubbery abutting city property will affect all of the projects on city property. Most likely we are talking about limbs hanging onto streets and city right-of-ways as well as limbs and brush that are hanging near utility lines. It would be the responsibility of a private owner to clip those or prune those trees and shrubbery. They would be given an order of removal. As currently stated in the existing tree ordinance it would carry a 15-days time period. City staff is considering making that a 30-days period. The exceptions are in the case of eminent threat like a hurricane or bad storm.

Next would be the unsafe trees, the investigation of fungus, insects or pests. Public Works may enter private property to spray or on extreme circumstances may remove the tree(s). Prior to entry Public Works would give the property owner 30-days notice. Public Works and Planning may periodically inspect some sites that have unsafe trees.

An appeal board would be put into place to hear any appeals. The Appeal Board will render its decision within 30-days. If someone is found to be guilty of anything inside the Tree Ordinance the maximum penalty we currently have is \$100. Staff is looking at possibly changing it if in fact the tree is worth more than the \$100.

Ms. Watts asked whose responsibility is it now to cut limbs down that may be intruding over the electric wires.

Mr. Olson said usually that is the responsibility of the Electric Department. We have a crew of three or more people that are tree trimmers. In the past we have also hired private contractors to come in here and do what is called a hurricane cut on trees which basically takes care of the growth for a two year period. It is very unsightly. We have roughly \$50,000 we can use in our contractual services if we need to hire someone to come in and do that type of work. Of course we do have in the Parks and Rec and Street Department individuals within those operating units that do this type of work.

Ms. Watts said if we need the line item funds then the tree budget would then have a negative there. The other issue is can we have some means of paying for this other than taking it from some kind of robbing Peter to pay Paul.

Mr. Olson said he doesn't think we are robbing Peter to pay Paul because it is already a sunken cost within those departmental budgets. We spend that amount right now. We would identify that we are going to spend it for that purpose.

Ms. Hummer said she has two questions. One is in some of our wards we have alleys which are still opened and there is a lot of overgrowth in them. There are still some cable lines in the alleys. Does the City still maintain trimming those lines or will this be in this ordinance.

Mr. Olson said we are responsible for trimming anything on "public right-of-way. If the alley is a public right-of-way as defined by what the Clerk has in her alley book then yes we would be. We do have some areas that have been closed.

Ms. Hummer stated her second question is how we are going to enforce the trees planted on the narrow city's right-of-way between the sidewalk and the street. There are trees, rose bushes with thorns, flowers, etc planted on the city's right-of-way. Will this ordinance take care of that? We need to really start enforcing that.

Mr. Lyons said he would define the city's right-of-way as where the trunk of the tree exist especially the majority of the trunk. It would be the responsibility of the City only if the trunk of the tree was in that narrow way. If the property owner's tree were hanging on or clinging over or endangering any citizen walking on that right-of-way then you could have that property owner trim that tree.

Ms. Hummer said she is speaking of trees that are now planted on the city's right-of-way and people continue to plant them. They grow up to be big trees and hang over the street. It is the City's right-of-way and it is an encroachment to plant trees on the City's right-of-way. A hundred of years ago there were trees planted there which now we are having to deal with them.

Mr. Olson said when planting trees on public right-of-way you need to be very careful what species of trees you put in there. One of the things he loved about Elizabeth City when he came here in August 2003, especially in the Historic District was the massive trees. We all remember in September 2003 Isabel took out about three blocks of Church Street. Of course those large trees affect the sidewalks, the curb, the flow line within the curb and also the street itself. We have to be careful what species of trees we plant. We will probably come up with a recommended list of trees to be planted within public right of way. In the UDO we do have specific requirements that limit the planting of trees within buffers where we may have underground utilities or there may be overhead power lines, etc. We are trying to address that issue now.

Ms. Hummer said it is like political signs or any other small sign there needs to be a definition of the city's right of way. On the other side of the sidewalk in someone's yard certainly they can plant what they want too, but the narrow area between the sidewalk and the street should be restricted from trees being planted there.

Ms. Meggs said she hopes you realize the Community Image group under the Economic Development has been working on this now for over two years. We are delighted you have finally taken the gun and gone with it. We thank you Mr. Lyons, Rich, Karl, Debbie Saul and Jim. \$2 per person is not a lot to beautify our City and she hopes none of you feel like we can't afford it.

Mr. Stimatz said this is an interesting document but from his perspective it does not go far enough. This appears to be the City's policy to respect city trees. In his mind it is not a city tree ordinance. He would like to see more. In reality by taking credit for the money we are already spending, by creating a tree ordinance commission and adopting a tree ordinance we have met three not two of the things to become a tree city. The only other thing is to have an annual Arbor Day observance. There are three aspects he sees. They are city maintained trees, private and business trees and the other issue most try to tackle is new development standards. He is concerned for instance when the piece of property right behind Big Lots and Farm Fresh. We should have an inventory of the trees on that property. That guy can go in there and clear cut it tomorrow and we lose that entire canopy. Those trees are not only pretty but they also act as holders of rainfall. They slow down runoff. We have this big drainage problem here. There are a lot more reasons than environmental. There is water runoff, street maintenance if the tar isn't hot then the asphalt doesn't take much beating from traffic. It reduces the amount of heat coming off the roads, reduces the temperature in the City, and reduces the electrical load on people that are running air conditions. There are a whole lot of reasons to do this. What he would prefer to see is a city canopy management program that really looks at where we are, where we want to go and how are we going to



get there. As far as just describing what we are going to do with just city trees, this is ok for city owned trees. We just had this in the Historic District but we don't have this power across the whole city. When they took down the tree at the Baptist Church they came under the Historic District standard and they got whacked for it and now they have to plant three canopy trees in response. Trees increase the amount of oxygen, they decrease the ozone and the quality of life in the whole city will be better. Some of the things that he sees in this if we are going to do what is in here he would clarify it and not call it the tree ordinance. It is not broad enough to be a tree ordinance for the whole city. He would see it as the City's policy on its own trees. There are some questions he has and this is really for the attorney. First of all the Tree Commission: its purpose is to regulate the planting of new trees and shrubbery; to vigorously encourage the preservation, replacement, etc, etc. However, it only applies to City owned trees. Broadly as the goals are they have got the right idea. It should be all trees in the City. When you get to the Tree Commission we are going to put you people together and ask for reports. There are no other duties. No roles, no functions, no nothing. But the obvious one that comes to mind is; guess who gets to do the annual Arbor Day observance. The Tree Commission should be the organizers, planners and make it happen. He took a walk last night on Main Street. There are probably 60 trees between his house and Betty Lyons house, on the north side of the street, that were not in compliance with the current ordinance requiring the height of clearance above a sidewalk or the height of tree clearance in a site of a triangle of a corner. This has been an on-going problem for years. By saying that no person should remove, destroy or prune any tree or shrubbery having its trunk on City property what you are saying there is that he is forbidden by ordinance to trim back the tree that overhangs the sidewalk that is in violation of City Code, which means the City is now in violation of its own ordinance. There are probably 6,000 violations right now in this City where there are trees in the public right-of-way that do not meet the height requirement. He thinks we ought to encourage the people that live there to cut it up and save ourselves some money because we are going to be cutting a lot of trees. Secondly, in a couple of areas here again we don't recognize our existing ordinances. There are ordinances on the book that talk about the height of trees especially over sidewalks and obstruction site lines. The other area he is curious about and this is for the attorney to look into, it says that the Public Works Director may enter upon private property. This is in the unsafe tree section and later on it says the same thing. He can periodically inspect areas subject to provisions which include private property. He doesn't know if we have that broad inspection powers. Thank you staff for bringing this to Council. It is much more enjoyable to come in here and discuss what we see or don't see in an ordinance without the pressure of going right to a public hearing and then having to make a decision and having to vote. We can sit down and say here is what we see. This has a big impact around the City. He thinks it is a great start and he can see why you would want to start with this because it is the easiest one to do. It is our property, our trees and let's stay

focused on what we can control without upsetting everybody in the world. He wouldn't see it as the City's Tree Ordinance but he would see it as the City's policy on trees for city trees and we need to keep working on an ordinance.

Mr. Lyons stated with this first one we tried to be less intrusive on people's property.

Mr. Stimatz said if you want to be a Tree City you need an ordinance. This is a S.O.P. for the City. This is just our direction to ourselves. Technically it does not have to be an ordinance. He is not against an ordinance; he just would like to have the right ordinance. It is really about managing all the trees for the benefit of everybody. It is about engaging the whole community. He is sitting here right now with two trees in the City's right-of-way that are sick and they are still hanging in there. He would like to replant trees in the City's right of way because it is the most advantageous place to plant the tree. Why, because by the time these die he will have a nice big tree; and, in the summer the front of his house will be shaded and it will lower his electric bill and he could sit on his front porch and not be in the sun. He looks at 10-15 trees and he doesn't know which one to pick. Part of why he sees us doing this is this Tree Commission is going to say, here is the kind of trees you plant in the right of way. They are going around and telling people if you are looking to plant trees here is what they recommend. There are significant issues when you pick trees for a city tool. They tend to pick male trees because male trees don't deposit pods, etc. and create a lot of trash on the ground. The problem is when you plant a male tree they have pollen. Cities that have planted a lot of male trees have problems with asthma and pollen and lung related diseases because they have more pollen trees. This commission would direct us to do research and look at it and work with the Planning and the Public Works to propose how we are going to do this.

Mayor Pro Tem Baker said she thinks it is a fabulous idea to become a Tree City and an All American City and a Coast Guard City, all of those things that will bring us more notoriety and do good things for our citizens. She has a question about the Commission being a volunteer group. It wouldn't be a paid group. Could we require this commission to have expertise in a field or is that something we expect from whoever appoints them to the Commission. They need to have some knowledge of what they are doing. Her concern also is for enforcement. It is great we are going to spend money we already spend but if we do it right and if we expand the instructions and the obligations of the ordinance it will probably cost us more money in the long run. Will we have to expand our Inspections Department? Then are we going to have to educate them on what they are looking at. She thinks it is a good idea and she agrees we need more in the ordinance. The more national badges we can get as a City the better off we will be the long way around.

Mayor Atkinson said staff's recommendation is before you and you will see they are calling for a public hearing. He is hearing maybe we need some more work on it. Think about what you want to do so we can move forward.

Ms. Watts said she just wanted to say to Mr. Lyons if you could she would like to have the Tree Ordinance of Greensboro and maybe several other cities that have Tree Ordinances and let us read what it should say before we make a decision on this.

Mr. Rivers said the one question he has is would this also allow if you have a tree and he understands that we have the enforcement over the sidewalks and things of that nature, but what if it was over top of a neighbor's fence.

Mr. Lyons said he thought about that and that is really between two private property owners.

Mr. Rivers said this is just city property, not neighbors, not back yards, over a house, etc. because he doesn't think we should be getting into things of that nature. If we find the tree has bulked up the sidewalks from what it says the owner will be held responsible for the removal. The owner will be responsible for fixing the sidewalks and things of that nature.

Mr. Lyons said that is something he will have to look at before we say it is the owner's responsible for it.

Mr. Olson said what we will do is to bring something back in an add/delete format. That is one reason we decided to put it on the work session agenda. We were trying to judge what the Council wanted in that type of ordinance. These go from one extreme to another extreme. That is not what we are proposing. We are trying to take care of City trees and right of ways.

***A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman V. C. Watts to table this item for 60-days or until staff can come back with a better presentation at the next work session. Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King, Meggs and Rivers. Against: None. Motion carried.***

**4} CLOSED SESSION:**

Mayor Atkinson informed the Council we will need to retire into Closed Session at this time.

***A motion was made by Councilman J. A. Stimatz, seconded Councilwoman V. C. Watts to retire into Closed Session for***

**consultation with the City Attorney as per NCGS 143-318.11 (a) (3) and discussion of personnel as per NCGS 143-318.11 (a) (6). Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King, Meggs and Rivers. Against: None. Motion carried.**

Upon the end of Closed Session:

**A motion was made by Councilman J. A. Stimatz, seconded by Councilman R. E. King to return to regular session of Council. Those voting in favor of the motion were: Stimatz, King, Baker, Evans, Hummer, Meggs, Rivers and Watts. Against: None. Motion carried.**

**5} ADJOURNMENT:**

There being no further business to come before the Council at this time, Mayor Atkinson adjourned the meeting at 6:55 p.m.

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

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Stephen S. Atkinson  
Mayor